Palestinian Anti-corruption Policies and Legislations

Analytical Study

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Contents:

Executive Summary

Corruption, in its broad sense, is the misuse of authority for illegal purposes. Corruption poses a serious threat to development by exhausting national institutions of their resources and abandoning values of democracy, equality and justice.

Corruption exists in various forms and patterns and has become a reality which is hard to deny or ignore. This poses an obligation for all people and institutions concerned with the rule of law, and in building a Palestinian state where the rule of law and justice prevails in exerting all efforts to combat this phenomenon. It is not impossible to eliminate and halt the spread of corruption if both governmental and non-governmental efforts collaborate in achieving this aim.

It goes without saying that the Palestinian society pays great attention to this issue; which demonstrates the consciousness and awareness of the society and its institutions on this critical issue. Corruption has had its negative social impact manifested in plaguing society with incidents of aggression, blackmail, intimidation, abduction, killing, imposing taxes and other violations of the rule-of-law. Its threats have extended to attack public property; thereby infringing upon the citizens' basic rights and liberties.

This study is a theoretical framework which establishes practical steps to be followed by governmental and non-governmental institutions to eradicate the phenomenon of corruption. It comes as part of a Palestinian social endeavor in combating this corruption in all aspects. AMAN, The Coalition for Accountability and Integrity, was the main initiate of this endeavor by proposing the National Agenda for Combating Corruption, and also by launching the National Campaign to Combat Corruption.

The United Nations Convention against Corruption, which has been unanimously approved by all civilized nations, has established the fundamentals to combat corruption. To save time and effort in searching for effective means in attaining this objective, one can employ and adopt the methods, procedures, measures and policies of the international community in combating corruption.

On this basis, if Palestinians wish to combat this phenomenon, they should adopt the policies and measures defined in the UNCAC. Moreover, their legislations, in general, and penalty legislations, in particular, must be consistent with the principles and provisions of the Convention in order to guarantee their possession of an effective legislative tool – which is needed to combat and eliminate corruption.

Hence, this study is intended to assess the consistency of Palestinian legislations and policies in relationship with the provisions of the UNCAC in order to identify points of agreement and disagreement with the Convention. Additionally this study aims to promote and stimulate points of such convergence and remedy points of divergence, bearing in mind the nature of the local environment and the cultural aspects of Palestinian society.

To accomplish this goal, this study has employed the descriptive analysis method, whereby it has analyzed the provisions of the Convention and preventative measures, set in the general policies and legislation to combat corruption. Likewise, the study analyzed the Palestinian policies and legislations relevant to combating corruption in order to examine their consistency with the provisions of the Convention.

This study consists of three chapters. The first chapter explains the major subjects of the Convention by identifying its objectives, range of practice, and the actions of corruption which incriminate their doers. It also points out the procedures and assurances, whether in general policies or legislations, made by countries in combating and pursuing corruption crimes and the preventative measures needed to combat corruption as the Convention stipulates. The chapter ends by stating the Palestinian National Authority's (PNA)'s obligation to be bound to the Convention, maintaining that it is within the PNA's self-interest to be part of the Convention.

The second chapter focuses on Palestinian policies assessing their compliance with the fundamentals of the UNCAC. It investigates the features of general polices of the sequential Palestinian governments. Then, it examines the framework of anti-corruption polices, as represented in political participation, election campaigns, regulation of general procurements, management of public funds and reforms

of public management and civil services. This chapter examines the Palestinian anti-corruption institutions and the role of the Anti-Graft Commission and the State Audit & Administrative Control Bureau in this respect. This chapter also clarifies the regulations of financial liability statements. In addition, it addresses procedures set forth to extinguish money-laundering and governmental policy towards criminal profit from this practice. It also addresses procedures controlling financial activities of nongovernmental organizations and institutions. According to the importance of international and regional cooperation in the field of anti-corruption, this chapter emphasizes that anti-corruption is not only an internal issue but has become a regional and even international issue. Due to the close relationship between reasonable governing principles and anti-corruption, this chapter examines reforming aspects of the reasonable governing program, its basis and criteria.

The third chapter discusses the ability of Palestinian law to adhere with the UNCAC. It defines Palestinian land laws, highlighting severe disadvantages. It also defines the extent to which Palestinian law adheres to the UNCAC in the field of criminalizing corruption – beginning with criminalizing bribes, embezzlement, money-laundering, illicit enrichment or illicit gain; and finally with its adherence to the UNCAC in adopting legislations in effect in Palestine to assure supporting anti-corruption measures and prosecuting corruption crimes. Particularly, this chapter addresses the importance of: not using immunity as a deterrent against legal accountability; investigating and prosecuting corruption crimes; prolonging time limits applied to such crimes; limiting amnesty available to those involved in corruption crimes and banning them from future official public positions. Furthermore the chapter addresses the need to confiscate illicitly obtained funds (or grafting) while protecting witnesses, experts, victims, and whistle-blowers of such crimes. Furthermore, this chapter discusses existing Palestinian legislature and its ability to meld with polices set forth by UNCAC, which stipulated particular rules and regulations regarding public-sector employment.

Introduction:

Corruption was first addressed as a public issue in Palestine in 1997, four years after the establishment of the PNA. In May 1997, reports by the Supervision Committee and the Palestinian Legislative Council (PLC) revealed the existence of financial and administrative corruption, as exercised by a number of PA members.

Despite the importance and seriousness of this event, this issue did not attract the attention or objective follow-up it deserved, by either the government or Palestinian society. While the report was presented to some members of the PLC and distributed among the elite intellectual crowd, some political circles, various academic members and a few civil society organizations – the reports were actually read by relatively few members of society. This lack of exposure of the Legislative Council's report resulted in its diminished value, impact and influence. By failing to hold corrupted parties accountable – despite the publishing of their names within the material – the handling of the reports had a direct impact on the prevalence of corruption. Thereafter, corruption went beyond misuse of public funds and manifested itself in diverse fields of public service at senior levels, where the spread of nepotism and abuse of power increased rapidly by assorted influential members. This violation of the law through appointments of public jobs and the policy of rapid promotions quickly became associated with characteristic of public service. Additionally, corrupt placement of personnel within security agencies and conflict resolution institutions were exchanged for commissions resulting in transactions and bids conducted devoid of adherence to legal structures and required objectivity, as had been mandated for the protection of public funds. At once, in the public sphere the phenomenon of corporate monopolies and suspect participation of influential personalities in the trade market, and other such deeds, rapidly became notoriously known throughout Palestinian society.

Without entering the labyrinth of countless displays of corruption while identifying it's patterns at various levels of Palestinian society, listed here are key reasons we believe the issue of corruption is demanding immediate attention :

1. A number of powerful executives disregard respect for the rule-of-law and the premise of “equal opportunity” in their holding of public positions.

2. The appointment of leading positions is often conducted according to political favoritism and quota systems among political factions and parties. Therefore, those who hold senior positions maintain high organizational ranks, regardless of their capacities or qualifications.

3. There is an absence of separation-of-power, while the executive authority has control over legislature and judiciary authorities.

4. There is an absence of effective political action combating corruption and exploitation, which have marred the public service sector and the image of public fund maintenance. Indeed, the system of quotas had a clear impact on encouraging the continuation of, while preventing proper action of preventing, such corruption. Moreover, the very lack of political action coupled with existing quota systems have functioned as partners and contributors toward the prevalence of corruption; especially as those in positions to prevent corruption are the very ones obtaining benefits, functional and financial privileges of position, illegitimate grants and financial funds from the public treasury for personal or partisan purposes.

5. There is a lack of transparency in some areas of financial transactions within the public sphere; all public funds going to the PA have not been handled uniformly, although this money is subject to monitoring by the PLC. There is no effective agency to handle all suppliers of public funds to the PNA in spite of the fact that the funds are subject to scrutiny and monitoring by the Legislative Council.

6. There is major interference within centers of power and decision making.

7. There is a lack of legal accountability for violators of the law and perpetrators of criminal corruption for up to hundreds of crimes related to corruption. This is accompanied by a lack of legal prosecution. Ultimately, this grants criminals protection or even legal immunity. This, along with the PNA’s persistent silence pertaining to corruption crimes has the effect of encouraging the acceleration of such crimes.

While there are other complications within the PNA, addressing this issue is of paramount importance as it effectively eliminates the credibility of the PNA . One such example has been the failure of the Palestinian Public Prosecution to indict key suspects in corruption cases.

In addition to the above mentioned reasons, one cannot ignore the reality of the ongoing Israeli occupation and the major role this plays in defining the very nature of Palestinian society, whose territories are controlled and managed by military force. The PNA is not entitled to exercise all the powers expected of a government. Their authority is confined to those areas identified and defined in the Oslo agreements between the PLO and Israel. The PNA's authority remains limited and constrained as they are unable to exercise sovereign rights and governmental powers and functions in aspects of the administrative and security fields.

In spite of the limited powers granted to the PNA under the Oslo agreements, it was essentially stripped of its powers after the Israeli occupation forces launched the military attack, Operation Defensive Shield (or Deterrence Wall[1]

We emphasize the importance of recognizing the direct – and indirect – relation between occupation and the fostering of a suitable environment for the spread of rampant corruption in the Palestinian Territories. For example, the destruction of the headquarters for reform, rehabilitation centers and prisons by the Israeli occupation forces required that the Palestinian security agencies release convicted criminals and detainees from these locations, regardless of the charges against them or the crimes they were sanctioned by. Thereafter, Palestinian security agencies and law enforcement stopped persecuting criminals for some time, preventing just legal action. The resulting lack of security and legal coordination has rendered these agencies unable to indict accused convicts in serious criminal cases; this is often due to the agencies' inability to conduct legal arrests.

1 Israeli occupation forces launched the military attack, known as Operation Defensive Shield on 3/29/2002. For more on this operation and its repercussions on the level of the PNA and the Palestinian Territories in general see:

Report of the Secretary-General of the United Nations prepared pursuant to General Assembly resolution ES -10/10 d, taken on May 7, 2002 and entitled «Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory». Document No. ES-10/186/A paragraph 23 onwards.

The cessation of the criminal and security coordination between Palestinians and Israelis has contributed to the escape of hundreds of accused and convicted due to the PNA's inability to control its own borders. This results in trafficking, or the movement of accused and convicts from the Palestinian Territories to the occupying state or vice versa.

This has resulted in an environment possessing few criminal justice institutions and a lack of legal accountability. Indeed, the result of the military occupation has provided the ideal environment for prevalence of illegal activity and subsequent unaccountability. Consequently, since the invasion by Israeli forces, the Palestinian Territories have been living in a state of chaos and lawlessness resulting in the prevalence of murders, corruption, extortion and assault to public and private properties. Moreover, due to its total control over the Palestinian Territories, Israeli occupation has absolute ability to influence and direct the Palestinian situation, whether economic, social or political.

Grants and aid, which have been flowing into the Palestinian Territories since the establishment of the PNA, have been accompanied by support for the peace process and good will to help Palestinians build needed institutions while the current governing system remains incomplete. Despite the important role played by this funding in the construction and establishment of the PNA's infrastructure, it has indirectly increased corruption in the Palestinian Territories. This has been accompanied by a lack of donor interest in the exploitation and operation of such funds and lack of control over spending channels.

We assert that the existing patterns of corruption, in their different forms, have become a threat to the credibility and effectiveness of the PA and its institutions. This necessitates that all individuals and institutions interested in the rule of law and justice in Palestine should immediately act to combat this phenomenon. The eradication of corruption is not impossible or even difficult if official and private efforts are combined — especially as the public sector and general employees have not generally been engaged in activities of corruption, nor do they justify it.

Chapter One:

The United Nations Convention against Corruption (UNCAC)

International concern about the phenomenon of corruption, in all its different forms, is not a sub-interest imposed by incidental considerations, but is a culmination of UN efforts in: regulating rights; ensuring freedom; fighting poverty; supporting development; achieving the right of economic self-determination; achieving free market practices for its right of permanent independence; and ensuring proper utilization of revenue and wealth.

Since its inception, the UN has granted individual rights as well as political, civil, economic, social and cultural rights. The UN set aside hundreds of decelerations and international conventions regarding the following: economic rights; developmental rights; social justice; individual equality; permanent sovereignty on revenue and wealth; and workers rights, among others.

International concern does not end at discussing details of rights and its codification and branches, but goes beyond the abstract theoretical codification of the role of the international society. It looks for ways that enable international society's effective and positive implementation for this system through limiting and diagnosing obstacles and challenges that stand between peoples and individual rights, as they exist, and the possibility of real satisfaction of these rights. Therefore, the UN works to eliminate obstacles which thwart development and prevent countries from establishing political and economic systems built on achieving social justice and equal rationing for income and wealth. This guarantees and enriches the right of every one in having benefits in revenues and wealth as well as their right in equality in the actual practice of rights, individual and collective freedoms, and actual practice of their education, health services, nourishment, housing, and right to work in public service.

Since corruption in all its forms has became one of the most important obstacles preventing people from practicing their rights in development and progress, fighting corruption and preventing its

future occurrence are of great interest to the UN and the international community. They attempt to create international comprehensive and permanent strategies in order to fight and prevent this phenomenon, realizing the danger it poses on individuals and countries.

Prompt efforts made by the UN in fighting corruption led to the approval of the general assembly of UN on its decision No. (584/) of October 3, 2003. By approving this decision, it ratifies the proposal of the UNCAC. In conformity with the aforementioned decision, the day of December 9 is named International Anticorruption Day. The decision also asked and urged the international society and regional economic integration organizations to ratify the UNCAC. This Convention was open to all states for signature on December 10, 2003, in Merdia, Mexico, and entered into force on December 14, 2005. Therefore, this Convention is the first general international convention concerned with, and specialized in, the limitation and codification of procedures and measures that should be followed by the international society and countries to guarantee fighting and eliminating corruption.[2]

Subject one: The Content of the International Convention against Corruption

The Convention consists of a brief preamble and 71 Articles divided into 8 chapters[3]. It also includes procedures and measures to be followed and applied by state parties to develop and strengthen the legal, administrational and judicial systems in the field of combating and preventing corruption.

By virtue of this Convention, we suggest shedding light on the most important responsibilities imposed on state parties in order not to go deeply into the details of the Convention.

: There are many regional anticorruption conventions such as 2
Inter-American Convention against Corruption adopted by the Organization of American States on March 29, 1996; the Convention on the Fight against Corruption involving officials of European Communities or officials of Member States of European Union, adopted by the Council of European Union on May 26, 1997; Convention on Combating Bribery of Foreign Public officials in International Business Transactions, adopted by the Organization for Economic Cooperation and Development on November 21, 1997; The Criminal Law Convention on Corruption, adopted by the Committee of Ministers of Council of Europe on January 27, 1999; The Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on November 4, 1999; and the African Union Convention on preventing and combating corruption, adopted by the Heads of State and government of the African .Union on July 21, 2003

3 See appendix (a)

Whenever possible, we focused on obligations appropriate to the Palestinian situation, as an authority within occupation. Therefore, we avoid concentrating on obligations related to sovereignty, enjoyed only by states that possess all legal state aspects, such as obligations related to criminal authority, extradition of criminals, prosecuting assistance and other obligations.

Hence, we are limiting the focus of our efforts, in this study, on obligations that could be applied by the PNA pursuant to its competence limited to its legislative, executive and judicial authorities.

Branch one: Purposes of the UNCAC Convention and Scope of Application

The preamble of the UNCAC reflects reasons for establishing this Convention, as maintained by the international society. The Convention aims at fighting the critical problems imposed by corruption on the stability and security of societies which under-minds the institutions and values of democracy, ethical values and justice, and jeopardizes sustainable development and implementation of the rule of law. In addition it focuses on identifying the links between corruption and other forms of crime; in particular organized crime and economic crimes including money-laundering.

The preamble also explains that corruption is no longer a local matter but affects all societies and economies, making international cooperation to prevent and control it essential. It requires that the international community develop and grant access to all technical, informational and administrational capability available to prevent and control crimes of corruption and illicit gain. Additionally it supports state recovery of assets obtained by different forms of corruption.

Importantly, the preamble highlights that prevention and eradication of corruption are no longer a single or individual responsibility, but are the responsibility of all states. Moreover, it asserted that the prevention and eradication of corruption can not be achieved without uniting the abilities of civil society, non-governmental organizations and community-based organizations.

With reference to provisions of chapter one of the Convention,

Articles of this chapter deal with purpose and scope of application. The first Article specified the purpose of this Convention as follows:

(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively,
(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of — and fight against — corruption, including in assets recovery,
(c) To promote integrity, accountability and proper management of public affairs and public property.

Article three of the Convention specified the scope of application of this Convention as follows:

1. This Convention shall apply, in conformity with its terms, to the prevention, investigation and prosecution of corruption; and to freezing, seizure, confiscation and the return of proceeds of offences established in accordance to this Convention.
2. For the purposes of implementing this Convention, it shall not be necessary, except when otherwise stated herein, for the offences set forth within it to result in damage or harm to state property.

The importance of this Article lies in its confirmation on the preventative dimension for the implementation and effectiveness of this Convention. As stated in its title and articles, it aims at promoting the preventative dimension for combating corruption. That means working on preventing these crimes before they happen. Therefore, the preventative procedures whether political, measured or guaranteed, have a special and unique position in the articles of the Convention. The establishers of this Convention are dedicated to combating corruption as the primary target because the result of such action would yield the reduction of corruption and, to some extent, the elimination of its capacity.

Branch two: Anti-corruption Policies and the UNCAC

The Convention shows the ideal policies that should be adopted by governments to achieve the best statue to approach good governance.

The Convention includes, in chapter two, **preventative anti-corruption policies and practices**. When creating a preventative anti-corruption body it expresses the importance of establishing

codes-of-conduct for: public officials; public procurement and management of public finances; public reporting; measures related to judiciary and prosecution services; the private sector; societal participation; and required measures preventing money-laundering.

The third chapter of the Convention discusses **criminalization and law enforcement**. It measured: the criminalization of bribery of foreign public officials and officials of public international organizations; embezzlement; misappropriation or other diversion of property by a public official; trading in influence; abuse of functions; illicit enrichment; embezzlement of property in the private sector; laundering of proceeds of crime; prosecution, adjudication and sanctions; freezing, seizure and confiscation; bank secrecy; cooperation between national authorities and private sectors; and establishing criminal records.

Chapter four of the Convention addresses the following: international cooperation; extradition; mutual legal assistance; transfer of criminal proceedings; law enforcement cooperation; joint investigations and special investigation techniques.

Chapter five primarily discusses asset recovery. It considers actions related to: proceeds of crimes; measures of direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; bilateral and multilateral agreements and arrangements; as well as methods for establishing a financial intelligence unit.

Chapter six of the Convention discusses technical assistance and information exchange. It focuses on: training and technical assistance; collection; exchange and analysis information on corruption; and implementation of the Convention through economic and technical assistance.

It is noted that the UNCAC marks the United Nation's enhanced interest in corruption crimes. It dedicated the third section to criminalization of corruption, unlike the UN Convention against Transitional Organized Crime; which was opened for signature and approval by virtue of the General Assembly resolution of UN on 112000/11/ and entered into force on 292003/09/. It dealt

(in Article 8) with bribery only under the title of Criminalization of Corruption. It lists money-laundering as a crime, but not under the title of Criminalization of Corruption, it can be found instead under Laundering of Proceeds of Crimes.

Branch Three: Criminalized Acts of Corruption Based on the UNCAC

The aforementioned policies and practices are no doubt inefficient and ineffective – in so far as these policies are without 'Penal Act' protection. Adoption of all procedures stipulated in the agreement by some countries does not add any value until and unless the 'Penal Act' of these countries includes a set of rules and legal statements that criminalizes acts that fall under definition of corruption.

On this basis, corruption-combat efforts imply criminalization of numerous acts that fall within the framework of this phenomena in order to ensure legal prosecution for whoever partakes in such corruption as bribery, extortion, Wasta (cronyism), nepotism, bene faction, denying justice, exploitation of employment position, illicit income, etc.

In this regard, we may define the "criminalized acts of corruption" in the agreement as follows:

1. The promise, offering or giving to a public official, directly or indirectly, of an undue advantage for the official himself/herself or another person or entity, in order that the official act or refrain from implementing his/her official duties;
2. The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official himself/herself or another person or entity, in order that the official act or refrain from implementing his/her official duties.
3. The promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage for the official himself/herself or another person or entity, in order that the official act or refrain from implementing his/her official duties in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
4. The solicitation or acceptance by a foreign public official or an

official of a public international organization, directly or indirectly, of an undue advantage for the official himself/herself or another person or entity, in order that the official act or refrain from implementing his/her official duties.

5. The embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his/her position.
6. The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his/her real or supposed influence with a view toward obtaining from an administration or public authority of the state party an undue advantage for the original instigator of the act or for any other person.
7. The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his/her real or supposed influence with a view to obtaining from an administration or public authority of the state party an undue advantage.
8. The abuse of functions or position, that is, the performance-of or failure to perform an act which is in violation of the law, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself/herself or for another person or entity.
9. Illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
10. The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself/herself or for another person, in order that they are in breach of their duties, or that they so act or refrain from acting;
11. The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself /herself or for another person, in order that they are in breach of their duties or

that they so act or refrain from acting.

12. Embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him/her by virtue of their position.
13. Laundering of proceeds of crime through the following acts:
    (a) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action.
    (b) The concealment or disguise of the true nature, source, location, disposition, movement, ownership of, or rights with respect to property, knowing that such property is the proceeds of crime.
    (c) The acquisition, possession or use of property — knowing, at the time of receipt that such property is the proceeds of crime.
    (d) Participation in or association with conspiracy to commit aiding, abetting, facilitating or counseling the commission of any of the offences established in accordance with this article.
14. The concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with the Convention.
15. The use of physical force, threats, intimidation or promises, the offering or giving of an undue advantage to induce false testimony, to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with the Convention.
16. The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention.
17. Whosoever attempts to commit any of aforementioned acts, in any capacity — such as an accomplice, assistant or instigator — in an offence established in accordance with the Convention.

After examining the provisions of chapter three of the Convention, it is worth noting:

(a) Adopting critera without definition, includes limiting corruption crimes

It is clear that although the Convention avoids defining corruption, it focouses on limiting crimes. The content of Article No. (65) of the Convention clarifys that the Convention included these crimes as examples and it left the door open for individual states to decided and add what they deem criminal within each individual legislative.

(b) Going beyond the traditional defenition of public official

For the purposes of this Convention and consequently to prevent and combat corruption, the definition of public official is not limited to the traditional concept held within states in the regional legislations, i.e, a person working for the state or its public administration. The Convention expands the definition of public official for legal prosecution and criminal accountability regarding corruption crimes – especially bribery. It therefore includes all officials, public servants and officials of international institutions existing on the territory of the state, regardless of nationality. By virtue of this definition, states shall prosecute and hold accountable persons who committed, or share in committing, bribery within the territory of the state.[4]

(c) Expanding the scope of corruption crimes outside the public sector.

The Convention also expands the scope of corruption crimes outside the scope of the public sector. By virtue of the Convention some forms of corruption shall also be viewed as corruption crimes, even if committed in the scope of the private sector[5]. For example, criminal bribery and embezzlement by a person who directs or works, in any capacity, in a private sector of any property, private funds or securities, or holds any other object of value entrusted to him/her by virtue of his/her position, should be held accountable for criminal corruption.

(c) Recognizing the criminal liability of Legal Persons

In order to lift the immunity of Legal Persons and to limit the scope of its liability in the civil liability frame, the Convention calls for expanding the scope of criminal liability to include normal persons

4 See Article 16 of the Convention

5 Articles 21 and 22 of the Convention dealt with this state

alongside public persons. These persons shall be subject to criminal accountability regarding corruption crimes as included in the Convention and shall be punished when committing these crimes[6].

Therefore, if the arbitrary person[7] (company, institution, society, body, and others) supports any crime or criminal behavior — such as offering bribery, promising advantages to others, money-laundering, purchasing or utilizing proceeds of corruption crimes, or other crimes included in the Convention — they shall be subject to criminal liability. Thus, regional legislations shall adopt effective and preventive criminal penalties against arbitrary persons, bearing in mind the nature and characteristics of such persons.

Branch Four: Procedures and Guarantees to Promote Preventing and Combating Corruption by States

Besides binding the state party by virtue of this Convention to adopt clear policies to promote anticorruption, preventative action, and criminating particular acts to ensure the effectiveness of its criminal regulatory against corruption, the Convention is concerned, as shown in chapter three, with promoting and activating state policies and procedures against corruption crimes. The most important policies and procedures are:

a- Removing immunity as an obstacle against prosecuting corruption crimes[8]

In prosecuting some criminal cases, legislators are required to obtain prior permission from the specialized authorities. Therefore, public prosecution does not have the authority to practice prior to obtaining special permission.

Thus, public prosecution, in principle, does not have the authority to prosecute cases related to public officials before getting permission from the specialized authority, if the accused person was a public official and his position or criminal act comes under positions and acts attached to a prior permission pursuant to the law.

Due to the occurrence of immunity and the lengthy process required

6 Article 26 of the Convention affirmed this matter

7 A Legal Person is defined as an organization or a group of people who have (some of) the legal rights and responsibilities of an individual under the law, this person or entity has an independent identity, which is separate from that of the individuals who make up the group.

8 Article 29, clause 2 of the convention calls for this procedure

to follow administrative procedures — that include addressing specialized authorities for obtainment of permissions — such permissions prevent the possibility of effective accountability and timely prosecution against corruption. It is therefore necessary for the state to take into consideration the proportion of criteria affecting the privilege and safeguards granted to its employees with respect to the legal equity of questioning pursuit, a timely criminal justice system and the need for acceleration of required procedures at the level of corruption-combating within public employment.

b- Statute of limitation of penal procedures relevant to corruption cases [9]

Statute of limitation is defined by the unavailability of legal action or measures, once the prescribed time limit (as legally defined by punitive legislations) has passed. Therefore if a certain period of time passes after a crime – or any actions relating to said crime – has been committed, and the competent parties did not take legal action, the state and the aggrieved have both lost the right to file a law suite on a penal or civil basis.

Term levels of statute of limitation of punitive legislation are determined according to the type of crime and its gravity. Therefore, punitive legislations usually determines relatively long statute of limitations for capital offense, this term ranges from one-five years, according to the level of violation.

The adoption of longer terms by punitive and procedural legislation for the statute of limitation of suit filing or dropping, relative to corruption crimes, yields a slimmer possibility of accused escaping questioning. Also an extended statute of limitation followed by the likelihood of trial will serve to create deterrence, preventing potential criminals from committing such crimes.

c- Consideration of the gravity of corruption crimes when granting free pardon [10]

Much criminal legislation gives the head of the executive authority the legitimacy to issue amnesty for those convicted; i.e. discharging the convicted person of the whole penalty, some of it, or replacing

9 Article 29 , clause 2 of the Convention

10 as provided by Article 30, clause 30, clause 5 of the Convention

it with legally looser one, in compliance with terms and procedures that are usually determined and organized by criminal legislations.

Therefore, many criminal legislations adopt the policy of canceling the penalty, or part of it for the convicted person with good conduct. For this reason, the Convention – to guarantee that the states would consider the severity of corruption crimes – drew their attention to the gravity of such crimes in case states apply the policy of amnesty. Subsequently, the state sets the arraignments and penalties, or exceptions, which are proportionate to the gravity of the crime, and in relationship with their policy of combating corruption.

The Convention's text is characterized by excessive generality, even diverting away from the penal philosophy – which the Convention essentially called for adopting – in order to effectively confront corruption crimes. Therefore, it was supported that the Convention should openly provide safeguarding against corruption crimes vis-à-vis amnesty.

d- Adoption of vigilant measures allowing the dismissal, suspension, or moving of employees accused of corruption crimes[11]

This action is taken as a preventative measure; for the employee indicted in corruption and being a top-executive within his/her field may be enabled to conceal criminal evidence or make right the criminal act under indictment. He, for instance, may return the embezzled money or rearrange the files in a manner that may enforce acquittal. His/her existence in post may allow exploitation of power enabling him/her to influence others to testify in favorably, or s/he may exploit their position to influence bodies concerned with the investigation preventing questioning or prosecution.

Therefore, in case of corruption crimes it is preferred that adequate preventative measures are taken such as suspending, moving, or the accused employee during investigation pending the trial's verdict.

11 Clause six of Article No. 30 of the convention

e- Temporary deprivation of those convicted in corruption crimes from assuming various posts: [12]

To combat corruption, the Convention urged states to consider adopting consequent punishment in corruption crimes, as one convicted of a corruption crime should be uniquely penalized for the corruption crime in addition to the original punishment of lost freedom. This punishment is manifested in subsequent disciplines, like temporary deprivation of assuming governmental posts, or working with public utilities possessed wholly or partially by the state.

f- Confiscation of assets acquired through, or engaged in, corruption crimes:

Confiscation means compulsory expropriation of the illicitly gained material or funds from the convicted, whereupon it is handed to the state. *Such confiscation is a financial penalty. The point of having confiscation as a punishment is that it can have the characteristics of a permissible punishment.* However, confiscation may become a compulsory penalty if the judge pronounces it as subsequent to the original penalty of said crimes.

Regarding the gravity of corruption crimes, the Convention requires that States take legislative measures that guarantee the confiscation of:

- Criminal returns resulting from criminal acts according to this Convention.
- Property or equipment and other instruments used or prepared to be used in committing criminal acts according to this Convention.

The Convention also obligates the states to take necessary measures to trace, freeze or reserve these. Also, in order to guarantee the actual confiscation of the assets acquired from the returns of corruption crimes, States should also confiscate these returns; even in their newly altered form. In this case, such possessions are subjected to confiscation in stead of the confiscated returns.

In the case that criminal returns are integrated into possessions acquired from legitimate sources, states should subject the confiscated possessions within limits of estimated value of criminal

12 Clause of Article No. 30

proceeds. According to the agreement, confiscation should include revenues or benefits from criminal proceeds, or from properties which have been financed or exchanged for such revenues; this includes properties which have been associated with such proceeds.

Perhaps the Convention's interest and emphasis on the confiscation of assets acquired from corruption crimes is justifiable. We see that such interest is well-defined, as the potential culprit of corruption crime, lacking immunity, criminal possessions and returns acquired from such a crime, will be dissuaded from committing such a crime. Subsequently, the potential criminal plans and fortune-seeking, through the exploitation of his/her professional position, may be halted. Its worthy of noting that the confiscated funds, as a result of corruption crimes should be dealt with in accordance of the Convention as follows:

- Return the possessions confiscated by the state to their former legal possessors
- In case of embezzling public assets or embezzled laundered public money, the confiscated possessions have to be returned to the aspect of the state claiming these assets; once it has been reasonably proved former proprietor of confiscated material.
- Use them in compensating the crime victims
- The state that has carried out confiscation in favor of another state, can deduct investigation costs and other expenses incurred to this effect.

g- Protection of witnesses, experts and victims

The Convention called upon state parties to take the proper measure – in compliance with their internal legal system, and within their potentials – to provide, when necessary, effective protection for witnesses, experts, their relatives, and all persons with close relationship with them, against any possible reprisal or terror they may be exposed due to their testimony given regarding criminalized acts of corruption.

The Convention requires the following measures (among others) to ensure witness protection:

- Set procedures to provide physical protection for witnesses, such as a change of residence when necessitated; including the

removal of any information related to their identity, whereabouts, or imposing restrictions on the disclosure of such information

- Provide special rules of evidence, which allow witnesses and experts to deliver their testimony in a manner that guarantees the safety of those persons. For example, permission to testify by using communication technology such as video connection, or other such alternative communication which may mask the identity of the witness.

h- Protect whistleblowers of corruption crimes:

To encourage individuals to inform about corruption crimes, the Convention called on the state to establish proper measures providing protection for informants without delay or questioning. Such measures shall be found by any person who, in good will and for sound reasons, informs authorities of any incidents relevant to criminalized act.

To encourage perpetrators of corruption crimes to voluntarily present information that may aid deprivation of illicit returns, and recovery of those returns, the states shall act according to the Convention by:

- Allowing the possibility of penalty alleviation for the accused that provides substantial assistance in an investigation, or pursuit regarding a criminalized act.
- Granting immunity against judicial pursuit for any person presenting substantial help in an investigation, or pursuit, regarding a criminalized act.
- Installing measures to protect those persons, in accordance with the manner assigned to witnesses and experts.

Subject Two: Extent to Which the PNA is bound by the UNCAC

The general principle in relation to regulations and principles of international law[13] stipulates that each valid treaty or international agreement is considered binding only to its cosignatories. These principles also stipulate that each international agreement cannot create or establish commitments or rights towards those not party to it without their consent.[14]

13 The Vienna Convention on the Laws of Treaties, 1969, regulating legal aspects of international agreements.

14 These issues were handled by Articles No. (26) and (24) Vienna Convention on the Laws

The UNCAC lies within the international agreements' register. Therefore its regulations gain a legally binding attribute concerning all states who are cosignatories. Thus, there is no disagreement in this regard that cosignatory states to these conventions should respect the enforcement and implementation of their regulations and remain committed to them in all cases and situations requiring their implementation. However, the PNA still does not possess the constituents of a state, which prevents it from enjoying the rights granted to states in accordance with international law, including the right to partake in, or join, international agreements; especially those that restrict the right to join them to states. Thus a number of legal problems could arise concerning the UNCAC especially its binding legal value in the case of the PNA. That is, we could express these problems with the following queries:

Does abiding by commitments stipulated by regulations of the UNCAC depend solely on states party to this Convention?

Without excessive discourse, and whilst illustrating the principles and regulations of international law related to these issues, one could say that there is nothing within international law that prohibits any Legal Person from implementing within international law's standards, or in respect to any of the principles or regulations of any international convention without being a party to it. Thus the PNA, if it seriously desires to respect and implement the regulations of this Convention, and subsequently adopt its contents, should issue a statement expressing its desire to commit to the regulations of this Convention and then implement and manifest its articles within the Palestinian Territories. This should be done independent of the president of the PA. In addition the PLC should also issue a statement, if it finds that Palestinian interest requires the implementation of this Convention through incorporating and including its Articles within Palestinian legislations that are in force, regardless of the membership standards within this agreement.

One could, more pertinently state that it is important and necessary that Palestinians commit to the regulations of this Convention and incorporate its texts within their legislations for the following considerations:

of Treaties, 1969. Article No. (24) stated that, "Every convention is valid and binding only for parties of the convention, who shall implement its contents "in good faith"

- The Palestinian Prime Minister, Ahmad Qrei' stated on 92004/12/, according to a special letter submitted to the UN Secretary General, that the Palestinian government is explicitly committed to the UNCAC. He also states that the Palestinian government respects and implements this Convention and commits to the adoption incorporation of its regulations within Palestinian legislation.
- The Convention analyzes an issue of great concern to Palestinians. Thus, it is within Palestinian interest, if they desire to combat corruption – which exists and is being exacerbated within the Palestinian territories – to commit to the principles and arrangements ratified by the Convention. These principles will have a positive effect upon limiting the spread of corruption and combating its existence within PA territory.
- Palestine will become a state; therefore, in the future it will be required to commit to the implementation of the UNCAC's regulations, which it will become party to. As ratification of any international Convention will require the ratifying state to incorporate the conventions within its legal system. Thus, it is within Palestinian interest to immediately achieve legislative concurrence between stipulations of the UNCAC and existing legal legislations.
- A legislator always seeks to meet the needs and requirements of individuals within his/her society with regard to legislation aiming at the progressive development of political, economic and social activity, as well as legislation aiming at potential social relations activities of intellectual, economic or political nature. On this basis, it follows that legislators should interfere to regulate a situation each time a social need arises; to put in place desired regulatory law addressing an important subject or issue. This may be attained either by issuing a new law or amending and developing the old legal system so that it can become better suited to the status quo and thus comfortably fit the international amendment. Doubtless, there is an urgent need within Palestine for issuing legislation and adopting procedures which combat corruption, apprehend perpetrators and hold them accountable.
- Incorporating the principles of international agreements within current Palestinian legislations will result in saving time, money and effort for Palestinians in the future, as complying to

international requirements within legislation that is currently being issued will relieve the Palestinians of the burden of amending and reformulating these legislations in the future.

Perhaps one of the most positive ramifications of rendering current Palestinian legislation contemporaneous with international agreements and conventions is the stability of legal positions and transactions pertaining to natural and Legal Persons. Stability is ensured through contemporary amendments as any amendment or alteration within the legal structure of any society will lead to amendment and alteration within legal positions and the rights and commitments given to persons, which could have negative repercussions on socio-economic activity. This is due to the time and effort required for the whole of society to comply with altered behaviors and actions of an amended legal system.

Finally, it could be said in this respect that the head of the PLO and president of the PNA should issue a declaration similar to the one issued by the Palestinian Prime Minister so that the declaration made by the government will gain legal and constitutional validity, since the Palestinian president , as chairman of the PLO and head of the PNA has the sole right and authority to issue such declarations as he constitutes the higher functional and political reference of the executive authority. Thus, not only should an explicit declaration be made by the head of the PNA in confirmation of that made by the government, so that it can gain binding legal validity, but this declaration should also be considered of important legal value due to its role in granting Palestinian society and individuals constitutional and legal prerogatives that will support their stands in legal interventions to force the various Palestinian authorities to commit to, respect and implement the regulations of this Convention whether on the level of incorporating its principles within local legislations or on the level of holding Palestinian administrative bodies accountable for the various administrative and procedural commitments required by the Convention.

Chapter Two
The Extent to which Palestinian Policies Comply with the UNCAC

Some of the most important regulations included within the Convention are the group of preventive policies and measures states should consider to prevent corruption. The most important of these measures being:

1. Continuous evaluation by participating states, of this legislative system and its administrative measures – especially those combating corruption in order to guarantee the effectiveness of these legislations and their continuous ability to prevent and combat corruption.

2. Formation of a body or bodies to combat state corruption. To ensure these bodies can perform their role effectively and efficiently, they should be given a certain degree of independence – enabling them to function with professionalism and away from the influence or hegemony of other authorities. These bodies should also be allocated the financial and human resources required for their activities.

3. Each state party shall – where appropriate and in accordance with the fundamental principles of its legal system – endeavor to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants; and, where appropriate, other non-elected public officials. These systems should be based on the principles of qualification, transparency, efficiency and fairness when designing a public post. Additionally, they should include standards and criteria related to the nomination of a public post in order to consolidate transparency in funding nominations for the election of public post holders and in funding political parties while preventing conflict of interest.

4. States' parties should place codes of conduct and manuals for public servants in order to guarantee performance that is honorable and proper. These manuals should consider the criteria and principles ratified by the international codes of conduct for public servants mentioned in the General Assembly resolution 511996/12/12 ,59/.

5. Incorporating, within local legislation, measures and systems that facilitate public servants' ability to inform the concerned authorities of corruptive acts that could occur whilst they are performing their duties. Legislations should also include texts binding public servants to disclose, to the concerned parties, information about their external activities to avoid conflict of interest with their duties as public servants.

6. States should adopt penal or other measures against public servants who violate memoranda or legislations that regulate public positions.

7. States should organize public purchasing systems and public financial administration so as to guarantee transparency and competition. Their systems should also consider the principles of dissemination of information related to purchasing procedures and agreements, and invitations to bid and to participate in tenders. Additionally their systems should consider information related to the signing of contracts, in order to guarantee open opportunity for prospective tenders by giving companies enough time to prepare and submit their tenders.

8. The agreement also stipulates that state parties should publish the conditions for participation, the criteria for selection, the drawing of contracts and the basis for the tenders. It also stipulates that they should set objective criteria before placing decision-making mechanisms related to public procurement. It also specifies the necessity of establishing an effective internal review system which will ensure measures are correct, thus guaranteeing proper implementation of the principles or measures related to public procurement. The review system shall provide the right for harmed persons to object in the case that measures or principles of the conventions are not adhered to, or are overridden or violated.

9. States should put in place appropriate measures to strengthen transparency and accountability in the administration of public finances. These measures include delineating measures for designing a national budget, disclosing information about revenues and expenditures, such as when they occur. Additionally states should put into place a system for reviewing accounts and related monitoring measures. Cosignatories should also place the

necessary civil and administrative measures to keep accounts, books, registers, and financial data and documents related to expenditures and public revenue safe in an effort to safeguard their forgery.

10. States should adopt measures that strengthen transparency within public administration, including measures related to their methods of organization, procedures and decision making mechanisms. They should also adopt procedures and by-laws that enable individuals to obtain, whenever necessary, information about the organizational methods used within public administration, its work and the decision making mechanisms. Similarly, states should simplify administrative procedures in order to facilitate individuals' ability to reach the concerned authorities that take decisions.

11. Cosignatories should take measures to support integrity and fight opportunities for corruption amongst members of the judiciary.

12. States should place and implement procedures that could prevent the private sector from corruption. This can be done through the adoption of procedures which encourage strict accounting criteria, monitoring accounts within the private sector. These include effective civil, administrative or criminal penalties that are appropriately preventive in cases of non-compliance with these measures. In addition, to achieve this purpose, it is necessary that states place criteria and procedures that aim to preserve the integrity of the private sector through placing account review measures that could help prevent corruption and reveal it on the level of this sector. States should also place memorandums and codes-of-conduct to guarantee that this sector practices its activities in a proper and honorable fashion. Additionally, states should prevent conflict-of-interest by placing restraints, for a reasonable period of time, upon previous public servants' who are practicing professional activities and upon public servants' working in the private sector after they resign or retire – especially if their employment or activities are directly related to their jobs within public service or if they had supervised such activities during their service.

13. States should adopt policies supporting the mobilization and integration of individuals and civil society institutions in combating

corruption and fighting it. Additionally they should actively raise public awareness of the dangers of corruption and its causes. Finally the states should also strengthen transparency within decision making procedures and encourage the participation of private individuals within these activities.

14. States should install measures of education for society about bodies that combat corruption and to provide society, according to need, with methods of communicating with these bodies so as to inform them of cases of corruption according to special procedures that consider the secrecy of this information without disclosing an individual's identity.

15. States should establish an internal system for monitoring and supervising banks and other financial institutions, including Natural and Legal Persons that present regular or irregular services in the field of financial transfer, in order to prevent and reveal all forms of money-laundering.

16. States should consolidate cooperation between the administrative, monitoring, judiciary and all other authorities dedicated to the prevention of money-laundering in the field of information exchange. This consolidation should take place at both the national and international levels, and within the limits of conditions imposed by internal by-laws. States should also establish a financial intelligence unit that acts as a national center for compiling and analyzing data related to possible money-laundering operations, in order to disseminate this information. They also have to guarantee that this information is utilized properly and without impeding the legal flow of capital in any way. They should stipulate that individuals and social institutions declare the transfer of large amounts of money and exchangeable bonds when moving them across borders.

17. Adopting a clear policy preventing expenditures in the form of bribery, commission, compensation or other monies presented as a grant to buy people off in order to obtain illegal facilities within the scope of tax exemption.

After examining Articles of the second chapter of the UNCAC regulations, it is evident that the Convention emphasizes the

preventive aspect of combating corruption to a great extent. The Convention stipulates cosignatories comply with specific procedures, measures and policies such as: social awareness raising policies in the field of corruption; methods of combating it and encouraging employees to report cases of corruption and violations related to public funds; instigating states to adopt financial monitoring policies at the level of public finance management on the flow of capital in order to stop money-laundering operations; dissemination of information related to bids and tenders; placing clear criteria for employment in public posts and placing ethical guidelines for employees in the public sector.

All these policies evidently depend on encouraging transparency as a practical performance philosophy that guarantees clear conduct within state authority's decisions in the monetary field. This can achieve a preventive dimension in combating corruption due to the fact that states have to comply with policies such as the free flow of information concerning public funds and procurement and the ability of the public to freely access, view or compile data related to this field. This will encourage public opinion and give those interested in combating corruption the ability to obtain required clarifications on various aspects related to the methods officials use to carry out their tasks and responsibilities and the justification for taking financial decisions.

These will, no doubt, result in the consolidation of society's monitoring role, which will in its own turn reduce crimes linked to corruption, mismanagement and other divergent occurrences that could blemish the performance of the authority. This being due to the fact that granting individuals and concerned parties the right to continuously monitor decision making mechanisms and other information related to activities by state authorities on the financial or administrative levels will, no doubt, enhance the role of individuals within the monitoring community. In addition it will enhance extent to which authorities are compliant with laws, as the public servant realizes that there are bodies or parties that are aware of their official duties and methods of performance. The monitoring of which will no doubt strengthen their attention to duty, while at once increasing their respect for said duties and proper procedures, apart from their interest in avoiding the exploitation of their authorities.

The Concept of Policies

When discussing government corruption policies we must clarify the concept of government policy and its relationship to other legislation that regulates and organizes governmental work. If public policies mean a comprehensive framework of all activities and functions the government has taken on – within prioritizing where all strategies, plans and expenditures are related in a way that links the goals and the mission of the institution with the executive plans and translates the government's vision and objectives into a group of outputs and tangible results – then this concept is not alien to other terms that regulate the government's work and its various administrations; but is connected to the government's vision, mission, objectives, strategies and programs.

By delineating the government's general objectives and the aims branching out from them, the need appears for placing a core strategy that is concerned with methods of achieving aims. After defining this core strategy, or what is often called the aspired for strategy that represents the broad outlines that bridge the gap between reality and aims, it is time for implementation. Implementation begins with placing general policies and guidelines within the government so that it can ultimately achieve its aims.

Government policies should, no doubt, include a number of issues and public demands that represent citizen's needs, which the government can categorize according to its priorities. Policy production is not limited to governments and official parties but is considered a result of efforts by the executive and legislative authorities, political parties and groups, civil society institutions and individuals.

In order to implement the government's public policies, a strategic plan should be installed, which is sometimes called the intended strategy. This requires taking strategic decisions related to programs that can achieve public wants that are in congruence with policies and preparation of appropriate projects within each program. This can be done in a way that achieves a harmony between the projects that are suggested within a program and the amounts spent by each government body, whereby the program will include the government's activity directions for the future in the various political, economical, developmental, social and humanitarian fields. The

implementation of programs also requires preparing subsidiary plans – to implement and prepare budgets for projects and prepare the financial and human resources in accordance with implementation requirements.

After this explanation of the concept of government policies and their place amongst public administration concepts, one should, no doubt, indicate the features of the Palestinian government's policies through the programs of consecutive governments and their development plans. Here within, the ministerial statement (ministerial program) represents the government's objectives and strategies, which should essentially gain the Legislative Council's vote of confidence in harmony with the vision and mission of the PNA.

It is natural that the government's vision and mission is an expression of the vision and mission of the PNA. In order to discuss the PNA's vision and mission one should refer to the Basic Law, the Palestinian National Convention issued on 101968/07/, and its amendment on 241996/04/ and to the declaration of independence issued by the PLC in its 19th Congress on 151988/11/, which was also mentioned within the preamble of the Basic Law. Thus, since there are numerous documents that are related to defining the PNA's vision and mission, these concepts should be agreed upon nationally and a clear and unified version of the PNA's vision and mission should be formulated.

The government implements its ministerial program through formulating public policies, which reflect and translate the strategic aims and objectives included within the program, and through initiating plans that include programs and projects that are ratified by the government. This implementation plan should reach its aims in various fields included within the ministerial statement, whereby Article No. (69) of the amended Basic Law for 2003 stipulates that the ministerial council's specialties are: 1.) placing public policy within its specialty and in light of the ministerial program authorized by the Legislative Council. 2). Implementing public policies ratified by the specialized Palestinian authorities.

Article No. (71) of the amended Basic Law for 2003 stipulates that each minister specializes in the framework of his ministry.

1. Suggesting public policy for his/her ministry and supervising its implementation after it is endorsed by the according to Article No. (72) of the same law which states that "Each minister shall present to the cabinet detailed reports about the activities of his/her ministry, its policies, its plans, and its achievements as compared to the aims set for the ministry within the framework of the public plan and its suggestions and recommendations concerning future policies. These reports are presented on a regular basis every three months whereby the ministerial council will remain fully aware of the policies and activities of each ministry.

Subject One: General Features of Palestinian Successive Governments

It is difficult to understand and to specify the general policies of the Palestinian government without reviewing the characteristics policies, due to the differences in the legal and constitutional foundations and the policy that accompanied forming these governments. However, the characteristics of the policies of Palestinian successive governments should be specified as follows:

Eight Palestinian governments were formed between 201994/05/ and 242005/02/, during the rule of the late Yasser Arafat. The ninth government was formed in 242005/02/ after President Abbas took the office as the head of the PNA. After Hamas won the Legislative elections, a tenth government was formed headed by Ismail Hanieyah in 292006/03/, then the national unity government was formed in 172006/03/ which was dismissed in the wake of Hamas coup against the Palestinian Authority in Gaza. After the coup, a twelfth government known as the "Emergency government" was formed in 172007/06/.

Governmental policies regarding corruption are related to what general policies the government engages in as a result of its overall vision. The goal of the UNCAC could be understood through the interest of the Convention in criminalizing corruption and fighting it by empowering the honesty of public employees. In this way the UNCAC strives at preventing corruption in the governmental organizations while empowering, reforming and protecting them at the same time. Additionally, the Convention strives to protect, to reform and to prevent corruption within non-governmental sectors as well. In the

case that the government was the party which conceptualized the general policies and, including the strategic developmental, then the policies of fighting corruption which came out of the aforementioned goal, adopted by the government, should be included in the agenda of the national policies of the government. These policies should, in turn, be expressed through the government's plans which include developmental programs in implementation of its policies. These will be reflected by the government's decisions, stances and conduct which express the attitudes adopted by the government.

Palestinian Policies and Legislations

The successive governments have prepared some strategic plans, as the idea of the strategic planning began in 2000. After which the plan of social and economic stability for the year 2004 and the emergency plan of public investment for the year 2003 were approved in addition to the program of speedy intervention, which was approved in 2003. The medium-range development plan from 20052007- is the first, the most organized and most developed plan since preparation began in 2004.

This development plan had set two main goals. The first is handling poverty in a sustainable way through social and economical development. Secondly it aimed at improving the effectiveness of ruling of the PNA through organizational capacity–building and speedy reform. Within these two main objectives, the plan had specified four national programs. One was dedicated to securing social protection, another to investment in human and financial capital; the third focused on developing ruling organizations and the fourth strove toward creating a suitable environment for the growth of the private sector.

It is worth mentioning that Palestinian reform was not initially an international requirement, but reforming efforts have been in motion since as early as the establishment of the PNA, when the report which was released in 1996. Since its publishing by the Control Bureau 1997 it has had immense influence in highlighting the necessity of reforming public organizations. The PLC had formed a special committee in 271997/05/ which studied the repot and presented its recommendations on the findings. This issue urged late President Arafat to close the government of that time,

in 251998/06/. He then formed a new government in 091998/08/ which lasted for almost four years. This government was expected to witness significant reforming features as forming it was related to the report of the Control Bureau and the recommendations of the PLC. During the term of this government, the international independent team headed by former French Prime Minister Michel Rocard had released a report, known as “Rocard Report”, through the American Council on Foreign Relations. The focus was on strengthening the organizations of the PNA, but reforming efforts did not continue in the expected way due to the political and security nature of that period of time (detailed in Part one as, “Features of the policies of the Palestinian successive governments”), but some of the recommendations of the “Rocard” report were taken into consideration later. Specifically they were noted during the creation of the “100 Day Plan” in 2002. Since then, files of reform and corruption files returned, in a more urgent and clearer way, to the top of the agenda accompanying the creation of a Palestinian State. Palestinian reform and fight against corruption became not only a Palestinian requirement and effort, but an international requirement and part of world pressure placed on the PA by the donor countries. The PA had revived the reform file and fought against corruption by issuing the “Basic Law on Reform” in 152005/05/ and the “Reform Document”, presented by the Legislative Council to late president Yasser Arafat in 162005/05/. Soon thereafter there was the addition of addition the “100 Day Reform Plan” adopted by the government in122006/06/. The introduction of which states that the government had adopted it upon the speech of president Yasser Arafat to the Legislative council on reform in 152005/05/ and in accordance with the decree issued by him to form of a ministerial reform committee in 122006/06/, and also due to the statement president Arafat delivered at the beginning of the first government meeting in 132002/06/.

The “100 Day Plan” plan stipulated that political action commit to the programs and resolutions of the PLO and the Arab Initiative, which was ratified in the Arab Summit Conference in Beirut March 20002. As for reform, it predetermined the necessity of holding legislative, presidential and local elections, within (68-) months, and preparing for elections in the unions and in the organizations of the civil community which haven’t as-of-yet had elections were held

according to existing legislation. It was deemed necessary to promote principles of democracy, transparency and accountability which will then promote separation-of-powers and an independent judiciary system, and the restructuring of public and governmental institutions.

Regarding security, the plan included restructuring and reactivating the role of the Ministry of Interior while linking to the Ministry the departments of police, preventive security and civil defense. In the financial field, it included the principle of unity of treasury in managing the public fund and moving all of the revenues of the Authority and outside foreign aids to unified account. Here it stipulated the creation of a Palestinian investment fund under which all the investment and commercial operations of the PNA are to be carried out; all actions within would be accountable to auditing.

Regarding the judiciary, the plan included activating the judiciary system by providing a good number of judges, a general attorney, facilities for courts, and the building of modern prisons. Implementation of the law of the judicial authority went in effect on 182002/06/, establishing the Department of Judicial Inspection and developing the Administration of Courts to be charged with preparing drafts of bills, laws, decrees and decisions to be expanded and utilized after the Basic Law went into effect. Additionally, the plan included politicized steps, such as eliminating the security apparatuses regarding the management of civil issues - which are within the realm of the ministries' responsibilities. It also included preparing laws that encourage investment in Palestine. Additionally, the plan included establishing a department for managing governmental cases in which the PNA is involved.

This plan was received positively by the international community. Specifically it was well received by the International Peace Quartet, the members of which are the United Nations, United States, European Union and Russia. The Quartet formed a Task Force on Palestinian Reform (TFPR) in 102002/07/. In London, seven subsidiary committees were formed out of this committee with focuses on: Financial accountability, market economy, legislative reform, judiciary, local government, ministerial and civil service reform, elections.

As an international requirement, reform had also occupied a part of the “Road Map” (declared in April 2003), where under the headline, The First Stage it states that the “PNA should carry out comprehensive political reform preparing for the state including formulating the Palestinian constitution and holding free honest and open elections based on these principals”.

Under the title of Security it states that, “To emerge all of the Palestinian security departments into three responsible directly to the Minister of Interior as the authorized person.” Under the title of The Third Phase 20042005- it specified, “The need to create international efforts to facilitate reform, stabilizing Palestinian organizations and the economy in preparation for the final status agreement”.

The government took many steps towards reform that will protect and limit corruption. The Palestinian Reform Program, which was the first comprehensive program for the years 20042005-, was approved by the government in its 43rd meeting, held on 272004/09/, the program dealt with the following fields in need of reform:

First: Financial
Second: Economic
Third: The field of judicial and sovereignty of law
Fourth: Public administration and civil service
Fifth: Local governance
Sixth: Security
Seventh: General and local elections
Eighth: Education

The ministerial cabinet decision (179), taken in 2005 had adopted millennium goals and subsequent indicators development as ratified by the United Nations for the period from 20052015-. The focus was aiming at ending impoverishment, providing basic education for all, achieving equality, empowering the whole of woman, decreasing infant mortality rates, improving mental health, fighting HIV, malaria and other dangerous diseases, guaranteeing sustainable health environment; in addition to achieving international development partnership. The government had put these goals in its medium rage plan for the years 2005-2007 and from 2006- 2008.

To specify the role of each of the Palestinian successive governments it should be noted that the UNCAC was signed on 092003/12/, during the term of the eighth government, which was formed in 122003/11/ and went in effect in 122005/12/ at the end of the term ninth Palestinian government. It is concluded that the two governments had established the traditions of the Palestinian governmental action based on clear legislative and methodological principles. During that period the government adopted significant developmental reform plans, especially medium range development plans.

Earlier, before the Convention went in effect, the first five governments – headed by President Yasser Arafat between 201994/05/ to 192003/03/ – had witnessed many attempts of reform. During the term of the fifth government, from 271996/06/ to 051998/08/, the crimes of financial and administrative corruption were highlighted in the reports of the Control Bureau and the Legislative Council. These revealed corruption cases in the ministries and organizations of the PNA, an issue that led President Arafat to force the government's resignation on 251998/06/. The third government was then formed on 081998/09/ during which the Rocard Report was released in 1999 by the International Independent Team of Action on Strengthening the Organizations of the PNA.

Due to the newness of the Palestinian Authority and the novelty of its governmental experience, the first seven governments, until 302003/10/, were an introductory experiment of the Authority in the field of the governmental and organizational action, which requires setting up many administrative and financial traditions and charters.

In spite of the lack of experience held by the PA, reforming efforts had been made during this period. The most important were: President's, Yasser Arafat's speech before the PLC about reform on 152002/05/; the reform statement issued by the PLC to the president on 162002/05/; the 100 Day Plan to reform, offered by President Yasser Arafat to the PLC on 262002/06/; and also the financial reform, undertaken by Dr. Salam Fayyad of the Ministry of Finance in the forth government. Likewise, reforms took a place on the administrative level by enacting the Civil Service Law No. 4 in 1998. On the Judicial side, many laws were enacted that control the notary and judicial service.

The PNA has been entitled to enact laws since 051994/07/, during the era of the first government from 20051994/ to 161996/12/. Legislations were issued in decrees by the president of Palestinian Authority. When the Legislative Council was elected on 201996/01/, it was entitled to enact laws on 031996/07/. That's what made unifying laws and substituting them with more contemporary laws the first task for the first Legislative Council. The Palestinian Journal, Al-Waqa'ea, deemed as an official Palestinian Journal, was concerned with publishing laws, decisions of CM, judgments, and notable administration. The first issue was published on 201994/11/.

By constituting the sixth government, headed by Mahmud Abbas on 292003/04/ with longevity of four months, the governmental work has interred a new level. The sixth government was the first maintaining the position of Prime Minister, amended on 182003/03/. The government failed, however, on 062003/09/ as a result of failure to conduct Al Aqaba Summit, which led to a tension between the presidential and governmental institutions. Another importance of the sixth government and sequential governments, from the perspective of reform, is that it enjoyed many powers created by Basic Law, amended in 2003. The most important of which was maintaining public order and international security. They additionally enjoyed the power of repeal over organizations, institutions, authorities, or whatsoever units of the non-administrative apparatus which involved by the executive apparatus belonged to the government, provided its being within legal functioning.

The constitution of the seventh government held immense importance as it was the first experience to constitute an emergency government, upon a presidential decree (No. 18) was issued on 052003/10/ announcing the emergency in the first Article. In the second Article, it states, was to constitute the emergency government headed by Ahmed Qurea. This government terminated in the same month on 302003/10/.

The eighth government was the last one constituted in the era of Abu Amar, since a presidential decree was issued on 302003/10/, continuing to entitle Ahmed Qurea as Prime Minister and constituting a new Council of Ministers (CM) before 30 days of the emergency announcement. It could be said that this government was the first which began to settle governmental work systems by preparing

strategic and temporary work plans, structuring ministries and institutions, approving the ideal structure of ministries, issuing the internal list of CM, making decisions to organize the relationship among CM and the President and the General Personnel Council in the field of civil services. Additionally this government was responsible for making decisions to separate majors and to organize the relationship between the executive and judicial authorities, and constituting the technical committee to follow the execution of reforming programs in the ministries.

The ninth government was the last under authority of the first Legislative Council, called government of technocrat. It was the first after the martyrdom of President Yasser Arafat, and the subsequent election of Mahmud Abbas as President of the Palestinian Authority on 092005/01/. The constitutional oath was taken on 142005/01/. This government represented an expansion of the eighth government which established the governmental work traditions, so it continued structuring and developing institutions toward their improvement. It realized many achievements on the level of strategic growing planning and structuring of ministries and institutions.

The tenth government was constituted on 292006/03/ and headed by Ismail Hanieyah. It was the first after Hamas' winning in the PLC election, conducted on 252006/01/. It ended with a presidential decree (No.1) to accept the Prime Minister's resignation on 152007/02/. He was authorized to constitute a government of national unity on 222006/02/. The decisions of this government concentrated on the administrative affairs specially assignments.

The eleventh government, the «National Unity Government», was constituted by a presidential decree on 172007/03/, and lasted for almost three months. It could not add any qualitative achievements on the level of the institutional development and general directorate. It terminated by dismissal of the Prime Minister on 142007/06/.
By a presidential decree issued on 142007/06/, a government of enforcement of the state-of-emergency was constituted and lasted for one month until 142007/07/, when it became a "Caretaker Government", because the infeasibility of the government to obtain confidence as the PLC was absent.

One of the most important achievements of the twelfth government, regarding development and reform of the institutional, administrative, and financial work, was preparing a middle range plan for reforming and growing for the years of 20082010-, on the basis of national polices approved by the CM, and connected with the main and middle objectives of the PNA. This was done through the merge of planning rudiments and allocation of resources in one document with a middle range perspective. It combines the allocation of governmental resources with the allocation of donor countries' resources. It includes performance measurement indicators, depending on the basis of middle range spending approach.

In the field of combating the financial corruption, a law of anti-money-laundering was enacted for the year 2007. It agrees with a massive part of UNCAC. The High National Committee was constituted to combat money-laundering by virtue of this law which states its missions, specialties, and relations according to its main mission in combating money-laundering.

Subject Two: The Framework of Anti-corruption Policies

Branch one Enhancing Participation & Democratic Election

Articles No. (5) and (13) of UNCAC include the issue of societal participation and supporting legal fulfillment of democratic principles. So, supporting transparency in the processes of decision-making and encouraging contribution and participation can not be realized except through functions of democracy represented in: parliament; local elections and elections of civil society institutions; the peaceful and periodical authority sequence; encouraging multi political parties and their participation in governing; supporting the role of law which controls elections; legal monitoring compliance; financial monitoring compliance on funding of the political parties and their electioneering; inculpation acts that abuse integrity and transparency of election, and assuring the independence and neutrality of the supervisor of the election.

By suiting Convention requirements with the government polices in this respect, it made clear that elections were based on elections law, so as the first legislative and presidential elections on 201996/01/, were based on elections law No. (13),1995. Its amendments issued

by the president of PNA, Head of the PLO, and agreed upon by the first government according to its legislative liabilities before the election of the first Legislative Council. The second presidential elections on 092005/01/, and the second legislative elections conducted on 252006/01/, were based on the Palestinian Election law No. (9) for the year 2005.

The elections were supervised by an independent committee, The Central Election Committee, under legal and financial monitoring compliance. Election law called for criminalizing a number of acts that affect the electors' will, such as bribes, and having no entitlement to vote.

In addition, the local boards were elected by means of the law of local assembly council elections No. (10) on 152005/08/ which canceled the previous law. And law No. (12) on 292005/08/, amending some regulations of local assembly council election No. (10) of 2005, and the CM' decision No. (44) on 202005/09/, to issue procedures system of local assembly councils election, where four local election rounds were conducted in the period 232004/12/ to 152005/12/, what equal to 262 residential in West Bank and Gaza Strip.

Regarding the election of nongovernmental institutions and organizations, the CM decision No. (181) for 2004, which is concerned with election in the nongovernmental organizations, Article No. (1), states that, «The concerned ministries should urge the nongovernmental organizations to conduct their election, organizing the meetings of their General Assemblies, and providing their balance sheets audited by virtue of laws at the time determined by their internal systems». By means of the Law of Charitable and Non Governmental Organizations No. (1) for 2000, and its executive rules No. (9) for 2003.

Branch Two: Supporting Approaches of Monitoring, Transparency, and Accountability

It's evident that monitoring is one of the most important specialties of the PLC. Some institutions of the executive authority are specialized in monitoring other authority institutions and actions. Furthermore, the role of monitoring is played by media and other civil society institutions.

Accountability is branched into criminal and civil, categories. It's a specialty of judicial device. Though, some institutions play a complementary role in this respect, especially parliamentary accountability administered by the Palestinian Legislative, the administrative accountability, or disciplinary accountability of employment of the public sector.

In order to support transparency in the framework of anti-corruption policies transparency is mainly concerned with administrative regulations and measures. Since, transparency is a result of existing regulations which control the administrative, financial affairs, participation, and private sector, provided that theses regulations should include a preventive punishments when necessity if they are violated.

The UNCAC states in Article No. (5) that integrity, transparency, and accountability should be defined for preventive policies and practices of anti-corruption.

First: Role of the Palestinian Legislative Council in Monitoring:

It's known that the PLC, with its jurisdiction, is the entitled authority to legislate and monitor executive authority works. So, the PLC has the power to enact laws which are supposed to be agreeable with UNCAC. Within this scope lays the PLC's abilities and responsibilities of: criminalizing acts and charging punishments; organizing financial & administrative affairs including within the civil service, approving the balanced law sheet; approving the final account of PNA balance and accepting loans where public loans are subjected to law. Furthermore, the Council is authorized to approve the general growth plan, enact laws specializing in governing works and anti-corruption institutions and create Articles that guarantee their independence. Moreover, the PLC is the department charged with setting texts in the Basic Law that ease cooperation with countries and national organizations in the field of applying UNCAC, especially as related to investigations, judgments, and extraditions.

The legislative council shall have the power to control works of the executive authority, including each member's right to call the government or any of the ministers to account. In addition, the council may ask the ministers to offer the related explanation of petitions and complaints offered to the council by the citizens. Furthermore, the

council may gave the minister a vote of confidence after discussing the ministerial statement.

Any of the ministers shall not practice their official duties, unless s/he obtained a vote of confidence from the council. Ten members of the Legislative Council, after questioning, may recant the vote of confidence. As a consequence of such repudiation, the jurisdiction of the above mentioned shall be ended. In such a case the council may chose to form a private fact-finding committee pertaining to any public issue or any persons of the general management.

Second: Role of Judicial Monitoring and Accountability

The UNCAC discussed accountability under Article No. (1). Accountability is also found within its policies and practices sated in Article No. (5). Also, it may be considered as a part of public finances, and public money management by virtue of paragraph 2 of Article No. (9) in the Convention. Likewise Article No. (9) sated the judiciary and public prosecution measures.

Bearing in mind its independent nature and the crucial role the judiciary plays in combating corruption, there may be no doubt that the judiciary is the best avenue of establishing justice among people and protecting private and public rights. Whereas prosecution rights are protected by the principles of Basic Law, persons may go to judiciary authority to settle the disputed issues. Furthermore, in the case that a crime was committed, they may go to arbitration, following the principles of sanctions and retribution that play a crucial role in reforming society.

The judiciary plays a crucial role in combating corruption. It has the authority to provide dissuasive rules and penalties. To prevent corruption involving the private and public sector, each state party shall, in accordance with the fundamental principles of the law, achieve equity for the victim, and shall herby protect and provide proper management of public rights – whereas there has been an occurrence of a corruption crime.

1. Judicial Domain

Article No. (3) of Sanctions Law, 1960, states that no sanction shall be considered unless it is states in the law at the time the crime is committed, and the crime may be considered complete.

The judiciary may face a legal gap in the judgment of the crime, unless part of the crime was committed inside the region, as money-laundering crime is one the indivisible crimes. Article No. (7) in Sanctions Law states that:

1- The Articles of the laws herby states are valid on any person when committed inside the Kingdom

2- The crime shall be considered committed inside the Kingdom, if the one capable of the committed crime, or any indivisible action resides within – or if any original or subsidiary complicity act happened within – the territories of the Kingdom.

The judiciary authority may obtain a power of jurisdiction over its citizens, by virtue of Article No. (10) of Sanctions Law which states that the laws shall be applied on:

1- Any Jordanian who is either an inciter or participant in an offense or felony committed outside the Kingdom and penalized by Jordanian law.

2- On offences committed by any public official outside the Kingdom in violation of the law, in the discharging of his function or position or in the occasion of abusing his functions.

3- On crimes committed by a public official and a Jordanian consult outside the Kingdom, unless they are granted immunity by the public international code.

3- On any foreigner currently residing in the Jordanian Kingdom who was either a participant or instigator of the crime committed outside the Kingdom, unless his upturn of immunity was accepted.

4- Article No. (11) of sanctions law states that the principles herby shall not be applied on the offences committed inside the Kingdom by foreign consult and public officials, as long as they have the immunity granted by the international law.

2. Judicial Competence and Transparency:

The country doesn't exist without legislative, judiciary and executive authorities. The legislative authority's duty is to provide the basic rule that shall not be effective unless it is applied. The judiciary is the body concerned with criminal proceedings and with pronouncing just judgments, while the decisions issued by the judiciary body may not

be effective unless they became subject to actual implementation. Thus, this marks the integrity of the different authorities' roles. For instance, the legislative authority may lose a lot of its competence and powers in a case where the judiciary authority was described of being incompetent or unqualified. Moreover, judiciary decisions may not have validity unless engaged with an act of implementation, which guarantees the significance of judicial decisions. The same shall be applicable to international Conventions, as the expected result of anti corruption Conventions may not be achieved unless there is an actual guarantee for the implementation of the Convention by establishing national and legal apparatus agreement with the Convention's, and by a transparent and competent judiciary. Such judiciary must be neutral and independent, and able to acquire the material and technical information needed for to implementation of the law; and achieving the aimed at target of the Convention.

As a result of the government's policy of enhancing the role of the judicial system, and to guarantee transparency of judicial decisions, the CM has issued decision number (0609/04//M.W/A.K) on 102005/03/ to deal with the decision in relation to establishing international security courts. Accordingly, decision number (082009/14// M.W/ A.K) has been issued by the CM to confirm the recommendation of the permanent ministerial committee for reformation and promotion. A letter for recommendation by the president was herby requested to cancel the presidential decree-law, related to the State Security Courts. A recommendation letter was sent to the Legislative Council to cancel laws related to State Security Courts. However, none of the above mentioned procedures were completed, neither of establishing a security court nor cancelling the laws related to the State Security Courts.

Code number 2, of 2005, issued an amendment of code 5 of 2005 for forming regular courts on 52005/1/. It also amended Article No. (14), which states that the court's body may be held of three judges, the presidency being the senior role and held by one judge. Upon which, the court initially convene in the presence of three judges who hear specific cases.

A- All criminal offences and felonies of relevance, or any other offences which are an inseparable part of it.

B- Commercial and civil cases of a value of more than one thousand Jordanian Dinars, or monetary equivalent legally in use.

C- The brought suits are subjected to the appeal process.

The magistrate court is entitled to call:

A- All felonies, correlated, misdemeanors, and any related and necessarily inseparable crimes whose punishment period does not exceed five years.

B- Commercial & civil claims according to clause (B) of Article No. (1) above. This amendment is included in development polices and judicial reforming as it has a great effect on activating judicial flexibility in circulating judges and enshrining timely trials.

3. Amendment and development of judicial authority law

The necessity to amend the Judicial Authority Law No. (1) for 2002 was initiated due to: ambiguity of distinction between the roles of the Ministry of Justice and the Judicial Council in the Justice and Judicial Department. This is accompanied by the need to set subjective criteria of assignment and promotion in judicial device, determine tasks of the judicial inspection, and to determine the nature of the office of the Attorney General and its administrative references.

The amended Judicial Authority Law No. (15), for 2005, states that the PA's policies to develop a judicial system and ensure justice which will overcome obstacles that hinder the authorities' regulations and the flexible separation between the judicial and executive authorities mentioned in the developmental plan of the ministry. In the Palestinian Reform plan (September 2004 - September 2005) which states the amendment of the law of the Judiciary Authority No. (1), for the year 2002. This came to solve and overcome the issues pertinent to the ambiguity of its articles, specifically to identify the relationship and the authorities among the CM, the Ministry of Justice and the General Prosecutions office.

The amended Judicial Authority Law took affect on 092005/11/, yet, it did not last long since the High Court, as a constitutional court, judged that the Judicial Authority Law No. (15), for 2005, is not institutional.

Ratifying the amended draft of the Judiciary Authority Law comprised a number of obstacles, such as personalizing of the Draft Law and general conflicts of interests. It required dealing with the Amended Draft Law, prepared by the Ministry of Justice, and is referred by the CM to the PLC, which ratified the law on the first reading on 102005/3/. Additionally, the project was approved and organized by the steering committee for the development of the judiciary and justice system, which was formed as a result CM resolution No. (0558//M.W/A.K) on 312005/01/. This was established by presidential decree, on 142005/3/, and was endorsed by the CM on 182005/4/ that then referred it by resolution No. (0409/10// M.W/A.K) to the PLC for ratification.

The amended draft law was ratified in the second reading, on 212005/7/, which attempted to merge the law ratified in the first reading with the draft law that is prepared by the steering committee. It was endorsed in the third reading by the PLC on 52005/10/. Consequently, it was published in the official gazette on 92005/11/ in order to be in effect as of that date.

Issuing of the law contributed in ending the relation problems which had existed since 2002. These problems were between Ministry of justice and the High Judicial Council with the Office of Attorney General. The law organizes the relation, clearly, between the Ministry of Justice and the Judicial Council in respect to the courts management and judicial inspection. Additionally, it oversees the relationship between the Office of Attorney General to Minister of Justice. It issues the criteria of assignment and promotion of judges pertaining to members of the Office of Attorney General. The Ministry of Justice assumes the responsibility of overseeing the following:

a) its role in constructing, repairing and equipping courts,

b) controlling the computerization of judicial works in cooperation with High judicial Council,

c) improving administrative performance in courts, and providing sufficient employers for each court including registrars, tellers, commissioners, notary public, recorders, process servers, and servants,

d) controlling the human resources and employment issues in the courts according to the abilities of the Chief Justice for each court and according to his/her directives regarding daily activities.

However, the High Judicial Council did not agree on this law, reasoning that Legislative Council did not undertake what was agreed on in the framework of the Steering Committee for Developing the Judicial and Justice Systems. The Judicial Council was a member of the Steering Committee along with the Office of Attorney General and the Ministry of Justice. By virtue of this claim of problems of relations and conflict-of-interests, it was issued a law of High Court, as high institutional court, No. (12006/) on 192006/12/, stating to consider the amended law of Judicial authority No. (15), for 2005, as non institutional. That led to a serious argument about the truly transparency of law when it's set to one of problematic relation, and the judicial interest in canceling the law. So, the situation was backed to the application of the Basic Law No. (1) for 2001.

Third: The role of the media outlets, specifically, and the role of other civil society institutions

Media can play an essential role in the fight against corruption because of its impact and influence in national and international communities.

The media plays an important role in the formation of attitudes and contributes to the awareness of societal conditions among a wide spectrum of society. Therefore, the practice of corruption is a reflection of the misrepresentation of society itself by way of its conscience, its religious and ethical values; as well as its values of integrity, honesty and responsibility.

Media is capable of overcoming barriers of distortion set in place by corruption. Through access to the society's conscience, and by addressing the importance of a virtuous society invested in equal rights for all individuals, the media is able to encourage the participation with the government while highlighting its services made available to the public. Therefore, the media is also able to notify and warn society of the dangers of corruption for both, present and future generations. Through this, the media is then able to block the growth and development of corruption. Indeed, the media is able to summon confidence and integrity, protecting citizens from falling prey to corrupt practices. Further, the media is capable of installing immunization programs which contribute to the formation of the citizens' awareness of the seriousness of corruption while

preparing them to properly handle a situation such as financial and administrative corruption, which could arise in their workplaces.

In the framework of the policies and practices of anti-corruption, Article No. (10) of the UNCAC stipulates that each state party shall take measures as may be necessary to enhance transparency in public administration, including with regard to its organization, functioning and decision-making processes. In this way, the appropriate role of the Convention shall be incorporated into the media and other institutions of civil society in the fight against corruption, under the rubric of community participation, in accordance with Article No. (13).

It is noted that the Palestinian media did not posses legal measures or practices to support the government at the time of this writing. Regulation of the media sector and implementation of policies and strategic plans and legal foundations has been introduced by a media and journalism draft law by the Legislative Council and the Media Transmission to the relevant committee for consideration on 252005/4/. It is noted that this project was drafted and proposed by only the PLC branch of government, which raises questions about the absence of the Ministry of Information. The mission of the bill was to regulate the media sector and the development of government policies for the organization of work in the field - which are of great importance in the various countries of the world. Currently the project's committee remains stalled.

Prior to the instatement of the first PLC, Law No. (9), for the year 1995, issued by President Yaser Arafat upon the consent of the PNA council. Issued on 252005/6/, the law addresses printing and publications and is still in effect. Whereas publication law No. (3), for the year 1933, effective in Gaza Strip, and the Printing and Publication Law No. (16), for the year 1967, effective in West Bank, were revoked. While the Printing and Publication Law focuses on printing and publications, like material pertinent to journalism, it does not focus on journalism as a profession that requires regulation from a union and professional perspectives. Thus, the law specified the necessity of freedom of the press in Article (4) which complies with UNCAC while the most important points in this Article include:

1. The right of citizens to be informed of current facts, ideas, trends and information on the local level as well as on the Islamic, Arabic and international levels.

2. The right of citizens, political parties, institutions and social and trade unions to express their opinions, thoughts and achievements in different areas and activities through publications.

It is noted that Article No. (6) of the Act detailed above is in line with the UNCAC, which stipulates that, «The official shall work to facilitate the work of journalists and researchers on their programs and projects».

Article No. (27) of the Basic Law Amendment Act 2003, also focuses on the rights and freedoms of the media. Moreover, it functions to ensure the right to establish newspapers and other media outlets, as long as the sources of funding for which are subjected to law. It further guarantees the freedom of audio-visual and written media, alongside the guaranteed freedom of printing, publishing and distribution, broadcasting and freedom of employees working there. Additionally, the article prohibits media monitoring, suspension or cancellation, stipulating exceptions for forfeiture or restrictions acted-out in accordance with a court ruling.

A draft law for the Palestinian journalists syndicate was suggested, and discussed, by civil media organizations, yet it has never been submitted to the PLC. It is well known that since establishment of the Palestinian Journalists Syndicate, in 1979, is has been an active member of the Arab Journalists Union and the Organization of the International Press and the International Federation of Journalists. On the other hand and the Association continues to press the Jordanian law No. (17) for the year 1953 in the West Bank in force despite the repeal of the law of the Kingdom of Jordan to the issuance of the Press Syndicate No. (1), for the year 1983, which canceled its role in the Kingdom of the enactment of the Press Syndicate No. (15) for the year 1998 was issued after that in the Kingdom of Jordan Radio and Television Media Law for the year 2002.

It is perceived by society that Palestinian media lacks national information policies and a clear statement. Notably, in an opinion poll on the head media officials, who had been placed by the PNA in 2004, 60.9% of respondents said they believe there is no clear policy within official Palestinian institutions and 91.8% of respondents said the media suffers from the absence of a Palestinian media plan.

The role of civil society is one of the mechanisms of a democratic society and is accompanied by cultural institutions which take on a social and political role. However, civil society is only allowed to function within democratic societies that enable them to integrate their role with the state. This includes enabling citizens to monitor the behavior and actions of the state and intervene when these actions run counter to the interests, rights and freedoms of citizens.

As civil society is a reflection of the reality of society and its interactions. The real-life definition of the term may sometimes differ from the understood concept of civil society. Therefore a definition is required. Civil society includes the traditional basis of religion, tribal and factional parties while regional civil society is a democratic structure and development composed of the intellectual and regulatory characteristics of the modern political parties, unions, judiciary systems, youth, student and women's groups, among others. The integration of domestic society and civil society is a reflection of the maturity of the community and reflects the growing cultural, social and intellectual characteristics. It is possible to differentiate between civil society associated with the values of freedom and democracy – which would emerge due to people's striving to get freedom against and dictatorial regimes, or colonialism – and the constructed civil society often artificially linked with political authority. Such a civil society institution emerges when the authority is in conflict with these people-related institutions which express their desires, interests, and will. The ninth government decided to provide funding for non-governmental organizations according to the Prime Minister's decree No. (24) for the year 2005, issued on 142005/6/.

Palestinian particularity must be measured when considering societal engagement in both, resisting the occupation, and the pursuit of freedom and independence. This should be reflected when considering the successive historical reality experienced by the Palestinian people; it is understood that the previous Jordanian occupation and the current Israeli military occupation have maintained a policy of suppressing the Palestinian people and subsequently their freedoms and rights. This touches all members of society from politicians to trade unions (and their subsequent regulations), to the economic sector, down to the basic civil rights of the Palestinian people – who have not known an independent

state to this day. With the existence of the PA it can be noted that there is a growing presence and role of civil society institutions and the extension of values associated with freedom, democracy and political struggle. Such national institutions (governmental organizations) implement these activities in several areas related to the requirements of societal development. They promote the values of democracy and equality and validate the protection of civil liberties, the rights of women and children, and have expressed dedication to combat corruption. Furthermore, these national institutions strive to strengthen governmental regulation in-line with the enhancement of the principles of accountability, participation, good governance and financial transparency.

It is noted that there is a large number of civil society institutions within the PNA territories, especially human rights organizations, research centers and studies, and associations, which exceeds the number more than their counterparts in any Arab country working with human organizations. This is due to the many factional affiliations of the many institutions, as well as their relation to international NGOs, of which, the latter would fund their establishment an activities. Many of the human rights organizations worked in the field of control within the PNA and its organizations. These organizations often functioned to detect violations of citizen's rights or to detect corrupt practices taking place, either within the PA itself or within related institutions, officials or their personnel. It is only ordinary that civil society institutions monitor the performance of the Authority's policy, better yet; they have competed to expose human rights violations or corruption practices committed by PNA agencies, officials or institutions.

Some institutions are limited to the confinement of the Israeli occupation practices and the Judaization of Palestinian land, as well as violations committed against Palestinian human rights by Israeli citizens.

As for practices pertinent to anti-corruption measures, as provided in the UNCAC, it is noted that there civil society institutions specialized in combating corruption while other institutions work in the field of monitoring the performance of the PNA and its various agencies. Furthermore, there are institutions that care for developing the financial and administrative performance of the governmental agencies and enhancing transparency in these fields. There are, as

well, right-oriented institutions that care of the rights of citizens and monitor violations related to rights and public freedoms, especially women's and children's rights. There are institutions that are interested in reforming and developing the judicial and justice systems and to enhance the transparency and independency of the judiciary.

The private sector has become the supervisor and the authority who has adopted the principles of good governance (the so-called governance for private sector institutions) There are a set of laws governing the private sector institutions in various areas of work, such as: the Companies Act, the Banking Act, the Monetary Authority Law, the Labor Law and the Insurance Law. The preparation of this research led to the Anti-Money-laundering Act of 2007, which regulates the relationship between the supervisory authorities and financial institutions, and those of the business and non-financial professionals, in an effort to fight against the laundering of criminal proceeds – an integral part of the UNCAC.

Branch Three: Control of public procurement and management of public funds

The General Supplies Law No. (9) was issued 21998/11/, where, in chapter 3, the purchase of supplies rules were defined. Chapter 4 of the law addressed supplies management in terms of implementation of procurement contracts, receiving, conserving, supervising and managing supplies within the coalition rules along with organizing the central warehouses unit's functions. Chapter 5 addressed supplies control and organizing the supply-unit's functions.

Law No (6), issued in 1999 by government tenders, chapter 2 dealt with the establishment of a central tender unit and terms of reference. Chapter 3 explained the tendering rules regarding public work. Chapter 4 entailed the formation of tender committees, terms of reference, decisions and public tendering or direct contracting. The law, in its other chapters, regulated: the opening of the tender documents; rules that help taking decisions on the tenders; signing of contracts; responsibilities and commitments of the contractor; guarantees; fines; and the classification of contractors; consultants; and engineering offices for the purpose of implementing the provisions of this law.

The Central Tenders Committee was established on 022003/09/, and re- established in 20042005/ based on CM resolutions (57) and (123) respectively.

Law No. (7) was issued in 1998 by the organization of the General Budget and Financial Affairs, which dealt with the preparation and submission of the budget, its adoption and implementation, budget accounts and audits. Additionally it addressed the Department of Treasury's debt and assets management.

A Public Debt Law No. (24) was issued in 2005 which regulates the management of public debt, where in Article No. (11), it authorizes the Minister of Finance to borrow for the government in accordance with the provisions of this law.

Each case should be presented to the cabinet for approval, specifying borrowing purposes and limitations. The borrowed amount cannot be more than the balance of the public debt at any time on 40% of the GDP. Article No. (39) requires that external public debt be presented to the PLC for approval and then published in official newspapers.

This is in line with Article No. (92) of the amended Basic Law in 2003, which stipulates that, "Public loans should be done according to the law and may not be connected to any project resulting in the expenditure of sums from the public treasury for the upcoming period without the consent of the Legislative Council".

The CM Decree No (43), issued on 222005/06/, addressed the financial system of the ministries and public institutions. The decree is a Financial Manual that regulates financial and accounting rules while establishing standards for: specialization and authorization; illustration of accounting records, forms, files, financial records maintenance and preservation; budget preparation procedures and reporting on the financial situation; budget bill preparation; supply and revenue collection; cash conservation; expenditure rules and types; and reconciliation rules.

In addition to reform steps mentioned in various places throughout this research, there are:

1. Resolution Numbers (811/10/), issued on 132006/06/, are focused on the mechanism of contracting suppliers for the ministries and official government institutions.

2. Partial application of the financial aspect of the Civil Service law, created on 012003/09/, where 50% of the benefits have been disbursed in accordance with the Civil Service Law for the Education and Health Ministries' staff. The remaining benefits were disbursed shortly thereafter.
3. The CM resolution No. (170), 192004/07/, on merging the financial monitoring and auditing departments in the ministries and public institutions with the Ministry of Finance.
4. Consolidating salaries management by merging the salaries management department in the General Personal Council with the salaries management department in the Ministry of Finance in July, 2002.
5. The CM resolution, 172003/05/, to annex three institutions to the Ministry of Finance. The institutions being: The Higher Committee for Finance and Investment; the General Authority for tobacco; and the General Petroleum Corporation.
6. Payment of the Preventive Security and General Intelligence staff salaries in the Gaza Strip. Employees were paid directly from the banks in April 2003, followed payment of salaries to all members of the security services and military.
7. The CM' resolution, at its weekly meeting, 212003/06/, to stop the deduction of unemployment and contingency fund contribution from the staff's salaries. It has been in application since June 2003.
8. The CM' resolution No. (0657// M.F/A.S), 172005/01/, on controlling and limiting the external transactions to the ministries and governmental institutions through the Ministry of Finance.
9. The CM' resolution No. (0258//M. F/A.S), 312005/01/, on controlling and limiting the external transactions to the security services through the CM.
10. The CM' resolution No. (0509/42//M.F/A.S), 11, 12, 2005, on the validation of the integration document on the medium-term planning and procedures for the preparation of the PNA's budget.

Branch Four: Public Administration and Civil Service

The UNCAC has illustrated the recruitment systems standards for civil staff and other public officials in Article (7), so that the civil service regulations will be based on the promotion of: principles of efficiency, transparency, merit, equity and aptitude; prevention of conflicts of interests; appropriate procedures for personnel selection; educational and training programs; availability of adequate and equitable remuneration.

Article No. (8) in the Convention, addressing codes of conduct for public officials, called on all state parties to promote integrity, honesty and responsibility among its public officials. Additionally the Article called for the application of codes or standards of conduct for the suitable, honorable and proper fulfillment of public functions. Furthermore, state parties should follow the relevant initiatives of regional and interregional and multilateral organizations, including the International Code of Conduct for Public Officials, contained in the annex of the General Assembly Resolution 5159/ issued on 121996/12/. Article 8 also called for establishing measures and systems to facilitate the process by which public employees could notify the authorities of acts of corruption – specifically as the attention was noticed during the performance of the employee's duties.

It is known that the organization of public service in the PNA is done according to the Civil Service Act No. (4) in 1998 and Act No. (4) in 2005, the amendment of the Civil Service Act No. 4 in 1998, and the pursuant regulations. In particular, it is done according to the executive list of the Civil Service Act No. 4 in 1998, as amended by Law No. 4 in the year 2005, issued by the decision of the CM No. 45 in 2005.

The General Personal Council was established upon the PA's presidential decree No. (131), in 1994. The decree provided for the establishment of the Council, to be followed directly by the President. Also, a general director has been appointed in Article No. (2) of the resolution.

The General Personal Council was established and operated according to this law until the Civil Service Act No. (4) in 1998, which organized the council's functions and responsibilities. As for judges and public prosecutors, their recruitment and affairs are based on the Judiciary Law No. (1), established in 2002.

The security services and military staff affairs are organized according to: the Palestinian Security Forces Service Law No. (8), 2005; the insurance and pensions for the Palestinian Security Forces Law No. (16), 2004; Law No. (16) in 2005 – amending some provisions of the previous law No. 16 in 2004; and the Public Intelligence Law, No. (17), 2005.

In the context of the Governmental policy decisions regarding reform and development of public administration and civil service, (in addition to remedial steps mentioned in their respective locations of this study) numerous resolutions of the CM were issued, including:

1. Ratification of the general framework of the Reform Plan in the field of public administration and civil service for the years 2004 - 2006 by the decision of the CM No. (173) on 32004/08/.
2. CM Resolution No. (144), 2004, on the job descriptions for senior positions in the ministries.
3. CM Resolution No. 0209/04//M.F /A.S, 152005 /03/, on the formation of a technical committee to study and develop the human resources database.
4. CM Resolution No. 0654//M.F/A.S, 282004/12/, n the treatment of non-ministerial government institutions.
5. CM Resolution No. 0809/03//M.F/A.S, 92005/03/, on the formation of a committee to deal with non-ministerial government institutions.
6. CM Decision No. 1109/24-/M.F/A.S 262005 /04/ on the validation of the Ministerial Committee's recommendations to deal with the non-ministerial government institutions, which requires annexing some institutions to ministries and the preparation of special laws for others, such as the environment and land authority.
7. CM Resolution No. 0109/04//M.F/A.S on 152005 /03/ on the validation of the Ministerial Committee's recommendations to deal with the non-ministerial government institutions, under the PA, which provides identifying a reference to some of the institutions that followed the Presidential Secretariat.
8. Adoption of structures and development plans of most ministries and government institutions.
9. CM Resolution No. (129) for the year 2006 and the introduction of internal control units in the ministries.

In the framework of activating the role of citizen oversight on public institutions' performance, the CM issued Resolution No. (0509/03// M.F/A.S), 92005/03/, on the development of Public Complaints Units, in the ministries, and the activation of the Complaints Department of the Presidency of the MC.

Also, the MC issued Resolution No. (0909/12//M.F/A.S), 52005 /03/, regarding the ratification of the Complaint Department's system in the Presidency of the Ministerial Council and units in the ministries of public complaints.

Subject Three: Preventive Anti-corruption Bodies

The UNCAC requires the establishment of specialized bodies to combat corruption as a preventive measure; contained in chapter 2 of the Convention with underlined policies and practices. When vetting the content of Article No. (6) of ANCAC, we find that in the area of finding a body or bodies to combat corruption and its functions can be defined by the following:

1. Anti-corruption body or bodies to undertake the prevention of corruption work, through the implementation, coordination, consolidation and promotion of effective policies and practices to combat corruption in accordance with Article No. 5 of the Convention can be found through the following:
   - Promote the participation of society and reflect the principles of rule of law, good governance, public property, integrity, transparency and accountability.
   - Conduct a periodic evaluation of the legal instruments and administrative measures with a view to determining their adequacy to prevent and combat corruption.
   - Provide basic principles of the legal system, which ensures the possibility of cooperation among states parties and international and regional organizations related to promoting and developing the measures referred to in this Article, and may include participation in programs and international projects aimed at preventing corruption.
2. To grant the bodies authority that guarantees their independence to carry out their functions effectively and free from any undue influence.

3. To provide the necessary material resources, specialized staff and training, to carry out their functions.
4. To inform the Secretary-General of the United Nations of the name and address of the body or bodies that can help other states parties to develop and implement specific measures to prevent corruption.

Branch one: Anti-Graft Commission

The anti-graft Commission is one facility to combat corruption. This body should not be the only specialized body in combating corruption, but could be one of the mentioned bodies by the UNCAC, according to Article No. (5), to establish a body or bodies to combat corruption so as each must be specialized in one of the different areas of combating corruption.

First: the suspicion of the anti-graft:

Efforts to combat and prevent anti-graft accompany combating corruption in the public sector. Article (1) of the Anti-graft Law (AGL) No. (1) in 2005 defined Anti-graft as, "All the money obtained by one subject to the provisions of this law, for personal interest by; using his position or status; as a result of behavior against the law or decency; or any unlawful manner that does not constitute an offense but is an illicit gain that led to an increase in wealth that occurred after service or subject to this Act or the spouse or children, that does not commensurate with the resources and the inability to prove a legitimate source".

Considered as graft is any money obtained by a person or entity through the complicity of others whom are subject to this law; to use ones position or status is also considered anti-graft.

Upon suspicion of the existence of illicit gain, Article No. (17) of the AGL states that in case the Anti Graft Committee (AGC) learned that there exist strong beliefs of illicit-gaining, involving the categories set out in items (1,2,3,4) of Article 2 of this Act (the president of the PNA, members, advisers, the president, members of the Ministerial Council, the members of the PLC, members of the judiciary and public prosecutors) then, the matter will be raised to the president of the PNA in case of the Prime Minister's involvement; to the Prime Minister for the Ministers involvement; to the Legislative Council for

the President of the PNA, chairman and members of the Legislative Council involvement; and to the Supreme Judicial Council for the members of the judiciary and prosecutors involvement to take the necessary legal actions.

Article No. (17) of the AGL has stipulated when one should consider such a case. When anti-graft is compromised by the head of the PNA, the president may not: purchase, rent, sell, or award anything from the state's properties or corporate body; have a financial interest in any contract conducted by the governmental or administrative agencies; and may not -- for the duration of his presidency –be a member on the Board of Directors of any company, engage in trade or any occupation, receive a salary, any bonuses or grants from any other person in any capacity, except for the one salary and allocations specified for the President.

Basic Law has identified when anti-graft is compromised by the Prime Minister and Minister. In Article No. (80), paragraph 2, of Basic Law, it states that the prime minister Or any minister may not: purchase or rent anything from the state's properties or corporate body; have a financial interest in any contract conducted by the governmental or administrative agencies; for the duration of his presidency to be a member in the Board of Directors of any company, engage in trade or any occupation, receive a salary, any bonuses or grants from any other person in any capacity, except for the one salary and allocations specified for the individual, such as a minister.

In general, Basic Law has illustrated when anti-graft is compromised of the members of Legislative Council, in Article No. (54), paragraph 1, it reads that any PLC member may not bring into play their membership in any private business, or in any mode.

Article No. (4) of the duties and rights of the PLC members Act No. (10), 2004, states that a member may not: purchase, lease or barter any state funds or vice versa; or enter into a contract with the state as a committed supplier or contractor, unless the contract has been signed in accordance with the general rules applied to all persons. In all cases, s/he should not use his/ her status for special privileges.

Under Article No. (5) of the same act, it states that a member may not represent a government or negotiate on its behalf for exchange for payment.

Article No. (6) states that a member may not be an agent in a case against the PNA.

Article No. (7) banned any parliament member from receiving any of the functional or consultancy work.

Article No. (9) confirmed that except for the minister's position, a member may not combine his/her membership in the Council with any function of Executive Authority posts – including functioning as an Adviser or other equivalent posts.

Article No. (8) banned all parliament members from occupying any advisory, supervisory or managerial board within any of the state's institutions.

Judicial Authority Act No. (1), 2002, states that AGC is compromised by the judges and public prosecutors. Chapter 3 - part 3 states the duties of judges. Chapter 3 - part 5 illustrates the duties of the prosecution members, and Article No. (71) states that all provisions of judiciary duties, found in chapter (3) - part 3 should apply to the public prosecutors as well.

Article No. (28), paragraph 1, declares that the judge may not engage in any business or action that is inconsistent with judiciary independence and dignity, and the Supreme Judicial Council may decide to prevent a judge from engaging in any work that is considered contradictory to the post's duties and performance.

Also, Article No. (29) prevents judges from:

1. Revealing the deliberations confidential information obtained in the course of their work.
2. Exercising political action.
3. Running for presidency, PLC, local councils or political parties until resignation and acceptance.

Article No. (30) has indicated that; judges sharing first or second degree of family or marital relationship are not allowed to sit in the same district; judges with first to fourth degree relationship or marital relationship with a member of the prosecution or defense representatives, or one of the litigation parties, are not allowed to sit together; and such action determines disqualification of the judiciary powers.

The State-Audit and Administrative Control Bureau (SAACB), Article No. (17) of SAACB Law No. (15), in 2004) states that during their tenure the Chief of Staff, Vice-President and Director-General, may not:

1. Hold any other employment
2. Buy, borrow or barter any money from the PNA or public corporate body's funds, indirectly or through a public auction and vice versa.
3. Participate in the PNA, institutions or public bodies commitments.
4. Combine his/her post in the bureau with membership on the board of directors of any company, institution, governmental or non-governmental body.

For civil service employees, Article No. (67) of the Civil Service Law No. (4), 1998, was amended to prevent the following:

1. Any combination of vocational duties and any other work performed in person or by favoritism. The Executive Regulations list of this act defines the controls and provisions of permissible employment the staff member may hold during the non-official business hours, so as not to compromise, interfere or contradict with the his/her work or requirements.
2. The exploitation of his/her status and powers for the benefit of self-profit or the acceptance (directly or through favoritism) of any gift or reward for the performance of professional duties.
3. The retaining or removing of the original, copy or summary of any official paper from its files, even if the work was assigned to him personally.
4. Disclosure of any information acquired by the nature of his/her job that is contrary to the law, even after the employee's tenor has been concluded.
5. Departure of duties applicable to the employee's job, or actions which would prejudice the dignity of the post.
6. Drink or gamble in the clubs or in public assembly.

As for permitting alternative employment, which can result in finger pointing, Article No. (83) "The Regulations of the Civil Service Law No. (4)" – created in 1998 as amended by Law No. (4) in 2005 and issued by the decision of the CM No. (45), in 2005 – states that the employee may not work outside the scope of his/her job permanently or temporarily, without the consent of the department's

president followed by the notification of the bureau. This is also applies to the employee during a period of leave, whether paid or unpaid. However, the purchase of shares or becoming a shareholder in companies is not considered work outside the scope of the job, as long as the employee is not effective in any way in the management or partnership of the company.

Article No. (85), from the Regulations of Civil Law No. (4), added rules and conditions for obtaining such a work permit. It stipulates the requirements for the granting of permission to take on external employment as the external vocation should:

1. Not to affect the employee's duties and capabilities within the scope of his/her work in the civil service or prejudice his status as a staff member.
2. Not be directly or indirectly linked to the employee's duties.
3. Not be associated with any individual, company or institution that has financial or commercial connections with governmental departments – regardless of whether it is the actual department of the employees post.
4. Not negatively effect or come into conflict with the employee's job requirements, civil service regulations, or any law.
5. Be outside the scope of the employee's office hours or area of employment, and not include usage of any governmental department property.
6. Not exceed the number of working hours outside the scope of his job, three hours per day and nine hours per week.

Second: Independence and Immunity of the Commission

Article No. (3) of AGL No. (1) for the Year 2005 states that:

1. A commission shall be established by law and should be called the Anti-graft Commission AGC. The AGC should assume legal stature and enjoy both administrative and financial independence; a budget should be allocated to this commission from the General Budget.
2. The president will appoint the head of the AGC based on the nomination of the Cabinet and the appointment should be approved by the absolute majority of the PLC.
3. The head of the Commission then appoints enough staff to enable it to conduct its business.

In addition to legal, financial, and administrative independence the AGC shall enjoy the allocation of its own budget from the general budget. The head and the employees of this agency benefit from immunity for their actions while performing the duties of their job; as Article No. (7) of the AGL states, "According to the provisions of this law the head and the employees of this Commission enjoy immunity for their actions while performing the duties of their job." Regarding the immunity of the Commission's president, the law states in Article (6): 1. The duration of the presidency of the Commission shall be for 7 years, without renewal; 2. The dismissal or removal of the head of the commission is not allowed without approval of absolute majority in the Legislature; 3. The head of the Commission is accountable before the Legislative Council".

The declaration above strengthens the independence and the immunity of the Commission's head since his/her removal is not allowed without the approval of a significant majority in the Legislature. This will guard against subjecting the head of commission to any undue pressure from the executive authority which may place him in a position of favoritism. Meanwhile, section 3 of Article No. (6), above, makes him/her accountable before the PLC and places him/her in a stronger professional status. It also strengthens the Commission's audit and control function complimenting the role of the Legislature as such.

Third: Specialization of the Anti-graft Commission

Article No. (8) of AGL No. (1), for the Year 2005, the Commission is to be specialized in the following:

1. Archiving of all financial disclosures and requesting any additional information and/or clarification.
2. Examining the disclosed financial records of those governed by this law.
3. Investigating and claims of anti-graft that get submitted to the Commission.

In relation to the section covering the Commission's responsibility for maintaining the disclosed financial records, and by referring to other laws, we realize this function is not guaranteed for the Commission. This is due to the existence of other laws that call for such records to be kept by the Supreme Court. Therefore, keeping of the records, as states here, only applies to civil service employees of the PA.

Fourth: the Anti-graft Commission's Power/Authority

Article No. (9) of AGL No.(1,) for the year 2005, states:
According to the articles of this law and to enable the AGC to perform its responsibilities, it should enjoy the following powers:

1. Requesting documents and clarifications, and obtaining records and documents and/or records from concerned parties (including those which may be deemed secret).
2. All entities should cooperate with the AGC and adhere to its requests; furthermore, the Commission can seek the assistance of the police and other court agencies while fulfilling its duties.

There are additional powers the AGC Head enjoys, as states in the various articles of the AGL. However, there seems to be some overlap between those powers of the Head of the AGC and those of the Attorney General or public prosecutor. For example, article No. (12) of AGL – in reference to the prosecution of the President of the PNA – authorizes the heads of either the AGL Commission, or the Public Defense Office, to submit a preliminary request to investigate the legal competence of the President of the PNA, in accordance with the Basic Law, if there is suspicion of anti-graft activity.

It is noted that there is ambiguity and contradiction within the Basic Law in the case of suspecting anti-graft activity by the Head of the PNA; according to Article No. (12) of the AGL which authorizes requests to investigate his/her legal competence. Such request does not by any means remove his immunity as states in Article 37 of the Basic Law to allow for his prosecution of trial. If we assume, then, the Supreme Court found the president to be legally incompetent, his position becomes vacant and should be filled according to the Basic Law; thus his trial should follow his impeachment. However, it means if s/he was convicted and lost position before s/he was tried – this contradicts the Basic Law that states everyone is innocent until proven otherwise in a court of law, and that guarantees his rights to defend himself. So, if the president was removed from office due to the provisions of Article No. (37) of the Basic Law s/he cannot be returned to it; in that case this calls for holding free and direct elections to elect a replacement. Therefore, Article No. (12) of AGL, as states, contradicts Article No. (37) because if the president was found legally incompetent, then s/he is removed from

office. However, according to Article No. (37) of the Basic Law, that should not happen until he receives a fair trial. Accordingly, this Article cannot be used to prosecute the head of the PNA because of anti-graft activities; it can only be used to decide on the status of his legal competence. This Article is not meant to remove his legal immunity or to put him on trial, since the loss of legal competence means the loss of his position, and NOT his immunity, and so makes his position vacant.

Article No. (15) also talks about authorizing the head of AGC or the Public Defendant to request of the Legislature the removal of the suspected member's immunity, according to the internal regulations of the council.

Article 96 of Internal Bylaws of the PLC gave the authority to request the removal of immunity of suspected members; this request should be submitted to the Council's president along with the supporting documentation of the nature of the crime – when, where, and any relevant evidence that warrants taking legal action.

Fifth: Evaluation of the Role of the Anti-Graft Commission

Mr. Ibrahim Abu el-Naja (a previous Senate member) was appointed Head of the AGC as a result of a decree by President Mahmoud Abbas on 112005/6/. However, this decision was not completed because it was not submitted for voting in front of the PLC according to Article No. (3), section 2 of AGL No. (1), of 2005.

The AGC has not been practically established, until now. Thus the AGC with its powers, specialization and laws remains confined to the laws and regulations states in AGL No. (1), issued on 82005/2/ and published in formal newspapers on 282005/2/.

In comparison, we realize the Commission's definition of illegal earnings, as states in Article No. (1) of the AGL, is similar to the definition of corruption in the following aspects:

1. **Illicit gain, or grafting, includes wasting public money and is a crime that goes against the ethics of the public office**. It also includes, to a great degree, a misuse of power and authority. The definition of graft states: it is any money obtained by an individual or entity governed by this law for themselves in a way that constitutes a misuse of the position; or via illegal means

which breaks the law or the public ethics, or any illegal method, even if it that does not constitute a crime.

2. **The unexplained accumulation of wealth after the holding the public office:** when the source of the wealth for the incumbent or their family members cannot be explained after the assumption of public office or acquiring its privileges.

3. **The misuse of public office and the acceptance of patronage and favoritism:** the definition of graft also includes material or wealth acquired as a result of conspiring with any individuals subject to this law.

It can also be noted that the definition of corruption according to the Jordanian Anti-graft Commission is very much similar to Palestinian definition. However, the Jordanian AGL has included a special statement which incriminates all actions contained in UNCAC. As such, Article No. (5) of Jordanian AGL No. (62) for the year 2006 states that, "It considers as corruption all of the following actions:

1. Crimes that break the public office duties and responsibilities as states in the Penal Code No. (16) for the year 1962.
2. Crimes that break the public trust as states in the Penal Code No. (16) for the year 1960.
3. Economic crimes as specified in the commercial Law No. (11) for the year 1993.
4. Every action, or lack thereof, that wastes public money.
5. Misuse of power against the provisions of law.
6. Accepting favoritism or/and nepotism that cancels a right or justifies a wrong.
7. All actions contained in the international agreement for fighting corruption which the Kingdom has joined.

Jordanian law, it seems, is more responsive towards the agreement in incriminating those acts that can be classified as acts of corruption.

1. It can also be noted that that the Jordanian law has been a model for laws that incriminate actions of accepting favoritism and/or nepotism that cancel a right or justify a wrong; thus it was more progressive in that regard, since the Convention did not

state in a clear manner that favoritism and/or nepotism should be classified as a criminal act punishable by law. Alternately, the UNCAC states that hiring for public jobs should be based on skills and qualifications.

Branch two: State Audit and Administrative Control Bureau (SAACB)

First: Establishment of SAACB

Article No. (96) of the 2003 Amended Basic Law states that "1.) The Audit and Administrative Control Bureau (SAACB) has full authority over all PA institutions – monitoring expenditure and collection of public revenues in relation to the budget is included. 2.) The Bureau is to report to the PA's President and the Legislative council – reports are done annually or whenever the bureau is called on for clarifications. 3.) The head of Bureau is appointed by the PA president and approved by the legislative council. Article No. (2) of the 2004 Audit and Administrative Control Law (No. 15) states that "A public bureau is to be found and called the Audit and Administrative Control Bureau. It would have a designed budget from the PA's broad budget, have an independent identity, and full legal capacity to run all the activities that lead to carry out the missions assigned to the bureau.

The 2005 Presidential Decree No. (17) states that a fully recognized SAACB is to be found and to replace the Public Audit Institute (PAI) which had been established in accordance with Article No. (22), 1994 and Article No. (17) 1995; all assets of the PAI are to be transferred to the SAACB.

Second: Independence, Immunity, and accountability of the SAACB

The SAACB enjoys total independence regarding the execution of its duties and responsibilities; Article No. (12) of the SAACB Law states that, "Interference in the AACB work is not permitted, and all parties under its jurisdiction are to fully cooperate with the SAACB and realize all its requests".

Head and staff of the SAACB are immune when it comes to activities related to their field of work; Article No. (11) of the SAACB Law

states that, “According to Articles of this law, head of the bureau, deputy head, director, and staff are immune in relation to all the acts carried-out while performing their jobs”.

Accountability of the SAACB is states in Article No. (7) of the SAACB Law, “The Bureau is accountable to the PA President and the PLC, and is to conduct its responsibilities according to the law”. According to Article No. (8) of the AAB law, the Bureau is to report to the PA President, the PLC and the Cabinet once a year or whenever it is asked to provide clarifications and explanations. Upon their request, the Bureau is to provide the PA president, the PLC, and the cabinet with information, data, studies, or other relative information requested. AAB annual reports are to be published in the official gazette.

Third: Framework of control

Article No. (3) of the SAACB Law states that “control” means: all monitoring actions and measures that include the following:

1. Secure right financial proceedings and the expenditure of the public funds in the correct and declared fields.
2. Administrative inspection to ensure excellent performance and proper usage of power, and to reveal ill conduct, wherever it takes place.
3. Compatibility of financial and administrative activities with laws, resolutions, and effective decisions.
4. Secure transparency, integrity and clarity in performance of the public sector, and enhance trust and credibility in financial, administrative, and economic policies within the PA.

Fourth: SAACB missions and specialty

Article (23) of the SAACB Law states that, “The bureau aims to secure correct execution of work, and financial and administrative stability within the PA’s legislative, executive, and judicial sectors. The Bureau is to reveal all financial and administrative corruptions, including the misuse of public post to ensure that the performance complies with provisions of the laws, resolutions and decisions in effect and within limits. Also the aim was to ensure that it is the

best practice of law applied and with as minimum cost as possible. In order to achieve this, the bureau, is to conduct the following in accordance with the provisions of the law".[15]

15 most important tasks that appeared in this Article:

a. Ensure that internal monitoring and audit bodies within all financial centers are handling their tasks in a correct and efficient way; check rules that regulate their work and ensure their accuracy and effectiveness in meeting the designed goals.

b. Monitor PA expenditure, revenues, loan, debits, cargos, and warehouses accordingly with Articles of the law.

c. Execute monitoring and inspection policies to secure transparency, clarity, and credibility within the government, public institutions, and public servants.

d. Study and investigate reasons for poor production and ill working order by revealing flaws of technical, administrative, and financial systems which obstruct work of the government and public institutions; The Bureau is to propose tools to treat and eliminate obstacles.

e. Reveal financial, legal, and administrative flaws committed by public servants; either within their working places or by misusing the power given to them by the position.

f. Reveal and decide responsibility of flaws committed by members other than the public servants when flaws endanger the work within the public sector and public services.

g. Consider public complaints regarding negligence and flaws in public servants' performances. Study and investigate complaints that are published by the media on negligence, misuse of the public post, and poor administration.

h. Monitor of revenues:
- Audit revenues from taxes, customs and others to make sure that assessments and evaluations follow laws and regulations.
- Examine documents pertaining to the selling and renting of governmental lands and properties; lands and properties under the guardianship of the PA are included.
- Examine the collection of various revenues to ensure that collection is timely and coincides with rules and regulations.

i. Monitor expenses:
- Monitor expenses to ensure proper expenditure and allocation according to regulations.
- Examine forms and documents that cover expenditures to ensure they align with registrations and books.
- Confirm that orders for expenditures are taken by responsible bodies and according to regulations.
- Examine proper-conduct of the Monitory and Budget law, the Annual Budget Law, and ensure proper monitory commands and transactions are executed accordingly.

j. Monitor all accounts, assets, loans, debits, and financial settlements:
- Audit all accounts to ensure correct transaction schemes and compatibility with registration books and availability of back-up documents.
- Monitor the accurate and timely retrieval of loans and credit; insure accurate benefit rates are transferred along to the public treasury.
- Examine and revise regulations of: appointments, promotions, salaries, raises, holidays, and other related issues pertaining to public servants. Ensure issues are handled according to regulations and rules, and along with Articles of the public budget.

Fifth: Scope of the Control Bureau Law

Article no (31) of the SAACB Law states that the following bodies are subjects to the control of the bureau:

1. The Palestinian presidency and all affiliated institutes.
2. Head and ministers of the cabinet, and all those who work for them.
3. All committees and administrations of the PLC.
4. The judicial system and the public prosecutor's office, including all staff members.
5. Ministries and institutions of the PA.
6. All police, security, and military forces.
7. Public and private organizations, unions, societies and associations – including all those belonging to these institutions and organizations.
8. Institutes and companies owned by the PA, companies where the PA is a share holder, and companies that receive aid from either the PA or from donors that support the PA.
9. Institutes and companies that are granted permission to use public facilities.
10. Local governing bodies and the people under their influence.
11. For the parties not mentioned above, provisions of this law are applicable to parties which have special rules citing their inclusion according to the law, regulations or special judgments.
12. All departments, institutes, and associations that are included by Articles of this law are called "The administrative bodies".

Aspects of the SAACB Law correspond directly to the AGL as both address the roles of the PA president, the prime minister, ministers and their constituents. Additionally both laws possess Articles pertaining to the PLC, the judicial system, the police and security forces, local governments, and all institutes where the PA is a partner share holder. However, while the AGL applies to personal and employees of related institutions, the SAACB Law deals with the institutions themselves.

Sixth: Financial disclosure

Unlike the illicit earning law, SAACB Law does not give the Bureau the right of financial disclosure. However, Article No. (55) of

the SAACB Law states that "The head of the bureau is to submit a financial disclosure regarding all types of tangible and intangible assets belonging to his/herself, his/her partner, and his/her underage children". Financial disclosures are to cover assets and debits within and without the country. This information should remain confidential, with power invested in only the Supreme Court to expose it if deemed necessary.

Seventh: Appointment of the Head of the Bureau

The Bureau's head is appointed accordingly with Article No. (4) paragraph 1 of the SAACB Law, which states that " The Head the Bureau is appointed by the PA President following a recommendation from the ministerial council, the PLC is to validate this appointment by the votes of majority of its members". If the PLC failed to validate the appointment, the PA president is to nominate a new candidate within two weeks from the PLC rejection date (Article 5 of the SAACB Law).

Before undertaking duties of office, the Head of Bureau is to take an official oath before the PA president and PLC. Article No. (3) states that the staff of the Bureau, in turn, are also to take oath before the Head of Bureau.

In its session on 132006/2/, the PLC validated the appointment of Dr. Mahmoud Abu el Rob as the Head of bureau to succeed Minister Jarrar Al Qudweh. In its session on 62006/3/, the newly elected PLC failed to recognize resolutions and decrees of previous council that were taken on 132006/2/.

The case was taken to the Supreme Court to decide whether new PLC decision's appointment of the Head of Bureau was legal. In its session on 192006/12/, court verdict states that the "Court accepts the appeal and regard all resolutions taken on 62006/3/ by current PLC to be unconstitutional. Therefore, the court calls the defendants- the PLC and its president, to correct situation along with the court's verdict". Both defenders failed to respond to court's verdict and situation was left open to controversy; the fact that court did not cancel PLC's recent resolutions and called the PLC and its president to do so, have left doors open to arguments.

The court's verdict implies ratification for the appointment of the Bureaus head, taken on 132006/6/, and elimination for the PLC decree on 62006/3/. However, actual implementation for court

decree is in the hands of the PLC itself.

The head of the Bureau was not sworn into office before the PA president and the PLC as states in Article No. (54) of the SAACB Law. The Bureau's staff, which had been appointed but not sworn into office, is in the same predicament.

Immunity and sovereignty of the Bureau's staff

Article No. (6) paragraph 2 of UNCAC states that "According to the Basic Laws of its jurisdictions, each member state, is to guarantee the body or bodies referred to in Article No. (1) of this charter whatever sovereignty needed to enable those bodies to effectively accomplish their missions away from any undesirable influence. Bodies are to be provided with necessary finances and human resources and staff may be given needed training to allow them to efficiently carry out their tasks. Article No. (11) of the AACB law states that, "By this law, the head of the Bureau, his deputy, director, and staff are granted immunity with regards to all tasks related to their jobs".

The Article, however did not elaborate on the frame of immunity or the power of the executive and judicial bodies regarding this immunity, which left the matter a bit vague and in need of clarifications.

Article No. (13) of the law also states that the Bureau is to be comprised of the Head of Bureau, Deputy, General Director, a number of directors, consultants, experts, inspectors, technicians, and employees according to a specific administrative structure and job description chart approved by the PLC.

Unlike the AGL, SAACB Law did not clearly cite the sovereignty of the bureau; Article No. (3), section 1, 2005, of the AGL states that, "The institute enjoys sovereignty as well as financial and administrative independence; it shall have a special budget from the general budget of the state".

The status of the Bureau's employees has been defined in Article No. (13) (mentioned above), accordingly, the administrative structure of the bureau is to be approved by PLC. This puts Bureau employees in a special category within the public servant's law, "The employee is appointed by a specialized agency to occupy a position within the civic administrative structure. S/he would be on the payroll of a governmental agency regardless of title or nature of job performances".

The administrative structure pertaining to public servants is to be approved by cabinet, while the structure for the bureau is approved by the PLC. In fact, the PLC did not receive any of the administrative structures of the Bureau for approval. Further, the PLC only received the general budget with general charts for all public servants' distribution within the PA.

It could have been possible, by referring to the above Article, to achieve sovereignty for the Bureau by submitting a separate structure for Bureau employees to the PLC for ratification.

Subject four: Financial disclosure

Paragraph five and six in the UN charter deal with the financial status of the top ranking individuals in the state; each state had to create its own efficient systems and measures in order to be able to reach financial disclosures and appropriate laws and regulations. Proper punishments are to be enforced for abstainers.
When evaluating the Palestinian system, in relation to this issue, we found the following:

First: financial disclosure of the PNA President

The Basic Law did not include any provision that abides the PA President to disclose his financial status. However, this gap was filled by the AGL by which the President is to submit financial disclosures for himself, his wife, and children. Disclosures are to be kept confidential within the Supreme Court. Article No. (11), paragraph 1, No. (1), 2005 of the illicit earning law states that the, "PA President must submit financial disclosures for himself, his wife, and children where he declares, in detail, all his and their assets and debits; tangible and intangible assets are included. Disclosures are to be kept confidential at the Supreme Court and may only be exposed by court order and within limitations of the law.

The law defined the custodian of the disclosure but did not define the exact body to which the disclosure would be submitted. Article No. (16), paragraph 2, No. (1), 2005, in Ant-graft law gave the institute the authority to observe the president's financial disclosure, which means that the institute has the right to ask the Supreme Court to view the disclosure. According to this law, the Supreme Court must allow that.

The same Article also refers to the president's deputies and advisors, however Article No. (11), paragraph 1, No. (1), 2005 of the AGL has regulated the process of financial disclosure for the president without mentioning his deputies and consultants. This same group, according to Article 16, paragraph 1 is not treated as part of the public servant's body which means that no Article in the law defines the body to locate financial disclosures of president's deputies and consultants, or the location where they should be kept. An amendment for Article No. (16) is needed to fill this gap.

Second: Financial disclosure for the Prime Minister and Council of Ministers

According to the Basic Law, the prime minister and his cabinet are to submit financial disclosures to the PA President, covering their own assets, their spouses and underage children. Article (80), paragraph 1 of the 2003 amended Basic Law states that, "The Prime Minister and all ministers are to submit separate and detailed financial disclosures, each for himself, his spouse, and underage children to cover all their tangible and intangible assets in and out side the country; disclosures are submitted to PA President which arrange and maintain their confidentiality. Permission of the Supreme Court is needed to be able to look at those documents".

Cabinet's and the Prime Ministers' papers are submitted to the President according to the Basic Law. The President's (according to the AGL) and PLC's papers (according to SAACB Law) are submitted to the Supreme Court. Regulations appear to be in need of association and unification.

Article No. (16), Paragraph 2, No.1, 2005, limits the power of the AGL regarding the disclosures of the PA President, the Prime minister, ministers, PLC executive members, members of the judiciary system and the public prosecutor's office, and those who enjoy similar ranks. The Anti-graft Committee might ask the Supreme Court for permission to look at the kept documents (within the restrictions of the law).

It is not clear why permissions are granted by the Supreme Court when financial disclosures are kept at the Supreme Court of justice. Article (32) of the Courts' law states that, "Structure of the Supreme Court is to include Supreme Court of Justice and Court of Cassation".

It is also not clear whether permission is granted according to the personal judgment of the head of court or whether a jury must pass a verdict. Article No. (16), paragraph 2 of the AGL says, "The supreme court- within the restrictions of the law- may grant permission". Procedures to grant permission are not states. Article No. (80), paragraph 1, of the 2003 amended Basic Law also refers to the Supreme Court for permission without referring to the necessary procedures to take that step.

Paragraph 2 in Article No. (16) refers generally to the people who enjoy similar powers of to those of prime ministers and cabinet members. Article No. (80), paragraph 1, states clearly that the Prime Minister and ministers' financial disclosures are submitted to PA President; however it did not address the disclosures of persons whom enjoy similar ranking positions.

Article No. (9) of the civic service law defines people who are ranked similar to ministers as public sector employees of a special category. First paragraph of the Article states that, "Except for the ministers, jobs in the Palestinian public sector are classified by, "A special category that includes all general directors who are granted ministerial like status". But, by placing this group within ministerial status in Article No. (16), paragraph 2- they were exempted from the conditions of Article (16), paragraph 1, which refers to financial disclosures for the civil servants. Consideration is needed in this point.

Third: Financial disclosure of the PLC members

PLC members are to submit financial disclosures to the Supreme Court of Justice that would maintain confidentiality of documents. Article No. (54), paragraph 2, of 2003, of Amended Basic Law states that, "Each of the PLC members have to submit separate and detailed financial disclosures for himself/herself, his spouse, and underage children to cover all tangible and intangible assets as well as their debits, both in and outside Palestine. Information in those documents can't be revealed without the permission of the Supreme court of Justice".

Article No. (16), paragraph 2, No. 1, 2005 of the IEL includes PLC members within its jurisdiction. By this, the Anti-graft Committee may ask the Supreme Court for permission for disclosure of those members' finances.

It is clear that the PLC Head is included in the Articles' clauses without needing to specify such in a separate paragraph, as the Head of Council earns his position from being a council member. Council elects the head for one year, and if the person is not re elected, s/he regains his original seat in the council. By this, the position of the Head of Council is different from that of the Prime Minister as the later is appointed by PA President and when the prime minister resigns the whole cabinet goes out of office.

Fourth: Financial disclosure of the judiciary and general prosecutor's office

Article No. (16), paragraph 2, No.1, 2005, of the AGL states that regulations regarding the financial disclosures of members of the judiciary system and the prosecutors office are different than civil servants. The judiciary and the prosecutor's office personal are categorized within the same rank as the PA president, the cabinet, the prime minister, and the PLC members.

This gives the AGL the power to look at financial disclosures of the judiciary and prosecutors office, only with the permission of the Supreme Court and bound by restrictions of the law.

However, and although the Article did not identify the body that would receive and keep the disclosures of the jurisdiction and prosecutors, regulations of the judiciary system have states the obligations of judges in this regards. Article No. (28) , paragraph 2, No. 1, of the 2002 Jurisdiction Law states that, "Upon their appointment, each of the judges must submit to the head of Supreme Court a separate and detailed financial disclosure for himself, his spouse, and underage children to cover all their tangible and intangible assets in and outside Palestine,; as well as their debits. The Head of Court is to maintain the confidentiality of documents and would only reveal their content if the Supreme Court ruled it must". The same regulations apply to the Prosecutor's office staff – as mentioned in Article No. (71) of the same law, which states, "Rulings in chapter three regarding the obligations of Judges are also applied to the Prosecutors Office staff".

Fifth: Financial disclosures of civil servants

Article No. (16), paragraph 1, No. 1, of the 2005 AGL states that except for those in categories 1,2, and 3, (which includes the PA President, the Prime Minister, ministers, PLC members, the judiciary and the Prosecutors Office), those under the jurisdiction of this law need to submit to the Anti-graft Committee the following:

1. Within two months of his association with this law, each individual must submit to the Anti-graft Committee a financial disclosure for himself and his underage children; documents should cover all tangible and intangible assets – both within and without the country, shares, bank accounts, jewelry, ornaments, and precious stones. Sources and amounts of their incomes are also to be included.
2. Financial disclosures are to be submitted every three years, or as requested. Recent disclosures must include updated information on financial resources.
3. The individuals included under theses clauses should also submit financial disclosures within one month of concluding tenure.

It is not clear where the financial disclosures that are to be submitted to the Anti-graft Committee, according to this Article, are to be kept. The body responsible for maintenance of confidentiality and necessary disclosures is not states.

However, Article 8 of the AGL states that the Institute is to keep all financial disclosures and may ask for clarifications and additional information from the persons included in this law. The sphere of power the institute has in this regard pertains only to the civil servants that report directly to the Anti-graft Committee according to Article No. (16), paragraph 1 of the AGL.

Sixth: Financial disclosure for the head of the State Audit and Administrative Control Bureau (SAACB)

Article 55, No. (15) of the SAACB Law for 2004 states that, “The head of the bureau must submit detailed financial disclosures for himself, his spouse, and underage children”. Disclosures are to include all their tangible and intangible assets in and outside the country, and are to be kept at the Supreme Court which would maintain confidentiality of documents and reveal necessary information only if requested by the judiciary system.

Subject five:

Measures for the prevention of money-laundering

UNCAC includes an extensive review of possible measures for the prevention of money-laundering, with many of its Articles devoted to measures on combating the laundering of proceeds of criminal activity; the freezing, seizure and confiscation of those proceeds; preventing and detecting of the movement of criminal proceeds. Moreover, it includes measures for the direct recovery of property, and mechanisms for the recovery of property through international cooperation for purposes of confiscating laundered money and property for the return and disposal of such assets.

Palestinian legislation has been in congruence with these required measures. For example, in the area of transfer of funds it can be noted that the Anti-Money-laundering Bill of 2007 has responded to these requirements set forth in the agreement to a large extent, since the Articles of the law are consistent with the provisions of the Convention. The act requires the financial institutions to verify the sources of wire transfers, and the archiving of information – after a period of no less than ten years and the formation of a financial tracking unit. It also specified the obligations of the authorities to supervise financial institutions as well as the non-financial actions and professions within the framework of effective control. Thus, the Bill requires any person who enters the territory of the PNA to disclose any funds s/he may have.

Regarding criminalization, the act also responded to what is included in the agreement since it defined the crime of money-laundering and specified its scope in accordance with the agreement. For example, Article (3) of the law specifies the original crimes that produce the capital used in the laundering schemes.

Regarding responsibility, the Bill imposed the punishment of fines on the legal entity perpetrating in money-laundering, and on the persons responsible for the management of such entity. It also declared it is the responsibility of the person or legal entity to fulfilling payment of any fines resulting from a judgment against them. The same applies if the crime was purported by anyone working for them or on their behalf. The law also established the exemption of any partner who

reports the crime in the case that such reporting leads to arrest and conviction of the criminals or leads to locating the illicit funds.

In the area of preventing and detecting the movement of criminal proceeds, the resolution to combat money-laundering included in its provisions the following: Article 6, addressing the recognition of customers, urged for greater care in the event of the implementation of financial transactions with a client who has no physical presence by which to know his/her identity. Paragraph 5 of this Article stipulated that it is necessary to obtain the approval of senior management of the institution before the establishment of a working-relationship with the customer who might be politically subjected to risk and to ensure greater ongoing monitoring control over work relations and to identify the source of wealth and funds related thereto. The Ninth Article focused on paying special attention to complex and large scale operations; another topic which is highlighted is the need for financial disclosure for public officials and the need to inform the appropriate authorities of any bank accounts they may have abroad.

Branch one

Governmental Policy for Combating the Laundering of Criminal Proceeds

The United Nations agreement for combating corruption defined in Article II, paragraph (e) “Proceeds of Crime”. Thus, consistent with the definition of the United Nations agreement to combat organized crime, which in Article No. (1), paragraph (e), defines: the **proceeds of crime** as, “Any property derived from directly or indirectly committing a criminal offense.”

It’s not easy to apply Feral Procedural Code in the prosecution of criminal money-laundering and subsequent proceeds, outcomes and implications. This is because this type of crime is not constricted to the borders of a state, or its territory. It’s possible that such actions may not constitute criminal acts within one state, while they are considered criminal in another. It is noted that some components of money-laundering crimes within the territory of a particular state may not be a crime in themselves; rather, they complement a crime that originated in a different place. Therefore, money-laundering and related actions cannot be treated as a crime the laws of any given state do not treat it as such.

It can be noted that laundering of proceeds of criminal activities can be considered as a new type of crimes that does not have a full legal provisions criminalizing it as of yet. There seems to be an urgent need to amend national laws and to draft new laws in line with modern international efforts in this area, especially the UNCAC.

The government indicated that applied laws combating new financial crimes – especially money-laundering – fall short of the desired level. Therefore, the Cabinet determined, in its session held on 18-7-2007 to form a special committee to draft an act of a law combating money-laundering and its subsequent smuggling. The committee consisted of the Justice Department, the Ministry of Finance, and the Secretariat of the Prime Minister's Office. The draft of the law was completed and approved by the Cabinet on 272007-8-. The law was released by the President of the PA on 52007-10-.

First: Decisions to freeze and foreclose on laundered assets

According to the United Nation Convention on combating corruption Article 2-section "Y" Freezing and foreclosure can be defined as, "Imposing a temporary hold on the transfer, exchange or removal of funds; or taking temporary responsibility for such funds. Such a decision is issued by a special court or authority.

After reviewing most of the existing legal materials related to restrictive holds we can see there was a lack of legal rules prior to the issue of the Anti-Money-laundering Act, that govern the foreclosure and identifying which entity has the right to apply it. It was important to create some laws that make it possible to allow for quick and effective legal actions that enable the prosecution of money-laundering offences; or delegating power to the Public Prosecutor to stop a financial transaction, temporarily, to enable him/her to consult with the court. These measures will be taken pending the presentation of serious evidence of crimes committed against financial assets; or upon proof that an individual has begun committing such a crime; or if the money was going to be used to help in masking a crime. In such a case the prosecutor is authorized to seize the illegal funds, both in terms of its source and intended of usage.

Under laws in force, the Attorney General or public prosecution may request from the court of criminal justice to place a preventive hold on any assets of someone who maybe suspected of engaging

any criminal activity related to money-laundering. This foreclosure covers registered or unregistered assets, but it cannot be carried out without a court order. Investigative, on the other hand only applies to the registered assets and is investigative in nature, it is typically conducted by the public defense office, without the need for a court order. But one should note that placing a hold on funds is the decision of the courts.

Under Article No. (24) of AGL No. (1), 2005, it is states that the "Anti-graft Commission may ask the specialized court to place a hold on funds belonging to someone (or funds he owns but someone else has possession of) if they were acquired illegally. The Commission has the right to review and audit the financial records of those under suspicion and to draw the necessary information from official and unofficial entities. It further has the right to request assistance from all possible parties, as it deems appropriate, including experts.

Article No. (41), section 1, of the Taxation Law No. (17) for the year 2004 states that "The order to foreclose on the financial assets of someone who did not pay their taxes can be issued by the specialized court upon a request by the concerned party and after the permission of the minister."

Moreover, Article (41) of Law No. (1) for the year 2000, in relation to charities and civil organizations, states that «It is not permitted to place a hold or lay hands on any funds or belonging to charities and civil organizations without authorization from the appropriate judicial entity."

Article No. (289), of the Code of Criminal Procedure, No. (3) for the year 2001, indicated that after a thorough investigation has been conducted and sufficient evidence has been gathered, the appropriate party to issue a hold on a fugitive charged with criminal money-laundering is the Criminal Court. Once the General Attorney gathers sufficient evidence, they can ask the Criminal Court to place a hold on the fugitive's criminal assets, regardless of the level the crime. However, it can be noted that this Article falls short in that it only addresses the 'fugitive' criminal.

It is permissible for the Public Defense Office and the appropriate judicial entity to place a hold on any material evidence of a crime

as it occurs. According to Article no (27) of the Code of Criminal Procedures No. (3) for the year 2001, "In case of crime or misdemeanor the legal officer has to report immediately to the scene of the crime, and examine the physical effects, preserve them and document the environment (its people and artifacts) in order that the truth may be revealed. They also need to hear from witnesses and gather any relevant information that may aid in resolving the case. S/he should then inform the public defendant, who in turn reports to the crime scene."

Furthermore, public investigators may request a hold be placed on property, as a preventive and investigative measure, according to Article No. (14) of the Public Investigation Law No. (17) for the year 2005. According to this Article, public investigators should conduct an initial investigation of charges against the accused under the following circumstances … they have the right to place financial assets on hold, to call people for questioning and requesting and maintaining information for as long as deemed necessary to resolve the case.

Article 46 of the agreement considered conducting searches and placing holds as a means of providing legal assistance that is exchanged among signature countries. However, Article No. (31) of the same agreement addressed the confiscation of assets on the internal level (which will be addressed in the following section —"The confiscation and the fate of the withheld money."

Upon the issuance of legislature criminalizing money-laundering, it is now up to the follow-up financial unit of the Monetary Authority, if there are reasonable grounds to suspect the transaction of the crime of money-laundering, implementation of the transaction shall be stopped for a period of not more than three working days and a report shall be submitted to the Attorney General. The Public defendant has the right to extend the hold for a period not exceeding seven working days; and the Attorney-General on the basis a court decision, can extend it to a period not exceeding fifteen days.

Second: Confiscation of assets and the outcome of withheld assets

Regarding measures of direct recovery of property, Articles (57:56:55:54:53) included provisions that require one state to allow

another to initiate civil action before the courts prove ownership or right of property acquired through the commission of an offense established in accordance with this Convention. These Articles have also set forth mechanisms for recovery of property through international cooperation via confiscation. They also allow for the appropriate local court to enforce a confiscation order issued by the court of an outside state, and to allow the local judicial and other appropriate authorities to order the confiscation of property of foreign origin. Also, included is to allow the confiscation of such property without a criminal conviction in cases that the offender cannot be prosecuted because of death, escape, or absence. In addition to allowing the appropriate authorities to freeze or seize property – according to an order issued by a court located outside the implementing state – and to take additional measures to permit its local authorities to preserve property for confiscation, on the basis of an arrest or pressing criminal charges of relevance, as related to the illegal acquisition of property of someone residing in the local state, who maybe a citizen of the requesting state.

The above Articles also included measures outlining international cooperation on the confiscation of funds and/or illicitly obtained property. Measurers on international cooperation on the transfer of information, regarding the proceeds of criminal financial activity as established in accordance with this Convention, to another state party without prior request are also established. The Convention also called for the return of assets seized by one state for another requesting state. The requesting state shall successfully present evidence proving ownership of such assets, or in the case that the receiving state recognizes there is a damage suffered by the requesting state and such damage can be rectified by the return of confiscated property.

It can be noted that the Palestinian Anti-Money-Laundering -Bill has not recognized the previously states requirements for international legal cooperation, including the recovery of confiscated property. This may be due to the fact that other states may not be able to reciprocate such commitments except Arabic countries bound by legal agreements as signed by the PLO, which is discussed in part 6, “International and Regional Cooperation.”

In Article (31), the Convention addressed the seizing and confiscation issues at the domestic level of each member state since it called for its domestic laws to include the necessary measures for the freezing or confiscation of proceeds derived from criminal offenses, as established in accordance with the Convention. income or other benefits derived from such proceeds of crime, property equipments and/or other means used in, or destined for, the employment of criminal activities; and if such proceeds of criminal property were mixed with property from legitimate sources, such property shall be subject to confiscation according to the estimated value of the proceeds of the tainted illegitimate property.

The public prosecutor has the right to decide the fate of seized property, and the court may decide, in the case of a dispute, as provided in Article No. (73) of the Code of Criminal Procedure which states that "1.) At the time of the discovery of seized property, the owner of the property may request its return prior to the ruling unless it is needed for the case, or for purpose of mandated confiscation. 2 - If the seized property is the subject of a crime, or resulted from it, it should be returned to the original owner, unless stated otherwise by law."

It is noted that returning seized property is within the authority of the Public Prosecution office. The court may, in accordance with Article No. (74) of the Code of Criminal Procedure, order restitution during the proceedings, since the fate of such assets should be determined by filing the case or issuing a decision. This is states in Article No. (75) of the of the Criminal Code . The decision of keeping the case could be made in accordance with Article No. (49), paragraph (a) Code of Criminal Procedure No. (3), for the year 2001, and the decision of Law No. (8) for the year 2006, which stipulates that, «Once the investigation has ended initiated and the prosecutor believed that the act is not punishable by law, or that the statute of limitations has expired, or the case of the death of the accused, or general amnesty pardon had been granted, or it is deemed he or she is not responsible for the crime due to young age or disability. If none of the aforementioned occurs, then the prosecutor should express their opinion in a memo and send to the Attorney General to take action. Article No. (152), paragraph 5 of the Code states that, «If the prosecutor believed that the act is not punishable by law, or that the case of limitations expired, or death, or for a general

amnesty had been granted, on prior trial of the accused, he or she is not responsible for the crime due to young age or disability; or the lack of sufficient evidence or the perpetrator is unknown, they can order it to be filed."

When there is a dispute over the confiscated property it's necessary to refer to Civil Court, according to Article No. (76) of the Code which states that the court can dispose of the seized money through management, preservation and sale. Article (72) of the Code of Criminal Procedure, No. (3), for the year 2001, stipulates that: 1.) seized property should be packed with a detailed description of the contents and stored in the safe-keeping of the Public Prosecution. 2- If the confiscated property is perishable, the Public Defense Office can dispose of it via auction and deposit the return in the courts safe or account.

The fate of the seized funds must be left up to the appropriate court to decide, since Article (21), paragraph (4) of the Amended Basic Law, 2003, states, "Confiscation is only allowed according to court order."

Article No. (44) of the Penal Code 16 for the year 1960 states, "If the prosecution obtains possession of any wealth in relation to any criminal activity, the prosecution, while taking possession of the case, can make the decision to return the funds to their rightful owner; and if the owner can not be identified the suitable decision can be made as it deems fit.

Under Article No. (40) of the Anti-Money-laundering Act it is states that the court has jurisdiction in confiscation and/or forfeiture of any funds in the hands of any party – even if the owner was unaware of the illicit source of the funds, or if it had been obtained through paying fair price – or in return of delivering services of equal value to said (illicit) property. Also the court has total jurisdiction over confiscation and/or forfeiture of any funds that are contained within illegal proceeds or intermediary funds (money that is appropriate to be used partially or totally in committing a crime). The court then has the right, according to Article No. (40) section 2 of the anti-money-laundering act to confiscate the funds if the court had sufficient evidence to indicate that it had been collected from the crime or if the person convicted of the crime of money-laundering is at large or dead.

Third: Decision to disclose bank's confidentiality regarding financial data

By reviewing the UNCAC, we find that Articles No. (3141-) of the Convention included a reference to the need for appropriate mechanisms to overcome the obstacles that may arise from the disclosure of financial data.

Regarding the congruence of Palestinian policies and legislation with the requirements of the Convention in this respect, we find that Article No. (26) of the Banking Act calls for maintaining the confidentiality of the information and documents that belong to clients. It states that the information may be disclosed only by written consent of the customer or a court order. By referring to the Code of Criminal Procedure the Attorney General may investigate and issue an indictment but the final decision is up to the court, not the prosecution; thus the public prosecutor will need a permit for accessing private financial data.

Given the speed required by the procedures for the declassification of the bank accounts at the time suspicion of criminal activity and/or charges, it was necessary to amend the legislation to find a faster and more effective way than a court ruling. Especially since the court ruling does not commensurate with the speed required for the detection of financial crimes, particularly modern money-laundering offenses. At the same time, the AGL No. (1), 2005, under Article (24) authorizes the Commission to consult the records and the documents of the defendant and draw necessary information from official and unofficial circles, and whosoever deemed appropriate, including experts.

The AGL states, «In accordance with the provisions of the law and to enable the Commission to carry out its functions it needs to be able to: 1.) Request clarification of data and be able to access documents and records from relevant parties, including those that are considered confidential. 2.) All concerned parties need to cooperate with the Anti-grafting Committee, and the Committee may seek the legal and law enforcement entities that may assist in carrying out its functions."

This means the Anti-grafting Committee can disclose the financial privacy given it authorization in order to review the financial records

of anyone who may be suspected of a money-laundering crime.

The office of public investigations can also seek and/or request any records from an individual for review and/or may keep such records as it deems suitable and according to the law.

It was necessary to find a legislative text that achieves some sort of balance between the need to protect the confidentiality of customers' bank information for and the need to empower the Public Prosecutor's knowledge of a suspect's account – when there is reason to believe a crime will soon be committed. Such legislative text was also needed to remove the confusion between Articles No. (26), which provides the text of the general protection of the confidentiality of information, and the text of Article No. (24) of the Anti-graft Legislation, which gives the commission the power to obtain necessary information from official and unofficial circles. In further need of clarification is the text of Article No. (4) of the Code of the General Intelligence Service, which grants the right to request intelligence information from any person or having such information retained.

With the issuance of the Anti-Money-laundering Act of 2007 it was possible to find a legal venue for the disclosure of confidential financial transactions. The third chapter of the Law has focused on the obligation of various entities to, "Maintain transparency and the obligation of financial institutions, business and non-financial, to disclose information when court ordered." This chapter included in Article No. (14) the obligation of financial institutions, business and non-financial professions, to inform the Follow-up Unit, as soon as possible, of any financial funds, that it suspects may be criminal proceeds or associated with money-laundering schemes; or in case they are aware of any money-laundering activities that maybe an indicator of the crime of money-laundering. Moreover, Article No. (15) obliged financial institutions, business and non-financial professionals to refrain from carrying out transactions that are suspected to include money-laundering crimes until they inform the Unit of such suspicions; the Article also banned disclosure to customers or third parties pending the completion of an official report.

The law in Article No. (17) and Article No. (18) shielded financial institutions, businesses, and non-financial professions, and their managers and staff, from any criminal liability, civil disciplinary

or administrative responsibility regarding informing on suspicious transactions – providing the information, and submission of reports, was done in good faith and in accordance with the provisions of this Act.

Chapter 5 outlines functions of the **Follow-Up Unit**, an independent financial unit created to combat money-laundering, and. They include requesting information from entities which are subject to the relevant laws.

Chapter 8 addresses conclusive provisions, such as Article (46) which states that banking privacy provisions should not prevent the implementation of the provisions of this law; the provisions of bank secrecy should not be used to prevent the disclosure of any information relating to the fight against money-laundering; except as states in paragraph (3) of Article (14) of the Act on exemption of lawyers from the duty to report information they receive from their clients.

The resolution on combating money-laundering granted the appropriate entities the right to acquire and keep sufficient, up-to-date and clear information of Legal Persons as established in the Territories under the PNA's jurisdiction. It calls on these entities to inform the Follow-Up Unit quickly in the case of suspicion and investigation of money-laundering activities.

The law has defined the **appropriate authority** as "Each government agency entrusted with the fight against money-laundering operations in accordance with its specialization" and differentiated it from the auditing agency, which is entrusted with oversight of laws and supervision of financial institutions as well as business and non-financial professions. Article No. (27) states that the appropriate authority must to establish any needed departments and/or sections to coordinate with the Central Monitoring Unit the provision of information regarding any activities suspected to contain money-laundering activities; in accordance with mechanisms established by the Commission. Article No. (29) also states that the appropriate authority is obligated to provide the Central Monitoring Unit with any additional information relating to its operations under the provisions of this law, within five days of the submission of a request for information submitted by the Unit.

Branch Two: Governmental Policy of Monitoring the Financial Activity of Non-Governmental Associations and Organizations

Decision No. (181) of 2004 by the CM (CM) was made to conduct elections in nongovernmental organizations, as states in its Article no (1): "Concerned ministries shall urge non-governmental organizations to conduct their elections, regulate the meetings of their general assemblies, and present their examined budget according to the current law in place, as determined by the nongovernmental organization bylaws." Article No. (2) of the same Decision also states "According to the law and relying upon bylaws of these organizations, concerned ministries shall abolish the legality of any administrational body of any NGOs upon completion of its term, due to the end of its election period. And without conducting new elections all ministries shall stop their financial capability within banks".

On June 20, 2007, a decree was made during "State of Emergency". It granted the Minister of Interior the authority to examine all licenses of associations, institutions and bodies, issued by either the Ministry of Interior or any other governmental authority. The Minister of Interior or his deputy shall conduct all procedures deemed fit, correct or whatsoever regarding the associations and institutions. Article No. (3) in the decree added that "All existing associations, institutions and organizations shall apply new applications to have issued new licenses within a week from that day. Legal procedures shall be conducted against anyone who breaches the decree".

As a result of this decree, the CM decided in its session convened on June 20, 2007 to charge the Minister of Interior with conduction all necessary procedures against any associations and institutions which practice activities that directly breach the law. He is also authorized to execute whatever actions deemed necessary to halt these activities.

It is noted that there is no serious follow-up by competent ministries on civil associations and entities. This encourages the general disorder and lack of accountability associated with this sector. The law defines the concerned ministry as the ministry under whose competence the base activity of the association shall be included. Article No. (6) imposes on the concerned ministry the responsibility of controlling the works of associations pursuant to this law. The

ministry shall control the activity of any associations or institutions by means of a written decision issued to assure that the organization's funds were spent to achieve their objectives and in conformity with this law and bylaws of the associations and institutions. Associations and institutions shall enable the ministry to implement this decision to verify that they work in conformity with this law and their bylaws.

In addition, Article No. 13 states that associations or institutions shall submit two reports, certified by the general assembly, to the concerned ministry not later than four months from the end of the fiscal year. The first being an annual report and shall include a complete description for the activity of the association or institution during the last year. The second report is a financial one certified from a certified auditor and shall include detailed information about revenues and expenses of the institutions or associations in conformity with effective accounting principle. In reality, most associations and institutions do not submit any reports to the concerned ministry, and do not receive requests to do so, as states in the law.

Subject Six: Regional and International Cooperation

Anticorruption is not inherently an international crime; however it has expanded into one from its local and then regional casing. Corruption crime, it's actions, executions and efforts go beyond the boundary of any country. So it has become international in nature in today's environment. Transnational organized crime is executed by groups whose members have extended beyond any particular national boundaries; and who take on an organized international character. State-of-the-art technology is required to execute this sort of crime. Organized crime gangs (Mafia) connect with terrorist groups which then obtain organized terrorism as an occupation.

Corruption in governmental organizations may create an appropriate environment to implement dangerous crimes especially terrorism, arms trade, and drug dealing; crimes which are physically related to corruption as the revenues of all such crimes shall then participate in illicit money-laundering – one of the most significant corruption crimes. Money-laundering is considered a transnational organized crime by means of UNCAC against Corruption. Revenues of such crimes are often used to bribe public officials and encourage corruption in public and nongovernmental institutions in order to

facilitate further implementation of organized crimes – especially in crimes related to drugs, weapons and the unlawful transfer of money. This happens either transitionally or by banks under illusive trade which facilitates investment with the intent to clean money, burglary, kidnapping, smuggling, forgery and other forms of organized crime. This makes the battle against corruption crimes related to anti-organized crime, anti-terrorism and anti-drug smuggling/dealing which calls for international efforts and cooperation.

Terrorist organizations needing money to support their activities may be forced to commit a transitional crime, especially money-laundering – which is considered one of the most significant crimes of international nature committed by terrorist groups to launder criminal proceeds of either the arms or drug trade. This makes combating money-laundering crimes of big importance as a tool to control the financial support of terrorist groups and sharing all countries against terrorism and terrorist groups through drying sources of terrorism financial support where exposing the sources of financial support helps in revealing terrorist networks.

By looking at the nature of organized criminal activities, which aim at financial gain, it's clear that money-laundering is considered one of the key crimes committed as most funds of such groups are illicit and cannot be used without being laundered. As a result, a money-laundering is considered by such groups as their main contentious activity.

Branch One : Importance of International Cooperation in Combating Corruption

UNCAC focused its forth chapter on international cooperation between state parties in crimes, especially on extradition, mutual legal assistance and the transfer of criminal proceedings to focus on combating cases in which such exchange is done for the sake of justice for the betterment of the different jurisdictional states. Moreover, it called for cooperation in implementing the law, including the creation and promotion of communication channels between authorities and concerned institutions. It also called for joint investigations, including the building of agreements – bilateral or multilateral –that facilitate the creation of joint investigation bodies by the concerned authorities. This includes special investigation methods, such as the use of electronic (and other forms of) surveillance and secret

operations conducted by foreign countries inside its territory. The UNCAC also states its acceptance of such evidences.

The Convention also states, in its fifth chapter, the assets recovery, prevention and detection of transfers of proceeds of crime, measures of direct recovery of property, mechanism for recovering properties through international cooperation in confiscation and international cooperation for purposes of confiscation, special cooperation, return and disposal of assets and, establishing financial intelligence unit and literal and multilateral agreement and arrangements unit. The sixth chapter of the Convention states the technical assistance and information exchange, training and technical assistance, collection, and exchange and analysis of information on cooperation. It also states other measures such as implementation of the Convention through economic development and technical assistance.

In conformity with the Oslo Agreement and following Palestinian-Israeli Agreements, the PNA cannot join an international agreement because it does not have the complete sovereignty needed to qualify such status. The PNA cannot amend its regional laws pursuant to related international agreements. The PNA, facing the gravity of organized crimes – which aim to unsettle security and stability, hinder developmental efforts and the rule of law, and represent a violation against humane values of people. It is possible that PNA continue joining related Arab agreements. There was an anticorruption Arab agreement project. The PNA was one of the first countries to submit its approval on that agreement on June 3, 1998. The agreement was made in Arab League on April 22, 1998 and effective on May 7, 1999.

Branch two: The Effectiveness of Riyadh Agreement for Judicial Cooperation

According to Article No. (72) of the Riyadh Agreement for Judicial Cooperation replaced three agreements made in 1952 within the Arab League that related to judicial declarations and delegation, and implementing laws and extradition. The Council of Arab Ministers of Justice ratified the agreement by virtue of its decision No. (1) on April 6, 1983 in its first standard meeting. The agreement was signed in Riyadh on April 6, 1983 by all member states, except Egypt and Islamic Union of Comoro Lands. The agreement was effective on 301985 /10/ pursuant to Article No. (67) of the agreement.

On 281983/11/, the PLO signed the agreement by its permanent envoy at the Arab league. Article No. (69) of the agreement was amended and approved by the Council of Arab Ministers of Justice by virtue of decision No. (256), 261977/11/, in its third standard meeting. The new Article states: “If the provisions of the present agreement conflict with those of any previous special agreements, the text most effectual in extraditing persons facing charges or convicted shall apply».

On September 5, 1998, the PLO approved the agreement by way of its Minister of Justice at that time. Therefore, the agreement was signed and approved by the PLO and the PNA. With reference to the effectiveness of this agreement, it’s worthy mentioning that Basic Law does not mention the necessity approving the legislative council on the judicial agreements or on Arab, regional or international cooperation agreements. Basic Law limits the role of the Legislative Council in approving loan agreements that lead to financial expenditure from the public safe. Article (92) from the Basic Law states: “Public loans shall be enacted by law. It is not allowed to engage a project that requires expending funds from the Public Treasury during the next period unless approved by the PLC.”

In reference to the approval of the CM, Article No. (1) of the CM decision No. (81) of 2005, concerning signing agreements with international countries and institutions, states “Draft agreements with institutions of international countries shall be presented to the CM to discuss the legal basis and regulations, and to approve it before signing it by the delegated authority.” This means the approval of the CM is needed prior to signing the agreements. According to this provision, the aforementioned agreement does not need the approval of the current CM.

Article No. (118) of the Amended Basic Law of 2003 states: “Law, regulations and decisions existing within Palestine prior to the implementation of this law, shall remain in force – to the extent that they do not conflict with the provisions of Basic Law – until they are amended or replaced in conformity with the law.” In compliance with Article (118) of the aforementioned Basic Law, Article No. (77) of the law No. (7), of 1999 and concerning the environment states, “According to the provisions of this law, international and

regional conventions, treaties and the provisions of the specialized international entities, of which Palestine is a part, or any other laws related to the environment which are in effect in the Palestinian territories, shall be considered complementary to this law, unless otherwise is provided.»

However, we encounter a problem in implementing extradition as specified in this agreement by Article No. (28) of the Basic Law which states that "No Palestinian may be deported from his/her homeland, prevented or prohibited from returning to or leaving it, deprived of his (citizenship) or surrendered to any foreign entity." Returning to Article No. (44), clause 11 of the UNCAC against corruption, we find this clause may be in conflict with what is mentioned in Basic Law, concerning the prevention of extradition of any citizen to foreign authority. The Article states: "If a state party, on whose territory an alleged offender is found, does not extradite such person, in respect of an offence to which this Article applies, solely in the ground that he or she is one of its nationals, shall, at the request of the state party seeking extradition, be obliged to submit the case without undue delay to competent authorities for the purpose of prosecution. Those authorities shall conduct their proceeding with the same integrity in which they would conduct any other case of such serious nature under the domestic law of the state party. The state parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution». Article No. 46, clause 21, item (d) of the Convention also states that "Mutual legal assistance may be refused in some cases, such as if such assistance would be contrary to the legal system of the state party.»

The end of this chapter discusses anticorruption policies and good governance standards. We cannot talk about anticorruption policies without mentioning standards of good governance, the antithesis of corrupted governance, which facilitates economic growth and long-term human development.

Good governance, based on principles of conventions, declarations and resolutions issued by the UN and developed through international awareness to the importance of good governance and its relation to human development. The UNCAC is among many international

documents connected to governance administration and good governance.

In an effort to understand the underlying foundation of effective good governance, we investigate this principle by means of international studies and applications. A study for the International Bank, related to the good governance in the Middle East and North Africa, specified two standards of good governance. The first standard is defined by the rule of law, equality, right of participation, and equal opportunity structures for the whole of society. The second standard is defined by representation, participation, competition, transparency and accountability. A study for the Economic and Development Cooperation Organization specified four standards of good governance as follows: rule of law, public sector management, control over corruption and reduced military expenses. Whereas the UNDP specified nine standards of good governance: (1) participation, (2) rule of law, (3) transparency, (4) good response, (5) consistency, (6) equality, (7) efficiency,(8) control, and (9) strategic view.

Elements of good governance:

In light of these standards, the concept of good governance is related to development in all its forms. It is concerned with the economic, social, political and cultural elements of humanity by the unification of all citizens in decision-making which touches their lives, improves their abilities, and makes available improved opportunities to them. It is not possible to separate good governance from a government's vision, its missions and objectives, which structure its strategy, policy and development plans. The three main concepts on which good governance is based are:

1.) The rule of law – which includes:

1. Constitutions and laws.
2. Judicial sector and public prosecution.
3. Transparency and accountability. Due to their close relationship, transparency and accountability are listed together. Indeed, accountability ceases to exist without transparency. Accountability generally means officials provide associated departments with explanations, concerning their competence and duties, and maintain responsibility for any failure or violation. Transparency is based on the free-flow of, or free access to, information. It focuses on two main topics:

4. Parliament and control, including control against corruption.
5. Public sector administration, including public and financial administrations.
6. Participation. This concept relates effectively to human rights and the concept of democratic society. Participation is activated through focusing on four topics:
    - Woman
    - Citizenship which includes rights of nationality and identity.
    - Civic and information societies.
    - Elections

Aspects of reform in good governance program:

Different aspects of reform fall under the concept of good governance. These are specified and prioritized on the basis of the level of development maintained by the state or region. In the Arab region it has been agreed that aspects of reform within the good governance program shall be specified. This was addressed in the Good Governance for Serving Development in Arab Countries Initiative, developed in the Dead Sea conference, held in Jordan and attended by both governments and civil society representatives on February 2005. The Initiative was conducted through Arab partnership, UNDP, and OECD. Six Arab countries were chosen to lead the regional collaborative, with industrial countries members of OCCD.

Therefore, Palestinian CM's drafted Decision No. (0259//m.o/a.k)on 152005/02/ which approved Palestinian membership in the Good Initiative for Serving Institutions in Arab countries on the basis of CM Decision No (156//m.o/a.k) on 122005 /01/ to form a Palestinian delegation to participate in the initiative. The program of the initiative includes six aspects in reform fields such as:

1. Civil service and integrity
2. Electronic government and simplification of administrative procedures.
3. Managing public money and financial control, and falls under Accountability and Transparency.
4. Providing public services and partnership between the public and private sectors; this falls under Accountability and Transparency.
5. Developing judicial authorities and implementation of laws; this falls under Accountability and Transparency.
6. The role of civil society and media in administrative reform. This aspect falls under Participation.

Chapter three

Compatibility of Palestinian legislations with UNCAC

Before discussing compatibility between Palestinian legislation and the UNCAC, we should examine the legislative systems which control the Palestinian territories.

Subject one: Legislations regulating Palestinian Territories

Legislation in the Palestinian Territories varies due to the disparity of political and administrative regimes which have controlled and governed the area, dating back to the Othman government and alternating with one another up until the creation of the PNA –on just part of the Palestinian Territories upon the Transitory Agreements. Reviewing the effective legislations and legal regimes that organize the legal and governmental structure of the Palestinian territories, we see a legal system which consists of integrated amounts of current legal legislations and regimes.

Regarding the current legislative system in the Palestinian territories, we note:

1) Outdated legislations in Palestinian Territories: the Territories are still legislated by old laws, which were created up to, or more than, a century ago. For example the Othman Pandect and Palestinian Penal Code No. (74) of 1936 is effective in the Gaza Strip today, although it was created during the British mandate. Jordanian Criminal Code No. (16), of 1960, is effective in the West Bank along with tens of legislations also created over half a century ago. Thus, it is a required necessity to replace them with up-to-date legislations which amend any gaps or loopholes and take into consideration the needs of society as established and emerged by the activity and social development in Palestine.

2) This failure of legislation to cover the needs of Palestinian society must be addressed. As previously states, the legislative system is closely related to the needs, life, and development of all the citizens of Palestine. Most of these legislations were concerned with the necessities of the previous political systems. Often such legislation was created to ensure its very existence, protect its interest, and guarantee quiet organized governmental control in

Palestinian Territories. Therefore, it is necessary to enact Palestinian legislatives concerned with the particularity of the Palestinian society, the need of its individuals and their basic interest.

3) The provisions of current legislations in the Palestinian Territories contradict many international conventions. Most of legislations were enacted before the UN Declaration of Human Rights, the International Convention on Civil and Political Rights, the International Convention on Economic, Cultural and Social Rights. Additionally, most the legislation was enacted prior to tens of international Conventions on human rights such as: the Convention on Elimination of all Forms of Decriminalization Against Women; the Convention on the Rights of the Child; and other international proceedings, conventions and declarations related to human rights and civil liberties in areas such as civil, political, economic, social and cultural fields. Therefore, international maturity requires addressing modern rights and civil liberties, as well as the necessitating the enactment of new Palestinian legislations that bearing in mind the important steps made by global societies; especially the progress made concerning human rights and civil liberties. This can be achieved when Palestinian legislatives respect and adopt the approved provisions of the following: the International Declaration for Human Rights, provisions of the International Declaration of Human rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural rights, and other principles and provisions related to human rights and freedom.

4) Civil inequality exists in Palestinian society. By looking at the various effective legislations we discovered that the rights of individuals' and legal obligations and duties are varied throughout the region. There is a clear difference in individual rights and obligations and duties according to legislations in effect in the West Bank and the Gaza Strip. Therefore, not only the roles of justice and equity but also the actuality of Palestinian equality before provisions of the law requires that the Palestinian legislator act to end this duality of rights and obligations and duties within the Palestinian Territories.

Subject Two: Compatibility of Palestinian Legislations with Provisions of UNCAC

In this part of the study we concentrate on and explain the criminalization, dimension and enhancement guarantees of countries prosecuting and combating corruption crimes. We will discuss some main policies to understand their position in creating effective legislations.

Branch One: Compatibility of Palestinian Legislations with UNCAC in Criminalizing Corruption

As previously states, international conventions have criminalized a set of corruption acts, specifically:

First: Criminalization of Bribery

The Convention states the criminalization of a bribe as a public official's promising – or the offering or giving to a public official, directly or indirectly – of an undue advantage, for the official himself/herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. In addition, it criminalizes solicitation or acceptance by public officials, directly or indirectly, of undue advantages, for the official himself/herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. The Convention extends the scope of bribe in its previous concept to include not only public officials but also private officials, foreign public officials and officials of public international organizations.

Through reviewing current Palestinian legislation we discover this crime is addressed in several legislations

Jordanian criminal code, effective in the West Bank, treated bribery as a crime in Article No. (170), which states: "Every public official and person, delegated to public service by voting or designation, every person charged to official mission – such as arbitrator, expert and syndic, who asks-for or accepts a present, promise or any other interest for himself, or for an other person or entity, in order that the official act in the exercise of his official duties shall liable to imprisonment for six months to two years and liable to a fine of 10 to 200 JD." Article No. (71) of the same code states: "1. Every person mentioned above who may ask for or accept a present or promise, or any other interest for himself or for another person or entity, in

return for his/her action or refraining from acting in the exercise of his or her official duties shall be liable to imprisonment for a term of one to three years, and is liable to fine from 20 to 200 JD. 2. The advocate shall have the same penalty if it conducts the same actions." Article No. (172) of the same code states: "1. Briber also shall have the same penalty states in the previous Articles. 2 The briber and accomplice shall be exempted from penalty if they reveal or admit the action to the concerned authorities before submitting the case to the court." Article No. (173) states: "He who offers any person previously mentioned in Article No. (170), a present, other advantage, or promises such person with a present or advantage to act or refrain from action shall - if the offer or promise is not accepted- be liable to imprisonment less than three months and is liable to a fine from 10 to 100 JD."

British criminal code No. (74) of 1936 studied this crime in Article No. (106) which states "Every public official and staff assigned to him who takes or accepts money, or advantage of whatsoever kind as a bribe, for himself or others to do or not to do an action in the future while performing his job; or to accept money or advantage for any aforementioned objectives or try to do so; or to (b) give or grant to a public service official or any other person, or arrange for, promise or offer to give, grant or attempt to arrange money or advantage of whatsoever kind as a bribe; to do or not to do one of the aforementioned actions shall be guilty of misdemeanor. Article No. (107) of the same code states: "Any public service official who takes remuneration in addition to his legal salary or who accepts a promise of such remuneration to act shall be guilty of a misdemeanor."

Palestinian Public Election Code examined Bribes. Article No. (103) of the code, which states: "He who does any of the following shall be guilty of a crime: (a) gives directly or indirectly; loans, offers, promises to give money or advantage to stimulate a voter for particular election or to prevent voting; (b) accepts or asks for; directly or indirectly, money, loan, advantage or whatsoever for himself, or for others with the purpose of specific voting or not voting or affects others action pertaining to voting or not voting; 2- he who committed actions states in previous clause (1) after conviction and confiscation of the bribe the perpetrator shall be sentenced to one of the following or both: (a) imprisonment not less than three years (b)

shall pay fine not more than 3,000 USD or its current equivalent. 3- The court may eliminate his name from the candidate list."

Anti-Graft Code No. (1), of 2005, indirectly considered bribery. It is obvious through the definition of illicit enrichment in Article No. (1).[16] In addition, Article No. (2) of the code defined items subject to its provisions and persons who may be expected to commit these crimes[17].

Palestinian criminal code studies bribery in the same context as it was previously studied by Jordanian Penal Code. The difference in the analyses between the proposal and the code is without a doubt the term of penalty. The proposal determined the penalty of such crime to be the temporary imprisonment of three to fifteen years. The proposal also states, by means of Article No. (114), the need for confiscation of all revenues of such crime.

The different and conflicting legislations and the proposal of the Palestinian criminal code, are limited to defining bribery according to public official or persons of public nature. Therefore, these legislations don't at all mention bribery as committed by private sector officials, public foreign officials or public international institution officials.

The AGL, it is noted, does not clearly address bribery, which is supposed to be added to this definition to achieve addressing the concerns and needs behind the legislation. This is especially problematic as bribery is the most common and dangerous corruption crime due to its different appearances and categories. Therefore, the legislator was supposed to add this crime to the definition as "All money gained by one of the actions listed in the code (above) either for him/herself or others due to misuse of power or as a result of bribery or a manner that violates the legal text or …….". It is clear from clause 11 of Article No. (2) the AGL specifies the categories

16 See page (69) of this study

17 The Article determined these types as follows: 1. the president of the PNA, his representatives and consultants. 2- The Prime Minister and ministers. 3- Members of the PLC. 4- Members of judicial authority and public prosecution. 5- Leaders and managers of security and police institutions. 6- Governors, chairmen and members of the local bodies' councils. 7- Chairmen and members of board of directors of public joint stock companies, their executive managers in which PNA or any of its institutions have shares. 8- Officials of the private sector, first and second categories who are subject to civil service code. 9- Official receivers and their representatives, treasurers, money-changers, purchase and sale agents, members of purchase and sale committees from third, fourth and fifth categories states in civil service code likewise security and police members of the same categories. 10- Officials, officials and members of authorities that receive their budget or any support from the public state budget. 11- Any other person subject to such law as decided by the CM

subjected to its provision which included, but were not limited to, those categories. While, the CM has the authority and competence to add what is deemed necessary to these categories.

Therefore, adding bribery to this definition may – if done in addition to a decision by the CM to add private sector officials, foreign public officials, or public international institution officials to the categories determined by law – overcome difficulties of amending effective penalty legislatives. Adding bribery to this definition may also facilitate a proposal within Palestinian Code which guarantees a correspondence between its provisions and the provisions of the UNCAC which shall include foreign officials working on the private-sector level along with the public officials.

Second: Criminalization of Money Embezzlement

The Convention criminalizes public officials who committed intentional embezzlement, misappropriation or other activity which was taken on by a public official for his or her benefit, or for the benefit of another person or entity, by way of property, public or private funds or securities, or any other item of value entrusted to the public official by virtue of his or her position. As for the private sector, embezzlement is criminalized by criminalizing any person who runs a private entity or works in the private sector within any form, and while exercising an economic, financial, or commercial activity, s/he embezzles any of the properties, money or private securities or any other thing of value that was entrusted to him/her due to his/her position.

As for the legislations in force in Palestine, Article No. (129) of the Jordanian Criminal Law on the public funds embezzlement stipulates that “S/he who conceals or embezzles money of enemy country or one of its citizen assigned to guard shall be jailed/imprisoned for more than two years and pay fine not more than one-hundred JD or both.”

Article No. (147) of the same law stipulates that “Each civil servant who is in hold of funds, as assigned due to his job duties, as a result of managing, collecting or keeping the funds of either the sate or a person is shall be punished by imprisonment for the course of six months to three year and shall pay a fine that ranges between ten and one-hundred JDs. - when aforementioned actions occurred

by inserting incorrect letters in records or books, or changing, eliminating or damaging accounts, papers or any other documents in general in whatsoever trick aims at preventing the discovery of embezzlement, shall be sentence to temporary works or arrest."

Article No. (316) of mandatory criminal code states that "Any official assigned to receiving, keeping or managing any part of proceeds or public money who knowingly presents an incorrect statement relating to funds received or insured by him, or funds or money within his possession or responsibility, shall be guilty of a crime." In addition, Article No. (346) of the same code states that a "Public official who organized, or knowingly gave, with fraudulent intent, another person a voucher to pay an amount of due money for any public authority and this voucher is either more or less that the actual due amount on the person shall be considered in committal of a felony act and shall be jailed for 7 years."

Article No. (25) of Anti-graft code states: "All who gained for him/herself or for others, or facilitated their acquiescence of illicit gain shall be punished as follows:

1. Temporary imprisonment
2. Reimburse the equivalent vale of the illicit gain and all funds in his possession acquired as such.
3. Pay a fine of equal value to the illicit gain.

In reference to Palestinian Criminal Code, Article No. (115), it is states that "In implementing the provisions of this code, public money is that which is possessed or assigned to any of the following institutions:

1. The state or its regional departments
2. Public bodies and institutions
3. Banks, corporations, societies and other economic units in which the country holds its capital.
4. Any other institution whose funds are legally considered public.

Article No. (116) states, "Every public official or his equivalent who embezzled money possessed by his/her vocational function shall be liable to imprisonment not exceeding 10 years…."

Crimes committed outside the scope of public-money and function but within what is known as a breach-of-trust are treated by current legislatives as embezzlement crimes. Article No. (422) of Jordanian

criminal Law stated that, «Any person who receives, as a kind of trust or commission for presentation or review purposes, or for use in a specific form, or to keep or conduct an action; paid or not paid, other people's money, funds, thing and any bond which includes a pledge or acquaintance in whole and he/who found any such thing in his possession and conceal, replace, conduct as an owner, consume, make any action considered as violation, or refuse to submit it to the appropriate authority shall be liable to imprisonment for a term from two months to two years and shall pay fine from 10 to 100 JD."

Article No. (423) states, "If the person committed the previous actions was a servant, industrial student or clerk and the result of the damage directed to his employer, the term of jail shall be less than one year." The term of penalty shall not be less than three months, if the doer of the aforementioned actions was one of the following:

a. Manager of charitable institution and it staff
b. The guardian of a minor and is legally disabled
c. Will or marriage deed executors
d. A lawyer or public notary
e. Any person delegated by the authority to manage and guard money related to the country and its citizens.

The mandatory criminal code dealt with this crime in Article No. (312) which states, «All those reliable and trusted with funds that damaged them or used it in any purpose other than assigned, with fraudulent intent, shall be guilty of felony and shall be liable to imprisonment for seven years. To be loyal to the intent of this Article the word (reliable) refers to the people mentioned hereinafter: (1) Those in charge of an estate created clearly by a deed, will or written deed for a public or private charitable authority, (b) those legally responsible, (c) persons whose supervision duties have been transferred to them for any of the aforementioned estates, and (d) executors and guardians of patrimony wills.»

Article No. (313) of the code states: «S/he who is (a) a director for an official body or company or one of its officials and receives or acquires any funds, either from the body or the company other than specified to pay a debt with fraudulent intent miss-records the status of the funds in the company books and accounts or does

not accurately record the known status of the funds (b) a manager, official or member of an official body or company who committed with fraudulent intent one of the hereinafter actions: (1) damaged, changed, faked any record, book or valuable deed or account related to the body or the company or any other register in its books or records; or participated in such action, or (2) registered false record in the books or accounts of the body or company; or participated in such action, or (3) miss wrote an essential record in the books or accounts of the body or company; or participated in such actions that shall be considered as a felony and shall be jailed for seven years.»

The Palestinian Criminal Code dealt with this crime in Article No. (366) and called for imprisonment from one week to three years.

Although Palestinian legislatives dealt with embezzlement committed by persons' private money, the treatment of such crime and limiting it to misuse of trust. As most other Arab legislations, they then maintain different punishments for breach-of-trust crimes and embezzlement related to public money.

Therefore, to ensure harmony between Palestinian legislations and the provisions of the Convention it is required that Palestinian Government and legislators deal with the money in the same manner in which it is dealt by the Convention. At once, strict interference against corruption is not only delegated to the public sector but also needed in the private sector. Indeed, the damage of corruption related to the public sector is not less in its effect and influence on individuals and their rights than the damage arisen from the public sector.

Additionally because of the massive size of the private sector and its role within globalization, monopolies and control of immense regional and international companies with massive economic movement legislators must deal with embezzlement within the private sector if it aims to protect the individual rights of its citizens.

Third: Criminalization of Money-laundering

Money-laundering is considered one of the most dangerous types of economic and organized crimes. Its purpose is to conceal and disguise the illegal origin of illicit funds and financial proceeds. Such funds are often obtained through the action of criminal operations like drug smuggling and trade, international terrorism, weapon

smuggling and trade, forgery, slave trade, administrative and financial corruption along with other types of crimes, transforming such money so as to appear to be earning or proceeds of a legal source.

In this regard, UNCAC is seriously concerned with condemning and prosecuting money-laundering[18], and is invested in preventing and

18 The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, approved in 1988, dealt with money-laundering crimes by means of its Article No (3). The UN Convention against transactional organized crime approved by UN General Assembly decision no 25 in its 55 session, dated November 15, 2000, dealt with this crime and other corruption crimes by means of its Articles 6, 7 & 8.

Article (6) of the convention states that «Each state party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures necessary to establish criminal offences, when committed intentionally: (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (ii) The concealment or disguise of the true nature, source, location, disposition, movement, ownership of or rights with respect to property, knowing that such property is the proceeds of crime; (b) Subject to the basic concepts of its legal system: (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this Article.

2. For purposes of implementing or applying paragraph 1 of this Article: (a) Each state party shall seek to apply paragraph 1 of this Article to the widest range of predicate offences; (b) Each state party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention; (c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the state party in question. However, offences committed outside the jurisdiction of a state party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the state where it is committed and would be a criminal offence under the domestic law of the state party implementing or applying this Article had it been committed there; (d) Each state party shall furnish copies of its laws that give effect to this Article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations; (e) If required by fundamental principles of the domestic law of a state party, it may be provided that the offences set forth in paragraph 1 of this Article do not apply to the persons who committed the predicate offence.

Article No. (7) of the convention states: «Each state party shall: (a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including or Legal Persons
That provides formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, then the regime shall emphasize requirements for customers and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions; (b) Without prejudice to Article No. (46) of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

fighting any attempts to disguise the proceeds and money obtained by such crimes. In this, the Convention aims to reduce such crimes and prevent criminals from enjoying the profits of illicitly gained proceeds.

Meanwhile, the awareness on the behalf of criminals of the continuous monitoring of their money will certainly function as a deterrent and aid in fighting future corruption. The perpetrator of such crimes is fully aware of the difficulty inherent in attempting to disguise profiting from the proceeds of such crimes

The Palestinian legislation criminalized money-laundering, by virtue of a special legislation, issued by the PNA President, in the form of law in 2007. The law defines money–laundering in conformity with Article No. (1), “As money-laundering is the processing of these criminal proceeds to disguise their illegal origin”.

Additionally, Article (2) of the law identifies these crimes by stating that “S/he who shall be considered a criminal of money-laundering are the individual who has committed any of the following:

1- The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property, or of helping any person who is involved in committing the predicate offence so as to evade legal consequences for his/her action;

2. States parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters: (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator; (b) To maintain such information throughout the payment chain; and (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator. 4. In establishing a domestic regulatory and supervisory regime under the terms of this Article, and without prejudice to any other Article of this Convention, states parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States parties shall endeavor to develop and promote global, regional, sub regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

2. The concealment or disguise of the true nature, source, location, disposition, movement, ownership of or rights, with respect to property, knowing that such property is the proceeds of crime;
3. The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
4. Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this Article.
5- Money-laundering is considered one of the original crimes whether or not it took place inside or outside the territories of the PNA; provided that this action shall be incriminated by virtue of regional country laws where the crimes was committed in.

Moreover, Money-laundering crime is valid on all persons who committed any of such crimes.

Article No. (3) of the law considered any funds obtained out of the hereinafter crimes as illegal proceeds:

1- Participate in a criminal or an organized fraud groups.
2- Trade of humans and smuggling emigrants
3- Sexual abuse
4- Illegal trade in drugs and psychopathic substances
5- Illegal trade in weapons and ammunition
6- Illegal trade in stolen goods and other
7- Corruption, bribery and embezzlement
8- Fraud
9- Forgery of bank note and official documents
10- Forgery and piracy of products and infringement of intellectual property.
11- Crimes that violate environment law
12- Murder or dangerous harm
13- Kidnap, detain, or taking persons as hostage
14- Burglary and robbery
15- Smuggling
16- Extortion
17- Forgery
18- Piracy of different types
19- Manipulating the stock market

Article No. (14) of the law obliged the state party to institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including Natural or Legal Persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering. The regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions.

The same obligation is valid by virtue of the law pertaining to merchants of precious coins and gems and those merchants who work with high value merchandizing. The law obliges them to report any suspected transactions when they go through any monetary operation equal to or exceeding the amount defined by the Anti-Money-Laundering Committee. Likewise, the law obliges real-estate agents and brokers to inform the Money-laundering Department of suspected transactions when of selling or purchasing real estate for clients. By virtue of the law, any person who enters the Palestinian Territories shall be obliged to reveal currency, any bonds or electronic monies, gems or valuable metals in his or her possession if its value equals or exceeds the value defined by the Committee, in conformity with related instructions.

By virtue of the law, the Anti money-laundering National Committee shall be established and consist of the memberships of the following:

- Representative of ministry of finance
- Representative of ministry of justice
- Representative of ministry of interior
- Manager of controlling banks department
- Representative of the Palestinian Capital Market Authority
- Ex-judge or legal expert

The committee shall be specialized in the following:

- Establishment of general policies for anti-money-laundering.
- Establishment of policies facilitating the efficient work of the department and guaranteeing its independency.
- Cooperation with the concerned authority to activate policies

and procedures related to the flow-of-information between the department and the concerned authorities.
- Cooperation with the concerned authority to ensure the application (of under its control) to the provisions of this law.
- Guaranteeing the concerned authority the facilitation of policies and necessary procedures to assist the flow-of-information between the department and the empowered authority
- To be in line with international and regional developments to combat money-laundering
- Represent the PNA in international meetings related to anti-money-laundering.

Article No. (37) of the Penal Code related to money-laundering crimes states, "S/he who commits money-laundering crimes shall be punished as follows":

1. In the case in which a person has laundered money as a result of a predicate offense, s/he shall be guilty of felony and liable to imprisonment, of a term of not less than three years and not exceeding five years, or is liable to a fine of not less than ten thousand Dinars (a Dinar equals a dollar and a half) and not exceeding one thousand Jordanian Dinars (JD) or its legal currency equivalent; or both penalties may be applied.
2. 2 In the case in which a person committed a crime and money-laundering arose from a predicate offense, s/he is guilty of a felony and liable to imprisonment for a term of not less than one year and not exceeding five years, or liable for a fine not less than five thousand JD and not exceeding five thousand JD or its legal currency equivalent; or both of these penalties.
3. In the case in which a person attempt to, help, facilitate, incite, and/or consult about committing a money-laundering crime, s/he shall be liable to half of the penalty assigned to the original perpetrator.

Article (39) of the law stipulated the penalties imposed on Legal Persons, while these penalties were determined as follows:

1. A Legal Person is penalized, when committing a money-laundering crime without detriment to the responsibility of the Natural Person who is affiliated with him, with a fine no less than ten-thousand JD and does not exceed twenty-thousand JD or its equivalent in different currencies.

2. The person in charge of the official administration of the Legal Person is punished in accordance with the determined penalty as stipulated in the provision of paragraphs (A,B) of Article No. of this law

3- Legal Person shall be jointly responsible for paying fines and compensations, in case the crime violates the laws and provisions of this law have been committed by one of the Legal Person official.

In addition to the aforementioned penalties related to in-kind confiscation of money, the Penal Code approved the following:

1- Proceeds of crime, including funds mixed with these proceeds, derived from or exchanged with such proceeds or funds their value equals the value of such proceeds

2-form the subject of the crime

3- Money that forms an income or other benefits obtained from such funds or proceeds of crime

4-Instruments

5- Funds mentioned in Articles (14-) that have been transferred to any party, the Court consider that the owner of the money obtained it by paying a fair price in return for a set of services that equal its value or on any legal basis, proves that he has no knowledge of the illegal origin of the money.

Additionally, the court has the right to confiscate funds, owned directly or indirectly, «By a person convicted of money-laundering or another crime», within a period not exceeding ten years of the initial judgment of guilt, provided that there is reasonable information indicating that the funds were illicitly obtained by the convicted person; and said person is unable to prove the legality of the money.

In a case in which the person convicted of money-laundering has died or fled, the court may confiscate the money if sufficient evidence has been found to indicate that such funds are the proceeds of crime, as defined in this law.

Each of the perpetrators, who reported the action of money-laundering to the Anti-Money-Laundering Department, before the information had been obtained by any authorities, is to be legally exempt from punishment. Additionally, the report shall aid in arresting the remaining perpetrators and apprehending the laundered money.

Regarding the legislations regarding money-laundering crimes, we feel that Palestinian legislations should adopt all the requirements and measures approved by the UNCAC as well as international trends in this issue.

Fourth: Criminalization of illicit enrichment or gain

The International Convention against Corruption criminalized illicit enrichment as any substantial increases in assets which can not be reasonably explained in comparison to his/her licit income.

Palestinian legislators establish a special law for this crime found in current Palestinian Legislation: The AGL No. (1) (Also known as the Illicit Enrichment Law (1)), of 2005, which defined this crime by virtue of the above mentioned Article[19]. Also significant is Article No. (2) of this law which those who are subject to or of such a crime are specified[20]. Moreover, this law established the needed Anti-graft Commission and grants the Commission the necessary administrative and financial independence needed, while stipulating the development of a special balance sheet for the Commission, as available to them within the public finances.

Furthermore, the chairman of the Commission shall be appointed by the president, pursuant to the CM designation and the PLC majority vote of approval on this appointment.

According to Article No. (8) of this code, the commission has been granted a number of the above mentioned abilities[21]. To ensure permanent control over financial sources covered under the provisions of this law, the president of the PNA, the chairman of and members of CM, the chairman of and members of Legislative Council and the members of the judiciary and public prosecution and all persons who are subject to this law shall provide the commission with the following:

A- A financial statement for oneself, spouse and any underage children along with financial explanations pertaining to their movable and immovable property. This includes: stocks, bonds, financial balances within their companies bank accounts, money, jewelry, valuable coins, gems, and statements verifying their source of

19 See page 69 of this study
20 See appendix (b) of this study
21 See page 73 of this study

income and its value. This shall be submitted within a period of two month of the implementing date of these provisions.

B- A financial statement shall be offered every three years, or when required, provided that it shall include beside the information herein mentioned in the above paragraph, the source of any increase in the financial statement.

C- A financial disclosure to take place within in one month of the date which he/she is no longer subject to the provisions of this law.

Furthermore, the provisions of the law ensure that neither the PNA president nor any public legislator shall purchase, hire, sell, grant, or present any state proprieties, or have any financial interests or advantages in any agreements governmental or administrative parties make. Likewise, s/he shall not, while in office, be a member on the board of directors of any company, market, or any other job in which s/he would receive salary or grants from any person, or in any manner, other than the sole salary states for the president and his allowances.

The law also included measures and procedures for suing the president of the PNA, the Chairman of Council Ministers, and legislators; clarified as follows:

1. If it became evident to the Head of the Panel or the Public Prosecution that there are suspicions against the President of the PNA of committing illicit enrichment, he should submit a preliminary statement to the PLC and the Constitutional Court requesting verification of the president's legal accountability, according to constitutional regulations.
2. The PNA president ceases all duties upon such accusation and the head of the legislative council temporarily undertakes the duties of the president of PNA until the accusation is settled. The attorney general undertakes investigation procedures, and the trial of the president of PNA shall take place before a private court formed and governed by the law. In case of having a definite judgment of guilt, the president shall be released from his position without facing other penalties according to the law.
3. The president of PNA may refer the Prime Minister to

investigation if he was accused of illicit enrichment during his career, or because of it, according to provisions of the law.

4. The Prime Minister may refer any of the ministers for any of the reasons states by the provisions of the law.
5. Head of the Panel or public prosecutor may, in case of having suspicions of illicit enrichment, lift the immunity of any member of the legislative council according to the bylaws of the council.
6. In the case of the Panel' possessing reasonable suspicions of illicit enrichment for the categories mentioned in items (14-3-2-) in Article No. (2) of this code, it refers the case to PNA President, regarding the Prime Minister; to the Head of the Ministers Council, regarding ministers; to the Legislative Council regarding the PNA president; to the head and members of the Legislative Council, to the Higher Judicial Council – regarding members of the judiciary and prosecution's need to take legal action.

Regarding the reporting of criminal anti-graft activity, the Code allows for any person who has relevant information about illicit enrichment to present them to the panel or to bring a complaint against any person subject to this law. The law also binds any public official who had had information about illicit enrichment to inform the panel about such. One if the important points included in the Code is the highlighting of the illegality of depending on notifications presented by the officials as a reason or reasons for taking any disciplinary measures against him/her, or taking any procedures that affect his career status.

The code did not point out any necessity of having the administrative bodies' permission when the official wishes to submit such a complaint. This is considered one of the important guarantees that may release the official of any authority that might hinder the notification. Furthermore, forgoing the permission is also considered a motivation and a catalyst for the officials, regardless of their stature, to practice their oversight role on others' performances – like directors – and, consequently, to unveil any trespass, violation, or misuse of power in public jobs.

Regarding the penalty stated by the Code for this crime, Article No. (25) states, "Anyone who commits illicit enrichment for himself,

others, or helps others in that shall be punished by:

1. Temporary imprisonment.
2. Confiscation of the amount of illicit enrichment, and all what is proved in his account payable of amounts of money he acquired by illicit enrichment.
3. Financial fines levied, equivalent to the value of the illicit enrichment, or grafted.

The code emphasized that the lapse of a case due to death does not prevent the recovery of the illicit enrichment, or grafted material, by a decision from the concerned court and the panel's request. Additionally, provisions of the code states that the one who commits illicit enrichment or is partner in such is relieved of the penalty, jail and fine, if he initially reported it to the authorities and informed them about the money gained by it. Also, if the one who commits illicit enrichment or the partner in that helped in discovering the criminals and their crime during the investigation, his penalty shall be eased to detaining and he is released of the financial penalty.

On the other hand, provisions of the Code prevent anyone who is definitely charged of committing grafting activity from holding any public position. It also states that anti-graft cases are not subject to statute of limitation. The panel is allowed to make a request to the concerned court to attach the money of the convict or any money suspected to belong to him, in a preventive attachment. Additionally the panel has the power to inspect the records and documents of the defendant and to derive the needed information from whatever official or unofficial departments, as well as utilizing the aid of an expert if deemed necessary.

Generally, the Palestinian Code against Grafting is considered an important step in the road of augmenting transparency, combating corruption and eliminating the exploitation and misuse of the public positions. Additionally, it is considered the only Palestinian legislation that pointed out the president's responsibilities and the possibility of charging him.

Actions criminalized by UNCAC and by current legislature in Palestine:

1. Concealment of others' properties which had been embezzled or gained by crime or felony; the law criminalizes any person

who intentionally conceals properties that belong to others – taken by force, defalcated, or gained by a crime or felony.

2. Concealment of or helping to conceal the perpetrator of a criminal act from justice.
3. Exploit of a professional position: this includes any person who is authorized to buy, sell, or manage movable or immovable properties belonging to the state or to public administration. If the individual partakes in illicit behavior, such as exploitation or grafting, through facility provided by their position, for the sake of gaining personal interest, party favoritism, harming another party, or harming the public administration, then the penalty shall be a jail sentence of 6 months to 3 years, in addition to a fine no lesser than the value of the damage caused.
4. Gaining of personal interest from any administrational transaction, either in the case that the person is employed the administration, or by another party, or through false documents. This is extended to include representatives of the administration, police officials, soldiers, and all public police figures who either directly or through another party or through false documents acted within their position for personal gain or exploited any property belonging to their position for personal gain.
5. Hindering justice through the action of concealment or intentional destruction of any document, instrument, whatsoever item, or distorted it to such an extent that it is no longer readable or valid, and s/he is aware of its necessity for the judicial procedures; thus, intending by his action to prevent its use in court.
6. Directing a written or oral petition to a judge in attempt to influence judicial procedures.
7. Forging official documents.
8. Giving false certificates by any person who works in public position, public service, medical or health profession, or any other authority. When said person gives a false certificate capable of bringing illegal interest to him or to someone else, or to harms interests of others, s/he shall to be presented before public authorities to establish appropriate legal action.
9. Misuse of position by any person working within the postal or telecommunication authorities via mail and the telecommunication authority by opening enveloped letters,

spoiling, or defalcating any of the letters, or telling someone other than the receiver of its content.

10. Trading illicitly gained currency, including the buying, selling, or auctioning of stolen money. Any person involved in hiding money or convicted of stealing money is free of penalty if he informs the authorities prior to the onset of legal proceeding against said person. If said person aids in the arrest of persons who, to his/her knowledge, are involved in the crime then he may be released in spite of the onset of proceedings.
11. Legal Persons, or entities shall pay retribution and claim legal responsibility according to a judgment of closing of any place where a crime has been committed by the owner, or by his consent; either due to the crime or immoral actions. Further, all public bodies and Legal Persons/entities, representatives, or members of the board who have committed – either under the name of the entity or by any of its means – either a felony or a misdemeanor will be liable to imprisonment for at least 2 years, and the decision of dissolution for these bodies takes place if:
    A. It did not abide to the legal corporation regulations.
    B. The aim behind its foundation is to violate the law.
    C. It violated the provisions states as conditions for dissolution.
    D. It stopped basing on a decision taken before less than 5 years.

Legislations stipulated partial responsibility for legal bodies through text clearly stating that: partial responsibility shall be assumed by any legal body for the actions of its director, managers, representatives and workers when criminal activity is committed in the name, of or through means of said legal body.

The laws specified the penalty for the Legal Persons shall be financial fines, confiscation, and dissolution.

Actions criminalized by the UNCAC and not criminalized in Palestinian legislation:

1. Palestinian legislations did criminalize the act of intentionally promising, offering or giving to a public official, who may be either a foreigner or one working with a public international organization, in order that the official act or refrain from acting

in the exercise of his or her official duties. This applies to when the action has been taken to apply to either the official him/herself or another person or entity.

2. Palestinian legislations did criminalize the act of a public official, who may be either a foreigner or one who works in a public international organization, intentionally, directly or indirectly, petitioning for, or accepting an undue privilege in return for acting or refraining from acting in his the exercise of his or her official duties. This applies to when the action has been taken to apply to either the official him/herself or another person or entity.
3. Palestinian legislations did criminalize the act of bribery in the private sector. Bribery in the private sector being: promising any person who directs or works in any capacity within the private sector, an undue privilege, directly or indirectly, for the person himself or for another person, to act or refrain from acting in his exercise of his or her official duties; and this negatively affects his duties.
4. Palestinian legislations did criminalize the act of embezzlement in the private sector. This would mean criminating any person who manages, or works in any way within the private sector, who during practicing any economic, financial or commercial activity embezzled any properties, money, private financial papers or valuables which s/he was entrusted to due to his/her position.
5. Although the crime of confiscating monies and property in the private sector is equivalent to the crime of stealing, or breach of trust, which are penalized in the Palestinian penal law, we perceive that it is of crucial importance to criminalize bribery in the private sector; as stipulated by the UNCAC. This is due to the essential role such action would play in preventing and eliminating corruption. Due to the private sector's entanglement and ramification with the public sector this is especially significant. Indeed, the private sector is practically the real executer of many of public projects and plays a significant role in managing and investing private funds.

Fifth: Extent to which Palestinian Legislations adopted procedures in preventing and controlling corruption crimes.

UNCAC calls on states to adopt clear corruption-crime policies and to criminalize specific actions which will facilitate the prevention of corruption – which in turn guarantees just accountability and enhanced combat of corruption crimes. Additionally, the Convention established the following group of procedures and stipulations to guarantee the protection and activation of anti-corruption policies:

A. Immunity may not be used as a barrier or obstacle hindering the investigation or accountability in corruption crimes.
B. The statute of limitations shall be extended for filing cases or proceeding with penalty measures in corruption cases.
C. When applying pardons, the danger of corruption crimes shall be taken into consideration.
D. Preventive measures that permit the dismissal, suspension or transfer of any official accused of corruption shall be adopted.
E. Any person convicted of corruption crimes shall temporarily be deprived of undertaking stipulated positions.
F. Monies gained through corruption crimes, or used in committing corruption crimes, shall be confiscated.
G. Witnesses, experts, and victims shall be protected.
H. Corruption whistle-blowers shall be protected.

1. **Immunity may not be used as a barrier or obstacle hindering the investigation or accountability in corruption crimes:** One of the main obstacles to combating corruption in Palestine is immunity. This is because prior to prosecuting senior officials (such as a PLC member or a judicial authority) a special permission to prosecute must be obtained by the administration or authority who the employs the accused. This hinders just legal action or subsequent accountability when dealing with any person granted diplomatic or administrative immunity. Hence, the Public Prosecution Office lacks the authority to initiate penal proceeding against such persons except upon obtaining prior consent from the

appropriate party.[22]. Furthermore, this consent may take an extended period of time to be granted, especially if the persons involved are members of the PLC. This obstructs justice due to the difficulty of questioning such officials, and may allow time for such persons to conceal any evidence or issues of concern to the case.

2. **The statute of limitations shall be extended for filing cases or proceeding with penalty measures in corruption cases.:** Article (32) of the Basic Law states that "Any violation of any personal freedom, of the sanctity of life, or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The PNA shall guarantee a fair remedy to those who suffer from such damage". Thus, person subjected to any attack on his rights or liberties, or is coerced into relinquishing or prevented from exercising any of those rights, or is forced into paying money to be able to exercise them may, at any time, proceed to judgment and pursue the person who imposes such coercion upon them. The Illicit Enrichment Law of the Palestinian Law has also established that illicit enrichment is not subject to any statute of limitation. Despite the importance of these provisions amendments need to be made to the statute of limitation for crimes to become consistent with the provisions of the UNCAC, especially since many of the crimes listed in the Convention are

22 **Article No. (96)** of the PLC bylaws state: 1- The Public Prosecutor shall write a letter to the President to lapse immunity and attach a document including the type, time, place and evidence of crime which call for legal proceedings. 2-The President shall have the right to refer the application to terminate immunity to a legal commission and informing the Council of taking such action. 3- the commission examines the application and reports to the Council. A decision to terminate immunity is made with the decision of a two-thirds majority. 4- The member, whose immunity has been terminated but is not withheld, may attend hearings and meeting of committees to participate in discussions and voting.

Article (56) of the Palestinian Judicial Authority states: 1- If caught red-handed, a judge may not be arrested or withheld without the prior consent of the Higher Judicial Council during the twenty four hour period following his arrests. The Higher Judicial Council shall decide after hearing the judge's statement either to release him on or without bail, or to continue detaining him for a period which the Council determines, or decides to prolong. 3- The judge is detained and the penalty of restricting his liberty is executed in an independent place away from other prisoner.

Article (75) of the Palestinian Basic Law states that the President of the PNA 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 law.

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 law.

classified as misdemeanors, which means a reduced statute of limitation.

3. **When applying pardons, the danger of corruption crimes shall be taken into consideration:** Palestinian legislation has not adopted clear-cut laws to impose restrictions on the executive authority in its power to pardon the convicted person from part of or the entire penalty. Therefore, we believe that that a clear and explicit article should be added to the Palestinian Penal Law making special pardons for corruption crimes inaccessible.

4. Any person convicted of corruption crimes shall temporarily be deprived of undertaking stipulated positions: Palestinian legislations have adopted this Article. Palestinian Penal Code stipulates that upon indictment of public officials for corruption crimes (such as bribery, embezzlement, exploitation of office, or grafting) said official, or employee, shall be duly expelled from his position. Furthermore, the law also stipulates the permanent termination of service from position if convicted in such cases.

5. **Monies gained through corruption crimes, or used in committing corruption crimes, shall be confiscated:** Legislations in Palestine adopt this principle by:

- Confiscating the money gained through criminal activities.
- Confiscating property, equipment and other tools used, or prepared to be used, for criminal activities.

It is noteworthy that legislations in effect and the Palestinian Penal Code do not include any article stipulating the confiscation of illicitly gained proceeds, or proceeds which have been transferred or converted, in part or in full, into other property, or if proceeds of crime have been intermingled with property acquired from legitimate sources.

6. Witnesses, experts, and victims shall be protected: the Convention called upon the state parties to take necessary measures in accordance with its domestic system, and within its means, to provide effective protection from potential retaliation or intimidation for witnesses, experts and their relatives and any other persons closely related to them, when testimony has been given concerning corruption crimes.

Some measures which the Convention requires on this issue are:

- Establishing procedures for the physical protection of witnesses (and others referred to above) to the extent necessary and feasible, such as, reallocation of said persons and ensuring, where appropriate, non-disclosure or limitations on the disclosure of information concerning their identity and whereabouts.
- Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons. For example, permitting testimony to be given through the use of communications technology such as video or other adequate means.

The Convention also mandated that states take appropriate measures to provide the protection witnesses and experts against any unjustified treatment so long as their testimony is in good faith and on reasonable grounds.

Each state party shall take appropriate measures to encourage persons who participate (or have participated) in criminal activity to supply the authorities' information that may contribute to depriving offenders of criminal proceeds and to the recovery of such proceeds while keeping the following in consideration:

- Mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.
- Granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.
- Taking necessary measures to provide protection of such persons, as in the case of witnesses and experts.

Palestinian procedural legislations lack any reference to these issues. There are no articles or procedures regarding providing physical protection or limitations on the disclosure of identities or whereabouts, or imposing restrictions on the disclosure of witnesses' and experts' testimonies, which should include any person related to them, so as to ensure protection from potential retaliation or intimidation.

Branch two: Compatibility of Current Palestinian Legislations with Policies Approved by the UNCAC

As mentioned earlier, UNCAC has called on states to adopt a number of ant-corruption policies. Some of the most important policies are:

1. States shall establish a body or bodies to prevent corruption.
2. States shall establish legislations and systems, within the public sector, regarding the hiring, retention, promotion and retirement of civil servants.
3. States shall prescribe criteria concerning codes of conduct for appropriate performance of public functions.
4. States shall include local legislation to facilitate the reporting by public officials of acts of corruption to the concerned authorities.
5. States shall adopt disciplinary or other measures against public officials who violate codes or standards established for the public sector.
6. States shall establish appropriate systems of procurement, based on transparency and competition.
7. States shall establish appropriate systems to promote transparency and accountability in the management of public finances.
8. States shall establish measures that promote transparency and prevent corruption among members of the judicial system, including codes for the appropriate performance of the judicial system.
9. States shall establish measures to prevent the involvement of the private sector in corruption.
10. States shall adopt policies promoting the active involvement of individuals and civil institutions in the prevention of and the fight against corruption. These institutions should enhance the public awareness on the dangers and causes of corruption, and promote transparency in decision-making.
11. States shall adopt a clear policy to prevent the use of expenditures such as commissions, bonuses and other types of wealth given as a gift, or bribe, to buy favors and obtain illicit facilitations within the area or aspect of receiving tax exemption.

After reviewing Palestinian legislation, the following observations can be made regarding their compatibility with the UNCAC:

1. **The establishment of a body or bodies to fight corruption:** A Palestinian body to fight corruption has not been established. Furthermore, the Palestinian National Body for Fighting Illicit Enrichment, whose establishment is stipulated by the AGL No. (1), for 2005, has not been established either. Thus, a deficiency, on behalf of the PNA, to establish bodies against corruption and illicit enrichment, or grafting, has been demonstrated.

2. **The establishment of measures promoting transparency and accountability in the management of public finances:** The PNA has adopted this policy as regulated in Law No. (9) for 1998 on general supplies, i.e. movable property needed and allocated for the management of public directorates, and providing them with necessary maintenance, insurance and other services vital for their continuity. Pursuant to this law, all directorates who are subject to the PNA's annual general budget law are subject to its provisions. In addition, any directorate approved by a Council of Ministers (CM) decision to be part of the budget is also subject to the provisions of this law.

In accordance, the Ministry of Finance established a general supplies directorate which is responsible and authorized to perform the following:

a. Policy creation and identifying methods in which to effectively execute them.
b. Purchasing the supplies needed for directorates according to the provisions of this law.
c. Keeping supplies and surpluses in central warehouses for distribution to other departments, according to their needs, or to be exchanged among them.
d. Conducting studies to develop the performance of the Directorate of General supplies.

In addition, the law also regulated the procedure of purchase by adopting the following measures:

a. Should the estimated amount of supplies to be purchased exceed three thousand USD or its equivalent currency, the law stipulates that a purchase order be submitted to the competent party along

with an application for a financial commitment which is signed by either the Deputy Minister or a delegate.

b. Should the estimated amount of supplies to be purchased equal three thousand USD, or its equivalent currency, the law stipulates that Permission to Purchase Document be issued and approved by the General Budget Directorate.

Article No. (7) of the law requires that purchasing is carried out in accordance with the following rules:

a. Purchasing is chiefly based on competition.
b. Purchasing is executed according to best quality, prices and conditions.
c. Similar items of purchases may not be divided into a number of transactions.

The law also identified that purchasing is carried out upon invitations of tender and along the following two methods:

1. Price quotations, in the following cases:

- If the amount of items of purchase do not exceed five thousand USD, or its legal currency equivalent.
- If the number of bidders is not sufficient and if the party which made the tender invitation decides to purchase through priced quotations.
- Purchasing of supplies directly from buyers, manufacturers or suppliers in any of the following cases:
    - If the supplies needed call for urgent purchase and where tender procedures or priced quotations may take time, direct purchase is performed based on the decision of the concerned minister and the approval of the CM.
    - If the supplies needed are exchanged items or complementary parts which are not available at more than one buyer. In this case, purchase is performed based on a technical report made by specialized persons and experts.
    - If the tendered invitation or the priced quotation fail to make good offers, or reasonable prices, or if the entire quantity of item is not available.

Furthermore, the law also stipulates establishing a central committee for tenders to carry out the tasks and responsibilities according to this law.

In spite of the law regulating purchasing procedures, general requirements, and the adoption of the principle of competition within all purchase operations – the law, from our stand point, does not include the evident article providing the obligation of purchasing all what is relevant to purchase operations.

Moreover, by giving the management the authority of direct purchase, the law actually prevents listing the expenditures that represent bribes, commissions, bonuses and other wealth presented as gifts to buy favors and get illicit facilities within tax exemption.

This is what the Palestinian Income Tax Law adopts with its various clauses. As being evident in its provisions, the law disregards the expenses that represent bribes, commissions, bonuses and other wealth presented as gifts to buy favors and get illicit facilities within tax exemption.[23].

23 Article No. (6) of this law provides that: persons shall be exempted of imposed tax according to the rules of this law, each of the following incomes:

1. Local bodies and public institutions income resulting from non-profit business.
2. Charities, syndicates, trade unions and cooperatives, from non-profit business.
3. Income of waqf and orphan institutions.
4. Pensions
5. Any bulk sum paid as remuneration on retirement, death, or as a lump compensation for injury or death, in compliance with the law.
6. Travel and representation allowance paid to public sector officials, within their official business.
7. That resulting from taxes as a result of settling the previous year's situation.
8. Income of the blind, disabled, and handicap (over 50%) resulting from manual work or employment as determined by specialized medical personnel.
9. Incomes exempted in accordance with a special law or international accord.
10. Allocations paid to Palestinian diplomats.
11. Salaries and allocations paid by the United Nations out of its budget to its officials and staff.
12. Income of any approved fund, such as retirement, saving's, security and health insurance funds; providing that exemption be limited to the fund's income contribution of all officials, and employers.
13. Unpaid rent value of buildings occupied by their owner, or by any family member, or any person who is legally dependent, or any unpaid workers, for shelter or work; upon official recognition of such by the authorities.
14. Income of farmers according to the standards of such exemption, in compliance with the relevant regulations

Also, Article No. (7) of the law provides that:

Each of the following incomes is exempted from the imposed tax according to the evident rules of this law:

1. Capital profits resulting from the sale of real estate or bonds providing that such sale shall

not be habitual, nor shall the nature of his/her business be trading such matter.
2. Salaries and allocations paid to non-Palestinian diplomats representing other countries in Palestine, providing mutual treatment.
3. Inheritance. Subsequently, the annual revenue of inherited property shall not be exempted.
4. Cooperatives relating their dealings with their members.

Article No. (8) provides that:
To prove the amount of income earned by any person, the expenses incurred by this person shall be totally cut down in order to produce the income subjected to taxation throughout the year, including:
1- Sales, marketing, transport and distribution expenses.
2- Managerial expenses, legal charges and rents.
3- Loan rates relevant to income production.
4- Value -added-tax to salaries, wages, as well as the paid value-added-tax to profits in financial institutions.
5- Paid salaries and wages.
6- Returns of evacuation, key, verified fame, foundation and expenses, providing that they shall be equally distributed over five years.
7- End- service repayment that is paid according to laws in force.
8- Compensations paid in return for work injury, or death, and the expenses of officials' treatment along with their families, and life insurance installments against work injuries.
9- The amounts paid by the employer to any fund approved by the minister, such as a saving's fund, security fund, or health insurance fund.
10- Expenses of officials training at the rate of 1% of overall income, or thirty-thousand US dollars a year.
11- Rule out all expenses that concern any activity or income exempted from taxation in accordance with this Law, or any other law or international accord, on the basis of the following equation.
■ Capital invested in the activity is exempted from taxation, relating the total invested capital, multiplied by total expenses and acceptable debit rates.
12- Differences of debit currency providing that it shall be for income production.

Article No. (9) provides that:
The following deductions shall be made, relevant to items of expenditures and losses and according to the evident terms:
1-The rate determined by a system issued by the minister through the manager, out of the cost of transferred assets. These include machines, equipment, furniture, and industrial buildings containing operative machines to be owned by the charged body in return of their deterioration or consumption during the year in which income has been achieved
2- Commercial banks shall have the right to deduct a percentage of the overdue bad loans as allocations for speculated debits according to instructions made by the minister in coordination with Monetary Authority. This, providing these banks shall assume the legal procedures of execution concerning the assets of those indebted without giving them any other facilities successive to the stuck loans.
3- Donations paid to funds of zakat, charities, non-profit organizations (that are officially registered in Palestine) as well as the donations made to PNA institutions, in accordance with official approval and that it does not exceed 20% of net income.
4- Carried losses that are determined by correct final statements of accounts for past financial years, providing that should not be carried for more than five years.
5- Documented hospitalization expenses that do not exceed 3% of pre-taxation net profit, or fifteen thousand USD per year.
6- Dead debts as determined by official assessment. Debt shall be considered dead in the following cases:
   a- Ruling by a competent court;
   b- In the case that the indebted is bankrupt, in accordance with the law.

3. Set legislations and special systems for the civil service sector to guarantee all citizens may clearly comprehend how to attain appropriate services and regarding their appointment, promotion and retirement. Palestine civil service law adopted these procedures according to its Articles and rules.

Article No. 19 provides that:
"Government bodies shall advertise vacant posts in which appointment is determined by a decision by the concerned body within two weeks of said vacancy. The advertisement shall be published in at least two dailies; it shall include the data relevant to the employment and the terms of its occupation; Personnel Council (Diwan) is usually notified by this procedure."

Article No. 20 provides that:
"For posts requiring written and oral competitions, the written competition is advertised first; only those passing the written exam are called to make an oral competition. Names of those passing the oral competition are announced according to the final grading of competition results."

c- Death of the indebted with inheritance that is inadequate to pay the debts wholly or partially

d- The indebted disappearance, travel and lost communication with defaulter for not less than five years, and having no assets that can be relied on.

e- Inability of the indebted to pay his debts, in spite of a repeated claim – given evidence that there are neither transferable nor non-transferable assets for the indebted that can be relied on; the passage of at least three years to such debt, providing that the reduced sum according to this clause shall not exceed 2% of the overall income, or thirty thousand USD per year; whichever is less for the Persons and private limited companies; as well as 2% of the overall income, or fifteen thousand US dollars per year – the lesser is opted for public incorporated company and statute of limitation of debt .

7- Loss resulting from replacement of machines and equipment, or some of their parts used in working.

This loss is calculated on the basis of machine, equipment, or their materials, after subtracting the price of the replaced machine, equipment and their parts, as collected by the responsible body aside from the earlier reduction for their consumption

8- Quota of branches from the expenditures of the headquarters existing outside Palestine, with a rate not exceeding 5% of the subject income, or thirty thousand US dollars.

9- Cut-down of operative risk reserve, as well as the reserve of settlement claims for insurance works, according to the minister's instructions as communicated through the manager.

10- Average consumption of rented assets and reductions, as well as the account of the tax subjected revenues of the parties of financed rent contracts which shall be determined by the minister's instructions as communicated through the manager.

Article No. 21 provides that:

"The Selection Committee announces the names of those admitted for employment competition. The announcement is published by two dailies, for at least two sequential days in, and including the data and location of the competition."

Article No. 22 provides that:

1- Appointment for posts shall be made according to priority as states in the final grading of exam results; when grades are equal, appointment will be for higher qualification first, and then according to experience; if the two are equal, priority will be given to the elder; rights to appointment cease one year after the announcement of exam result.
2- Procedure of appointment is carried out within a month from the date of announcing the results.
3- Appointment for the announced vacancies ends within a year from the date of announcing the exam result.
4- Palestinian law addresses procedures and regulations of promotion; the law sets several objective rules and terms that guarantee the integrity of such promotions[24].

24 Among the most important regulations are:

a- For promotion through a grading system, the employee has to have an average of «very good» throughout all years of the graded service.

Promotion is confirmed by the cabinet according to the recommendation of the concerned head of affiliate governmental department. Priority of selection is given to the one who acquires an average of «excellent» throughout all years of graded service. If the candidates are equal in performance assessment, selection will be made according to seniority.

b- For those in the remaining levels to be promoted; the employee has to acquire an average of «good» or above during the previous three years.

c- Promotion is given for the second and third levels of officials, who fulfill promotion terms at the concerned governmental department, by a decision from the head of department; priority is given to seniority and performance, with priority allocated to seniority.

d- All promotions for the remaining third, fourth and fifth levels are given according to seniority for those who fulfill promotion terms. A decision, herewith, is taken by the department head according to a recommendation by the concerned committee.

e- Promotion is given to first and second level officials who fulfill the promotion criteria, through a recommendation by the department head, and a decision by the cabinet. Priority of promotion by selection is given to one who acquired an average of "excellent". In case the performance assessment is equal, selection is made according to seniority.

f- Promotion taken by the concerned body is done through appointment. Promotion is considered effective from the date of the decision. The employee deserves, from the promotion date, the first step of the new position shall include all aspects of a full promotion, being name, rank and title.

g. If a complaint is filed against an employee, and disciplinary or penal procedures are required, his promotion is only considered after taking a final decision regarding his case. Once, it is decided not to take any disciplinary procedure against him, or he is acquitted of the charge directed against him, his promotion will be considered from the date of its maturity.

Special measures of discipline shall be taken regarding the public employee. Palestinian Civil Service Law defines the duties and behavior of the employee through a number of provisions dissuading the employee from participating in any corruptive deed[25].

4- States shall take measures to enhance impartiality and reduce corruption opportunities among members of the judicial system. This includes setting rules for expected behavior of the judicial system members. This has been done, as the Supreme Palestinian Judicial Board sets the behavioral code that organizes the work of judges.

5- Set codes-of-conduct for public officials to guarantee the sound performance of public employment. In cooperation with Coalition of Impartiality and Transparence (AMAN), a Palestinian code has

h- Promotion is only given on the basis of a vacant rank in the approved budget, providing that the employee served minimum number years, referred to in the table No.1 supplemented to this law.

25 Article No. (66) of Civil Service Law explains an employee's duties as follows:

1-The employee shall perform work assigned accurately and honestly, devoting the official working time to the duties of his job. He is also committed to work over-time according to the assignment by the concerned department, if the work interest requires so.

2- The employee shall deal respectfully with the public, carrying out their transactions on time.

3- The employee shall respect the working time table.

4- The employee shall respect public money and property.

5- The employee shall respect administrative sequence in job communication, and execute orders and regulations in force; every official should be responsible for the orders issued, as well as for good management within his/her area of concern.

6- The employee shall work to advance his/her scientific and practical capabilities: review the laws and regulations relevant to his/her job; present the proposals seen as useful for improving work methods at the department to upgrade the standard of performance.

Article No. (67) of the law provides that there are prohibitions:

1- Breaking the rule of this law or other laws and regulations in force, in relevance to the civil service and personnel council.

2- Adding any other job to his employment, whether, this job is done by himself or through mediation. The executive regulation of this law determines the rules that govern the jobs employees may take outside official working hours, in a way that makes no harm, or contradicts the employment or its requirements.

3- Exploiting his employment and powers for personal benefit, profit, or accepting personally or by mediation, any present, reward, gift, or brokerage, while carrying out the duties of his employment.

4- Keeping for oneself the original of any official paper, copy, and photocopy; or taking it out of the files, even if this paper is connected with a job he is officially charged with.

5- Revealing any matter which pertains to one's employment, other than the fields permitted by the law, even after the termination of his/her employment.

6- Breaking from employment duties, or performing in a way which may defame the dignity of employment.

7- Drinking alcohol or gambling at clubs or public places.

been set for the conduct and duties of the public employee.

At the level of disciplinary procedures and penalties, Article No. (68) of the law tackles such procedures and penalties for breaking the law by the employees as follows:
If proven that the employee has committed contravention against the laws, regulations and decisions that are enforced by the civil service, or in application, he will be subjected to one of the following disciplinary penalties:
- Alarming or drawing attention
- Warning
- Salary discounting, not exceeding the value of fifteen days
- Deprivation of regular allowance, or delaying it for a period, not exceeding six months
- Deprivation of promotion, according to the rules of this law
-Work suspension for a period, not exceeding six months, along with paying a half salary
-Demotion - dismissal warning – reference to retirement – dismissal

Article No. (69) stipulates that the employee be referred to an investigation for disciplinary violations, by to the body having the authority of assigning the punishment. It obligates the department to punish the employee only after being referred to an investigation commission; his defense shall be heard and documented in a special record. The acted punishment shall also explain the reasons justified by the department to question and punish the employee.

Article No. (71) stipulates that officials subjected to investigation for disciplinary violations, respect the cabinet decision, upon order from the appropriate department head. Investigations shall be assumed by a commission formed by the cabinet, and officials whose positions are not less than that of the employee under investigation.

The commission shall carry its recommendation to the cabinet to take the proper decision to this effect, in accordance with the rules of this law.

Conclusion and Recommendations

First: When assessing the legislative harmony between current Palestinian Legislation and the UNCAC and after reviewing a number of legislations ratified by the PLC, in addition to other current Palestinian legislation, the following has been concluded:

1- *While current Palestinian legislation criminalizes most of the offenses criminalized by the Convention, we note disproportionate (lesser) penalties for severe crimes related to corruption*. For this reason we feel that since the current legislation lists most of these crimes as misdemeanors, the Palestinian legislator should intervene to correct this defect in the arena of corruption crimes.

2- *Some activities are criminalized by the Convention, but not by Palestinian legislation*. The Convention, for instance, criminalizes a foreign public employee, or an employee of a public international institutions who intentionally, directly or indirectly, requests or accepts undue privilege, whether for himself or for another person or body. As a result, the employee may act, or abstain from acting in accordance with his official duties. The Convention, further criminalizes bribery and embezzlement in the private sector, through criminalizing the action committed by a person who directs or works, in any capacity, in a private sector of any property, private funds or securities, or holds any other object of value entrusted to him or her by virtue of his/her position who receives an undue privilege, offering or gift, directly or indirectly (whether for himself or another), in return for acting or abstaining from acting in accordance with his/her duties.

Therefore, to achieve harmony between Palestinian legislation and the rules of UNCAC it is necessary for local legislation to criminalize all such acts as so done by the Convention. Importantly we note the existence of a draft law within the legislature agenda. This may help the Palestinians to correct such defect through integrating criminal corruption into the core of this bill.

3- *The definition of public employee should be redrafted so as to guarantee the extension of such a definition to cover combating corruption*. This shall include foreign public employees as well as employees of public international institutions.

4- *Current procedural legislation has not defined and ensured adequate witness and expert protection*. This protection should be extended to include relatives and all those close to the witness' and experts against any reprisal that may occur due to the testimonies given in cases of corruption crimes. This shall include the provision of physical protection, reallocation, and ensuring, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons. Further, the legislation shall provide evidentiary rules which permit witnesses and experts to give testimony in a manner that ensures the safety of such persons. For example, it may be permitted for testimony to be given through the use of communications technology such as video or other adequate means.

Additionally, current legislation does not include any articles providing protection for persons who reported to the authorities (of good-will and honesty) criminal activities related to corruption crimes. Therefore procedures and measures ensuring the protection of witnesses, experts and those who report corruption crimes should be merged with Palestinian Procedural Law to ensure it is consistent with the provisions of the Convention. Further, such a measure will encourage individuals and witnesses to report and prosecute these crimes. Moreover, penalty legislatives and particularly the Palestinian Penal Code should include articles related to these crimes and stating the following:

- The allowance of mitigating the penalty for an accused person who provides substantial cooperation in the investigation or prosecution corruption crimes.
- Granting immunity for any person who provides substantial cooperation in investigations or prosecuting corruption crimes.

5. *When pardons are considered, the seriousness and severity of corruption crimes shall be taken into consideration*. An article should be added to the Palestinian penal code which bans amnesty and pardons for any crimes which fall under the category of "corruption crimes".

6. *High-ranking officials should not be immune to prosecution in cases of corruption crimes.* It is necessary to create swift and effective procedures to lift the immunity protecting high-ranking

officials. In so doing, public prosecution may then efficiently practice in prosecuting criminal corruption crimes against all citizens equally, whereas prominent members of society currently have immunity from such prosecution.

7. *The statute of limitation should be lifted in all cases of corruption crime*. Legislation should be created which will lift the statute of limitations in cases of corruption crimes as it serves to hinder prosecution and implementation of penalties regarding such crimes, especially as they are categorized as misdemeanors and therefore subject to shortened statutes. For this reason, we see it necessary for the Palestinian legislator to adopt similar legislation as is applied to the AGL concerning the banning of statues of limitation. The generalization shall include all crimes confirmed by the UNCAC.

8. *Penalty legislation should be amended regarding the confiscation of funds gained or used to commit corruption crimes.* The amended legislation should be expanded so as to include the confiscation of revenues, interests gained from criminal revenues, properties by which the revenues have altered form and properties intermingled with such revenues.

9. *Penalty should be effective, equivalent and restrained in all cases of corruption crimes.* In all actions criminalized by the Convention, persons committing illicit actions should be held duly accountable.

10. *We see it as necessary to ratify and enact legislation regulating financial statements.* This action should be taken to guarantee the removal of existing contradictions in national legislatives regarding with which authority these statements shall be presented and preserved. Further the legislation should specify that the concerned authority shall be granted permission to examine these statements when deemed necessary according to the legislation.

11. *Legislators should adopt transparency as a legislative method and philosophy in all Palestinian legislatives related to public money and civil service employment.* UNCAC clearly states the necessity of publicity, clarity and acting in a way that is explicit to the role of state governments. These legislations shall adopt clear procedures that guarantee clarity and free-flow of information along with granting the public open access to related information. This will enhance

public participation and encourage concerned citizens to practice their legitimate right in questioning and maintaining the necessary explanations about different aspects related to the conduct of officials regarding tenders, bids and purchasing. Therefore, the Palestinian legislator should reword the public requisite law to ensure consistency with principles of transparency and to reduce opportunities for corruption while allowing for the public to assume their role in monitoring governmental performance.

12. T*here is a need to prepare legislation aimed at creating a highly professional Official Committee which will assume responsibility for establishing criteria and work conditions as applied to high-ranking officials.* Further this Committee shall monitor the execution of such criteria and conditions and publish a detailed definition of their criteria.

13. *Palestinian legislation should incriminate all persons participating in illicit activities defined in the UNCAC, including the conspirator, supporter or instigator*. The consequences of corruption shall be treated with care and individuals shall be held duly accountable for their participation in the onset of such consequences.

Second: Upon review of the compliance of Palestinian Policies to the policies of UNCAC we have created recommendations.

1. In respect to “anti-corruption procedures, policies and practices” of the second chapter of UNCAC, we recommend the following:

a. To conduct a legislative inventory of all legislations related to anti-corruption. This should include codes, standing orders and instructions of a legislative and systematic nature to evaluate legal efficiency against corruption and insert necessary legislations and amendments in the legislative plan of the government within the Reform and Development Plan, and by timely plans decided by the government in conformity with this plan.
b. Priority should be given to the establishment of an Anti-graft Committee. This should be done swiftly by virtue of Anti-graft Code No. (1), of 2005. and in order to address the seriousness of corruption crimes.
c. Building an Administrative and Financial Monitoring Bureau; by means of provisions of the law related to the Bureau which binds it to presenting an annual report.
a. The creation of internal monitoring units in public institutions

and inspection/monitoring units in the ministry of finance. Also we recommend the establishment of a Complaint Bureau in all ministerial and non-ministerial public institutions on the basis of a cohesive system.

b. The PNA should establish an independent and national Committee against Corruption. Further the PNA should grant authority to the committee to set polices and plans against corruption, make use of comparative international experiences in this field, and insert legislative amendments that enable the committee in monitoring the performance of anticorruption institutions and administrative and financial monitoring.

c. The PNA should facilitate and enable the judiciary and public prosecution to be better able to carry out their duties and responsibilities in accordance to the law. In this regard, it the following is necessary: preparing and confirming a National Plan to habilitate and develop the judicial authorities, confirming a comprehensive legal system that guarantees honesty, neutralization and autonomy of judicature; public prosecution should be better equip to enhance the role of government and enable it, on the basis of its position in responsibility and questioning, to present the technical, financial and administrative support. This action is seen to enhance honesty, transparency and autonomy, and enhance alternative dispute resolutions which shall decrease the caseload.

c. The PNA should encourage officials and others to report to the responsible authority about suspicious corruption crimes by providing legal protection to one who has reported and extenuate applicable penalty of said person. This action will serve to promote honesty, transparency and a free-flow of information which is essential in the development of an “anticorruption culture”. This is characterized by steadfastness of all aspects of society to fight corruption, especially mediation, favoritism and nepotism, and the presence of moral concepts and principles against corruption within educational policies and national education programs; all this in coordination with diligent training courses for public officials.

e. The PNA should reinforce the essential value of transparency in public administration. This will serve to enable citizens to receive

information about the internal organization of administrations and their decision making. In so doing we recommend to simplify administrative procedures and inspect reports related to the strong and weak points of the governmental works, achievements, failures, and obstacles as they exist within public administration.

f. The PNA should reinforce the importance of the role information plays in combating corruption through approving national information policies based on a national democratic view. Additionally we recommend the adoption of strategic informational and timely plans, the creation of a legal framework to organize employment information and union information by enacting a Palestinian Journalistic Union Law. This law shall guarantee freedom of the press, their rights to access information and to the publishing and distribution of such information. Also an informational fund should be instituted and the capabilities of journalists should be maintained and promoted through training programs.

g. The PNA should reinforce the role of civil society organizations in monitoring governmental performance, encouraging them to aid in combating corruption. This entails the creation of a national plan shared by such organizations to be part of the development and restructuring plan as defined on the basis of national policies and taking into consideration the priority of the Palestinian society needs. This plan shall prevent the imposition of the priority of any outside financer of this institution.

h. The National Committee Against Money-laundering - created by virtue of money-laundering code of 2007- should set national political policies against money-laundering. This should be facilitated in a way that achieve balance between the duty of the PNA in protecting citizen rights and freedoms – including rights to privacy of personal and financial information related to private business – and the duty of the PNA against money-laundering crimes.

i. L. We encourage the PNA to join in Arab cooperation conventions and make dual conventions, legal and judicial, to obtain assistance in the pursuit of corruption-crime criminals – especially in the cases of cross-national organized, financial and economic, crimes. Within the Palestinian situation it is difficult to

pursue corruption cases due to the lack of sovereignty or country over its own borders. It is necessary to make use of related dual conventions signed by Israel and adjacent Arab countries. Israel, as an occupation country, may cooperate with corruption criminals inside the Palestinian territories to weaken PNA control and its institutions.

j. To call for the UN to grant the PNA membership in international law and the right to ask for extradition of persons involved in corruption crimes. Further the PNA should then be granted the right to recover the funds and properties gained through such criminal activity as well as revenues interests which arise from such crimes.

2. We recommend that the PNA issues a declaration expressing its clear desire to abide by the provisions of this Convention and to apply it on the Palestinian territories; Or, for the PLC to state, if deemed necessary, that Palestinian interest requires applying and dealing with this Convention through merging its provisions with the effective Palestinian legislatives regardless of the membership criteria of this Convention.

3. The PNA should prepare and ratify a national policy against corruption – built on a national basis – as the Palestinian situation requires the merger of administrative and national affairs. Combating corruption is not the sole responsibility of the government. It is known that the misuse of sources and resources negatively affects public trust in the PNA, decrease Arab and international solidarity, and gives the Israeli occupation excuses to continue its control on the Palestinian territories.

4. To articulate the adopted national policy through national plans against corruption and shared by parties, all institutions of civil society, the private sector, and unions under the leadership of the government. These plans shall express the government's political and national desires to fight corruption in a serious, effective and comprehensive manner. Further this shall be committed in a way that guarantees the consideration of this plan and its policies as part of a national, ethical and legal commitment to any government or party affiliated with the authority.

5. It is necessary to focus on referral of corruption files to the court especially when it is related to high positions and officials. While Palestinian legislations, reformation plans and development fight corruption their remains a deficit in accountability demanded of those who perpetrate such crimes. The weakest aspect in fighting corruption is judicial punishment. The more the PNA punishes the high-level officials involved in corruption the more enhanced is public trust. Further, prosecuting the leaders of society, when they behave criminally, sets an example for all the citizens.

6. To reinforce the government policy in monitoring the financial activities of non-governmental bodies and societies.

7. To adopt a clear policy of the subjugation of governmental institutions - of administrative and financial independence, which receives its budget from the PNA – according to the provisions of monitoring, accountability, management of public funds and human resources.

8. We recommend that the PNA adopt a National Security Policy requiring the security institution adhere to principles of good governance. In order to enhance the image and function of the governmental security institutions on the basis of their work and responsibilities they should be subjected to monitoring, questioning and legal accountability.

9. We recommend that the PNA facilitate the delivery and distribution of material aid –which has arrived for Palestinians- through an official body pursuant to the formulation of clear and limited criteria and system.

10. We recommend that the PNA prepare and ratify national policy related to the social insurance to protect the poor. Additionally the PNA should adopt a national comprehensive health insurance system based on solidarity between the society's and the government's role; which shall be that of monitoring and organizing.

11. We recommend that the PNA apply behavioral criteria for public officials and conduct disciplinary procedures against public officials who violate such criteria.

12. We recommend that the PNA increase salaries and wages on

the basis of the high-cost-of-living-table to guarantee a good quality of life contributing in public employee's protection.

13. We recommend that the PNA reinforce the role of monitoring units in ministries and institutions and citizen complaint units in order to assist reporting of any corruption cases and enhancing the internal monitoring.

14. We recommend that the PNA enhance and enable the evaluation process of the performance of public officials on an accurate basis and to conduct legislative amendments that enable promotion on the basis of efficiency regardless seniority and years of service.

15. We recommend that the PNA reinforce and enable planning and development units in ministries and support them with qualified staff. We also recommend focus on the development of the civil service employees through training opportunities. Further, by raising awareness of the importance of strategic planning related to the government policies the employees will be further competent.

16. We recommend that the PNA expand the use of information technology and technological tools at work. To focus on automation of data and activities, services and work system in ministries which shall result in an electronic government.

Conclusion

To conclude, we can say that the continuation of occupation is considered a basic element in encouraging corruption. The continuation of occupation means the continuation of conflict. It is understood that encouraging corruption is one of the tactics of the Israeli occupation who aims at weakening the Palestinians (as an enemy). There are numerous elements of corruption created by the occupation in that it creates a suitable environment for both encouraging vigilantism and escaping punishment. Destruction and invasion of the PNA sites by occupation forces is considered one of the basic elements that contributed in weakening the control of the PNA, the efficiency of Palestinian judiciary system, and the ability of the PNA prosecuting of criminals and implementing judicial sentences.

The political desire for anti corruption is very much connected with national priorities. This is because the apparatus states in the UNCAC – which we aim to apply and achieve – acquires its legitimacy

and effectiveness from the state. The international community and UN bare great responsibility in helping the Palestinians to rid of occupation and to reinforce enable and support the Palestinian authority up until the absolute creation of a Palestinian state. At this time, the state, in all its ministries and institutions, may be an effective member in the UN General Assembly and able active participant in all international commitments which arise.

It is known that the more assistance and support the PNA receives, the more ability it will posses in combating cross-national organized crime and cross-national corruption crimes. If the Palestinian authority collapses, all the tools introduced by the UNCAC and the UN Convention against Transnational Organized crime will collapse as well and there will be no remaining opportunity to talk about institutions, laws and conventions.

Appendices

United Nations Convention against Corruption
Preamble

The States Parties to this Convention,
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,

Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,

Convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,

Convinced further that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively,

Convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

Determined to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery,

Acknowledging the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

Bearing in mind that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective,

Bearing also in mind the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption,

Commending the work of the Commission on Crime Prevention and Criminal Justice and the United Nations Office on Drugs and Crime in preventing and combating corruption,

Recalling the work carried out by other international and regional organizations in this field, including the activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, the Organisation for Economic Cooperation and Development and the Organization of American States,

Taking note with appreciation of multilateral instruments to prevent and combat corruption, including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,[1] the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997[2], the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1997,[3] the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,[4] the Civil Law Convention on Corruption, adopted by the Committee of Ministers of

1 See E/1996/99.
2 Official Journal of the European Communities, C 195, 25 June 1997.
3 See Corruption and Integrity Improvement Initiatives in Developing Countries (United Nations publication, Sales No. E.98.III.B.18)
4 Council of Europe, European Treaty Series, No. 173.

the Council of Europe on 4 November 1999,[5] and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003,

Welcoming the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime,[6]

Have agreed as follows:

Chapter I
General provisions

Article 1. Statement of purpose

The purposes of this Convention are:

(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

(c) To promote integrity, accountability and proper management of public affairs and public property.

Article 2. Use of terms

For the purposes of this Convention:

(a) "Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

5 Ibid., No. 174

6 General Assembly resolution 55/25, annex I.

(b) "Foreign public official" shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;

(c) "Official of a public international organization" shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;

(d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

Article 3. Scope of application

1. This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.
2. For the purposes of implementing this Convention, it shall not be

necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.

Article 4. Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Chapter II
Preventive measures

Article 5. Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anticorruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Article 6. Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Article 7. Public sector

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or

standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.
3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.
4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Article 8. Codes of conduct for public officials

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.
2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 5159/ of 12 December 1996.
4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.
5. Each State Party shall endeavour, where appropriate and in

accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic aw, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

Article 9. Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental

principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

(b) Timely reporting on revenue and expenditure;

(c) A system of accounting and auditing standards and related oversight;

(d) Effective and efficient systems of risk management and internal control; and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

Article 10. Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 11. Measures relating to the judiciary and prosecution services

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.
2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Article 12. Private sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c) The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e) The use of false documents; and

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise

public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or order public or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 14. Measures to prevent money-laundering

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record keeping and the reporting of suspicious transactions;

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the

ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.
3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.
5. States Parties shall endeavour to develop and promote global, regional, sub regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money laundering.

Chapter III
Criminalization and law enforcement

Article 15. Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 16. Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 17. Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

Article 18. Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Article 19. Abuse of functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

Article 20. Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative

and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Article 21. Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Article 22. Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

Article 23. Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the

predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

Article 24. Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

Article 25. Obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 26, Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 27. Participation and attempt

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.
2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.
3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

Article 28. Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

Article 29. Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

Article 30. Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.
2. 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 offences established in accordance with this Convention.

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.
5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.
6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.
7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and
(b) Holding office in an enterprise owned in whole or in part by the State.

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.
10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

Article 31. Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:
(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;
(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.
2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.
3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.
4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.
5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been

transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.
8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.
9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.
10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 32. Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.
2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts

to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.
4. The provisions of this article shall also apply to victims insofar as they are witnesses.
5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 33. Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Article 34. Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

Article 35. Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

Article 36. Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

Article 37. Cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.
3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.
4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.
5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 38. Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

Article 39. Cooperation between national authorities and the private sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.
2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

Article 40. Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

Article 41. Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous

conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

Article 42. Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(d) The offence is committed against the State Party.

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same

conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Chapter IV
International cooperation

Article 43. International cooperation

1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.
2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

Article 44. Extradition

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.
2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.
3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment

but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.
5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.
6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to his Convention, inform the Secretary-General of the united Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and
(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.
7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.
8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.
9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which

this article applies.

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.
11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.
12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.
13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.
14. Any person regarding whom proceedings are being carried

out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.
16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.
17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.
18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 45. Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

Article 46. Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation

to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a

case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.
7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.
8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.
9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered

by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or

transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.
17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.
18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.
19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.
20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.
21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the

requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 47. Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 48. Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange

of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

Article 49. Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 50. Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent

authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.
3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.
4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

Chapter V
Asset recovery

Article 51. General provision

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

Article 52. Prevention and detection of transfers of proceeds of crime

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its

jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures

to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.
6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non compliance.

Article 53. Measures for direct recovery of property

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;
(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and
(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation,

to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

Article 54. Mechanisms for recovery of property through international

cooperation in confiscation

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to

believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Article 55. International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the

extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of

an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.
6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.
7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.
8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.
9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

Article 56. Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

Article 57. Return and disposal of assets

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.
2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.
3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated

property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

Article 58. Financial intelligence unit

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

Article 59. Bilateral and multilateral agreements and arrangements

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

Chapter VI
Technical assistance and information exchange 37

Article 60. Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training

programmes could deal, inter alia, with the following areas:

(a) Effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods;

(b) Building capacity in the development and planning of strategic anticorruption policy;

(c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;

(d) Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector;

(e) Preventing and combating the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds;

(f) Detecting and freezing of the transfer of proceeds of offences established in accordance with this Convention;

(g) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds;

(h) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of offences established in accordance with this Convention;

(i) Methods used in protecting victims and witnesses who cooperate with judicial authorities; and

(j) Training in national and international regulations and in languages.

2. States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.

3. States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and

regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.

4. States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries, with a view to developing, with the participation of competent authorities and society, strategies and action plans to combat corruption.
5. In order to facilitate the recovery of proceeds of offences established in accordance with this Convention, States Parties may cooperate in providing each other with the names of experts who could assist in achieving that objective.
6. States Parties shall consider using sub regional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries and countries with economies in transition.
7. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition to apply this Convention through technical assistance programmes and projects.
8. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programmes and projects in developing countries with a view to implementing this Convention.

Article 61. Collection, exchange and analysis of information on corruption

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.
2. States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.

3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

Article 62. Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.
2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption.

Chapter VII
Mechanisms for implementation

Article 63. Conference of the States Parties to the Convention

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.
2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.
3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.
4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article;

(c) Cooperating with relevant international and regional organizations and mechanisms and non governmental organizations;

(d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;

(e) Reviewing periodically the implementation of this Convention by its States Parties;

(f) Making recommendations to improve this Convention and its implementation;

(g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

Article 64. Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.
2. The secretariat shall:

(a) Assist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article 63, paragraphs 5 and 6, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Chapter VIII
Final provisions

Article 65. Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.
2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

Article 66. Settlement of disputes

l. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance

or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 67. Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005.
2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.
3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary- General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 68. Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 69. Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the States Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 70. Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

Article 71. Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.
2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.