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Bridging Gaps: The Link between Corruption and Human Rights in the Palestinian Context

(Right to Health as a Case)

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Introduction

Human rights are interdependent and indivisible. In the Palestinian context, many human rights abuses are either committed by the Israeli occupying authorities or are a result of practices of the Palestinian Authority (PA) agencies or other parties. Recently, awareness of the link between human rights and corruption has grown. Corruption is one factor that causes both individual and collective human rights violations. It targets existing resources and capacities needed to fulfil fundamental human rights, including the right to development and right to a healthy environment.[1]

Human rights organisations are informed by the Protection, Respect and Fulfilment of Human Rights model as a key tool for oversight and accountability. Integrity and anti-corruption commissions are guided by the National Integrity System (NIS). In addition to ending the impunity of violators, the NIS promotes prevention and ensures effective exposure of corruption. For research purposes, either approach can be used to examine the link between human rights and corruption.

For the purposes of this study, a human rights-based approach is adopted. Human rights indicators are used to investigate the causes and impact of corruption on human rights, forms of corruption in the law enforcement process, and role of relevant actors in combating corruption. Right to health indicators are employed to assess the opportunities, forms and consequences of corruption within the health sector. A special focus is placed on the Ministry of Health (MoH) as a main provider of health services, particularly to the poor and marginalised groups. Using the NIS requires further research and elaboration.

Objectives

- Uncover the link and impact of corruption on the enjoyment of human rights in general, and right to health in particular.
- Examine the extent to which the health sector is immune and resilient by assessing respect for the values integrity, transparency and accountability. The assessment covers anti-corruption efforts in the health sector, specifically in relation to medicine and food management. It also reviews the challenges facing the health sector.
- Submit recommendations to relevant government bodies and civil society organisations with a view to enhancing their role in preventing and reducing the impact of corruption on human rights, specifically the right to health.
- In particular, the study addresses suspicions of, or opportunities for, corruption, which result in:
- Violating PA's human rights obligations.
- Abusing human rights by discriminatory provision of public services to powerful individuals. Using a variety of tools, these actors are capable of influencing the PA so as to achieve their personal interests.
- Draining development resources.

1 Shuaibi, Azmi, and Somod al-Barghouthi. (2017). Guiding Principles for Integrating the Defence of Human Rights and Combating Corruption, AMAN, Ramallah, Palestine.

Corrupt management of public resources undermines the government's ability to deliver public services, including health, education and care. These services are crucial to fulfil economic, social and cultural rights. Widespread corruption gives rise to discriminatory access to public services. Using various techniques, such as .bribery, influential people can make government bodies serve their personal interests

This study uses the right to health as a model to address the dialectical relationship between corruption and human rights with a view to alleviating the direct and indirect negative impact of corruption. Informed by an investigative method, the study presents an overview of current perceptions of the human rights-based approach to corruption cases. To maintain the spirit of the law and promote community understanding, the study contributes to raising awareness of relevant legal provisions, integrity standards, and codes of professional conduct.

Chapter 1

The Link between Corruption and the Enjoyment of Human Rights

Human rights indicators are provided by an extensive set of international covenants, charters and conventions,[2] which are ratified by states parties. Declaring their commitment to human rights standards, states parties pledge to protect, respect and fulfil human rights obligations. This mandate covers a state party's duty to provide services that safeguard human rights. The state is also liable for holding to account, and exercising control over, all other cross-cutting service providers, including the private sector and civil society actors. To ensure fulfilment of human rights, the state will prevent any irregularities that result in human rights abuses. Needless to say, a state's resilience against corruption as well as appropriate accountability and transparency standards ensure respect for human rights. Individual human right abuses are not necessarily indicative of corruption cases. Reflecting the type of current governance, a rising number of corruption instances reveals a general pattern and practice within state institutions. Hence, an influential group exercises persecution and corruption, undermines publish trust and confidence in governing institutions, threatens public security and community safety, and misuses public funds. In this context, the Progress Report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights stresses the significant role of the state/government in protecting, respecting and fulfilling human rights obligations.

> The State is responsible for any violation of human rights resulting from the conduct of persons acting in their public capacity. Furthermore, the State can also be responsible for human rights violations caused by corruption in the private sector. The duty of States to protect against human rights violations obliges States to protect people and consequently requires States to prevent human rights violations by third parties. According to this dimension of human rights, States must act (and not only refrain from violating human rights) in order to fulfil their human rights obligations.1

Human rights reflect a long-standing, powerful movement. Dedicated tools, indicators and organisations monitor and address human rights abuses. However, human rights actors are challenged by a hijacked discourse and eroded trust in the ability of state institutions as well as regional and international organisations to enforce human rights. In particular, some human rights require long-term programmes and development plans, which involve various actors. A case in point is collective economic, social and cultural rights, including the right to development. At the same time, anti-corruption movements have become increasingly important. These embrace new tools that link corruption with basic service delivery and fight against poverty. Hence the importance of the intersection between human rights, promotion of integrity and combating of corruption. Also importantly, the expertise and tools used by each actor need to be widely shared. The overall objective is common for all: to ensure a decent human life free from poverty, violence and discrimination.

Corruption encourages citizens to use unlawful techniques to attain rights. Difficult or obstructed access to, and lack of readily available, health, education or other fundamental human rights force the public to

2 The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are the umbrella for all human rights. Other treaties and conventions determine states parties' responsibilities towards particular social groups or rights. These include the Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women, etc.

look for illegal alternatives. Some people might, therefore, be obliged to pay bribes, engage in favouritism, or use other techniques. Corruption also furnishes an opportunity to exchange interests between people in powerful positions. It undermines commitment to human rights, facilitates access for influential individuals rather than for marginalised groups, and helps interest groups to extend influence over resources without consideration of the rights of other social groups.[3] As a result, marginalised groups, particularly persons with disabilities, the elderly, women and children, are deprived of their rights. Corruption undermines trust in any reform processes, fulfilment of human rights, or combating of corruption. Depriving marginalised groups also exacerbates the negative impacts of human rights abuses and corruption.[4]

In some countries, including Palestine, officials can use anti-corruption tools to persecute rivals, in grave violation of civil and political rights. In this context, corruption charges and anti-corruption mechanisms are deployed to settle political scores and take revenge against political opponents. Human rights are violated when persons accused of corruption are subjected to torture. In addition to arbitrary decision making, the right of privacy and right to a fair trial are abused.[5] Sweeping accusations of corruption and failure to provide a systematic complaint handling system promote the perception of widespread corruption and allow human rights violators to benefit from impunity.

The link between human rights and corruption is close and twofold:

- Between human rights enforcement and widespread corruption; and
- Between respect for human rights and anti-corruption measures.

Many issues involve a direct link between human rights abuses and corruption, including the right to education, right of access to information, right to a fair trial, etc.[6] Specialised studies need to be developed about each right. This paper focuses on the important right to health, which touches on people's daily lives from birth to death. Millions of people are still far from enjoying the right to health. According to a 2017 World Bank report, in many countries around the world, almost 100 million people are pushed into extreme poverty each year because of out-of-pocket health expenses.[7]

Human Rights, Right to Health and Right to Food and Medicine

Corruption is one challenge and impediment to enjoying the highest attainable standard of health, depriving many citizens of easy access to health care.[8] In the health sector, corruption deprives the public in general, and marginalised groups in particular, from easy access to health care. Anyone can be a victim of this form of corruption. However, the poor are more affected by corruption in the health sector because

3 Dana, Tariq. (2015). Corruption in Palestine: A Self-Enforcing System, https://al-shabaka.org/briefs/corruption-in-palestine/

4 Progress Report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, 2014.

5 Shuaibi, Azmi, and Somod al-Barghouthi. (2017). Guiding Principles for Integrating the Defence of Human Rights and Combating Corruption, AMAN, Ramallah, Palestine.

6 In 2016, the Independent Commission for Human Rights and Palestinian Anti-Corruption Commission published a paper on the link between human rights and corruption.

7 World Bank. (2017). Tracking Universal Health Coverage: 2017 Global Monitoring Report, http://documents.worldbank.org/curated/en/640121513095868125/pdf/122029-WP-REVISED-PUBLIC.pdf

8 Shuaibi Azmi. Guide to Human Rights and Corruption.

they immediately depend on public health service provision. They are incapable of purchasing health services from the private sector.

Key Indicators of the Right to Health9 and Link to Opportunities for Corruption

Below is a theoretical framework, which shows how the link between the right to health and corruption can be delineated using internationally recognised indicators of the right to health. This framework is used to assess integrity, transparency and accountability standards in relation to the right to health.

Scope of indicator	Right to health indicator
Functioning public health and healthcare facilities, goods and services must be available in sufficient quantity within a State.	Availability
Health facilities, goods and services must be accessible physically (in safe reach for all sections of the population, including children, adolescents, older persons, persons with disabilities and other vulnerable groups) as well as financially and on the basis of non-discrimination. Accessibility also implies the right to seek, receive and impart health-related information in an accessible format (for all, including persons with disabilities), but does not impair the right to have personal health data treated confidentially.	Accessibility
The facilities, goods and services should also respect medical ethics, and be gender-sensitive and culturally appropriate. In other words, they should be medically and culturally acceptable	Acceptability
Health facilities, goods and services must be scientifically and medically appropriate and of good quality. This requires, among other things, trained health professionals, scientifically approved and unexpired drugs and hospital equipment, adequate sanitation and safe drinking water	Good quality
Health services, facilities and goods must be accessible to all without discrimination for any reason whatsoever.	Non-discrimination
The beneficiaries of health care services, facilities and goods should have a voice in the design and implementation of health policies which affect them	Participation
Duty bearers should be held accountable for meeting human rights obligations in the area of public health, including through the possibility of seeking effective remedies for breaches such as, for example, the denial of treatment.	Accountability
An inclusive right extending not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to safe and potable water and adequate … sanitation, adequate housing	Underlying determinants

The Legal and Legislative Framework of the Right to Health

There is no agreement on a definition of the right to health for two reasons. Firstly, the definition of health has not been generally agreed. Does health mean the prevention of diseases or provision of treatment? Secondly, the minimum standards of the right to health cannot be determined. Likewise, main health providers who can be held to account are difficult to be identified. Usually, these aspects are agreed on a national level. Still, international human rights standards provide the general framework of the right to health.

Internationally, the World Health Organisation (WHO) defines health as "a state of complete physical, men-

9 Office of the United Nations High Commissioner for Human Rights (OHCHR), Toolkit on the Right to Health, http://www.ohchr.org/EN/Issues/ESCR/Pages/Health.aspx

tal and social well-being and not merely the absence of disease or infirmity". A wide range of international treaties and conventions emphasise the right to health, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, etc.

According to Article 12 of the ICESCR:

1. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Consequently, states have concrete obligations, including:

1. States have the responsibility to guarantee their citizens the right to adequate health. When for whatever reason they are unable to do so, the international community must assume that responsibility.

2. States have the responsibility to ensure that none of their citizens are deprived of this right by state action.

3. These rights are guaranteed to all citizens, regardless of race, religion, gender, age, or social standing in the community, or other status.[10]

A number of the 17 Sustainable Development Goals (SDGs) adopted by the United Nations General Assembly in September 2015 have targets that relate to health. However, one goal – SDG 3 – focuses specifically on ensuring healthy lives and promoting well-being for all at all ages. Target 3.8 of SDG 3 – achieving universal health coverage, including financial risk protection, access to quality essential healthcare services and access to safe, effective, quality and affordable essential medicines and vaccines for all – is the key to attaining the entire goal as well as the health-related targets of other SDGs.[11]

10 David Almeida and Robert Berlin, Study Guide: The Right to Means for Adequate Health, Human Rights Library, University of Minnesota,http://hrlibrary.umn.edu/edumat/studyguides/righttohealth.html

11 World Bank, (2017). Tracking Universal Health Coverage: 2017 Global Monitoring Report, http://documents.worldbank.org/curated/en/640121513095868125/pdf/122029-WP-REVISED-PUBLIC.pdf

The Legal Framework of Health in Palestine

The 1988 Palestinian Declaration of Independence provides that the State of Palestine is committed to the Universal Declaration of Human Rights. Later, the State of Palestine acceded to several international covenants, treaties and conventions. The Palestinian Supreme Constitutional Court has recently rendered a decision, ruling that international treaties are superior to national laws. Accordingly, a legal process can be initiated under international conventions if any human rights, including the right to health, are abused. Guided by the WHO's definition of health and ICESCR standards, the MoH works towards improving and ensuring public access to primary healthcare.

The health sector is regulated by the Palestinian Public Health Law No. 20 of 2004 – the nationally agreed minimum standard for the right to health. The MoH is the main provider of health services,[12] particularly to the poor and marginalised groups who do not have access to other service providers. At the same time, the Ministry exercises control over the health sector in Palestine. According to the law, the MoH plays an oversight role and ensures a minimum standard of service provision. The MoH plays the following roles:

Commitment to respect	Provide health services and avoid activities that affect or restrict the enjoyment of the right to health. The law provides that the MoH "provides governmental preventive, diagnostic, ".curative and rehabilitative health services, and establishes needed health institutions
Commitment to protection	Against third parties that extend influence over the right to health, such as private firms and civil society actors, which provide health services. These include pharmaceutical companies, labs, clinics, and community institutions. To this end, the law states that the MoH "."licenses and monitors non-governmental health institutions
Commitment to implementation	Put into effect the legislative and legal framework needed to ensure informed periodic con-.trol of all components of the health sector

The Public Health Law delineates and safeguards the fundamental rights of patients. Namely, each patient at the health institution shall have the right to:

1. Receive immediate healthcare in cases of emergency.
2. Have a thorough explanation of the treatment proposed to them. They are entitled to either agree or refuse to receive that treatment.
3. Agree or refuse to participate in research or training at the health institution.
4. Respect their privacy, dignity, and religious and cultural beliefs.
5. File complaints against the health institution or a staff member thereat.[13]

12 As indicated below, this is a controversial issue in the Palestinian context. The fact that it is the main health service provider, the MoH can attain the required level of quality. However, this would weaken the historical role played by community health organisations and the emerging private sector.

13 Public Health Law No. 20 of 2004.

Chapter 2

The Impact of Corruption on the Enjoyment of the Right to Health in Palestine

Multiple international studies highlight potential incidents of corruption in health sector management processes. Of these,

1. Service management is provided by persons not immune to favouritism, nepotism and conflict of interests.
2. Human resource management lacks competent individuals, whose performance is evaluated and who are held to account for malpractice.
3. Selection of essential drugs (basket of medicines) does not observe quality standards. Assessment does not examine if medicine providers are prone to bribery and abuse of public office.
4. Medicines and medical equipment are not purchased in line with tender and procurement regulations. These processes might be non-transparent, uncontrolled, and susceptible to bribery practices.
5. Budgets, service prices and health insurance fees are not set. Persons who have the right to receive health services are not identified.

These predicaments undermine the resources available to operate and develop the health sector. They debilitate quality, jeopardise justice and competence, increase expenses, and undermine effective public health service delivery.

Health Service Providers in Palestine

- The MoH is the main health service provider. The Ministry covers all primary, secondary and tertiary healthcare services, food supplies, medicines, and control of community health organisations and government bodies. Hence, the MoH is frequently criticised for its extensive outreach at the expense of quality service provision.
- The United Nations Relief and Works Agency (UNRWA) is the second largest health service provider in Palestine. In partnership with other providers. UNRWA delivers health services to Palestinian refugees. The Agency's reform strategies have introduced the Family Health Team as a new, person-centred approach. Since it focuses on primary and preventive healthcare services, the majority of patients are forced to use governmental health facilities if they need hospitalisation or advanced health services. The UNRWA's role is particularly significant in the Gaza Strip, where refugees are a majority of the population.
- Palestinian community institutions play a key role in providing health services to rural and remote communities. Before the PA was established, community institutions delivered many services, which the Israeli occupying authorities did not provide. The MoH can support these institutions by purchasing their services. In this cases, community actors can significantly enhance the right to health.

- The Palestinian private sector plays a vital role in providing good quality health services. The MoH purchases many private health services. However, the Ministry is a strong competitor to the private sector, weakening private health service providers' role and increasing opportunities for corruption.

Resilience of the Integrity System in the Palestinian Health Sector Management

In its 2016 annual report, the MoH commended tangible improvements in key success indicators, which the Palestinian health sector had scored in reducing infant, maternal and under-five mortality rates.[14]

Still, many citizens are dissatisfied with the performance of the national health sector. A general sense of many opportunities for corruption, favouritism and nepotism is pervasive. Although it accounts for an internationally acceptable percentage of government expenditure, the health sector is overwhelmed by needs, complaints and suspicions. According to some studies, developed countries earmark 7 percent of their general budgets to health service provision. By contrast, only 4.2 percent is spend on the health sector across developing countries. The PA allocates 10-11 percent of its general budget to the health sector,[15] matching developed countries' expenditure on high quality health services.

In an opinion poll conducted by AMAN in 2016, 14 percent of the respondents (17 percent in the West Bank and 9 percent in the Gaza Strip) ranked the MoH as the second most susceptible to corruption. According to AMAN's 2017 opinion poll, although this perception declined, the MoH continued to rank second – 19 percent of the respondents (21 percent in the West Bank and 15 percent in Gaza). The largest change was marked by the Gaza residents. Compared to 9 percent in 2016, those who considered the Ministry as the most susceptible to corruption rose to 15 percent in 2017.

Current patterns that show the link between forms and impact of corruption on the right to health:

- Abuse of the right to health and mismanagement of the health system sometimes lead to violating other rights. For example, false medical reports might be given to issue drivers' licences, putting citizens' lives at risk and impinging on the right to road safety.
- False medical reports are issued to take time off work, undermining public interest.
- Approval is given to purchase unneeded or particular tools, supplies or medicines from certain companies in return for a commission that is paid to the responsible employee or attending physician. For personal gains, the latter requests a specific prescription to promote the products of a company.
- In addition to financial exemptions, influential patients are allowed access to health services, which they are not entitled to.
- Opportunities for external patient transfers are not equitably given to all patients. These are also affected by discrimination, favouritism and nepotistic practice.

Combined, these violations result in common challenges, which cripple human rights, increase opportunities for corruption, and undermine trust in the health system, and more broadly in the PA.

14 MoH. (2016). Annual Health Report, Palestine.

15 Peters. (2015).

This chapter focuses on the impact of corruption on key aspects of the right to health. These are, namely, availability, accessibly (non-discrimination, physical accessibility, economic accessibility, and accessibility to information), acceptability, and good quality. The investigation also covers commitment to minimum standards of the right to health, including:

- Primary healthcare;
- Minimum food and nutrition standards;
- Adequate sanitation;
- Safe and potable water; and
- Essential medicines.

Integrity and Combating Corruption in the Health Sector

1. Health Insurance

Effective public finance management in the health system: Justice, equality and impact on marginalised groups

Several interlinked problems affect the right to health, including government health insurance, purchase of health services (treatment abroad or procurement of outsourced services), medicine and food. All these are crucial to safeguard the right to health, particularly for the poor and marginalised groups who cannot purchase expensive private health services. This section highlights the role the MoH play as a provider of some health services. It does not delve too deeply into the Ministry's role of controlling and holding to account other service providers, in which case further research is needed. In many countries around the world, opportunities for corruption lie in, inter alia, excessive medicalisation, false medical bills, and diversion of funds to personal gains.[16]

The Current Context of Health Insurance in Palestine

Health insurance services are provided by private corporations, UNRWA and the government. This section only addresses government health insurance in the light of the right to health indicators mentioned above. The MoH states that it has paid close attention to building the Palestinian government health insurance system with a view to providing equitable and distinctive health service to all citizens. In this vein, the Ministry provides primary and secondary healthcare services of the highest professional standards. Tertiary healthcare service is also delivered at or outside the MoH facilities.[17] It is worth noting that, according to the MoH organisational structure, the Health Insurance Directorate General involves two health insurance departments. Although they report to a single directorate, both departments are administratively and financially separate. The first is responsible for health insurance management, subscriptions, and issuance of health insurance cards. The other manages service purchase or patient transfers.

The MoH asserts that it provides a comprehensive insurance system to the Palestinian system, covering and providing all available health services to every citizen. The system is sustainable and maintains the

16 Vian. (2008).

17 MoH, https://www.site.moh.ps/Index/Circle/CircleId/19/Language/ar (in Arabic).

principle of good quality and fair service provision.[18] However, this does not relieve the PA from the responsibility for monitoring, controlling and holding to account private companies to ensure citizens' right to health. The maximum fee of government insurance is NIS 75 a month and payments can be made in instalments. Government health insurance comprises several types, including:

1. Compulsory insurance: In addition to retired personnel, employees in the public sector and local government units subscribe to compulsory insurance. In 2017, households with compulsory insurance subscriptions numbered 67,331 in the West Bank. Revenues from this insurance amounted to NIS 60,619,111.
2. Voluntary insurance: Households with voluntary insurance subscriptions totalled 2,662 in the West Bank. Revenues from this insurance amounted to NIS 1,910,583.
3. Insurance of workers inside the Green Line: In the West Bank, households with insurance subscriptions were 40,330. Revenues from this insurance totalled NIS 1,910,583. 62,680,977.
4. Group/contract-based insurance: In the West Bank, households with subscriptions to this insurance were 42,616. Revenues from this insurance were in the amount of NIS 30,572,870.
5. Social affairs insurance: In the West Bank, households that subscribed to this insurance were 31,727. Revenues from this insurance were worth NIS 14,860,900.
6. Prisoners insurance: In the West Bank, prisoners and households with insurance subscriptions numbered 15,012. Revenues from this insurance totalled NIS 7,965,000.[19]

According to Article 2 of the 2007 Presidential Decree, all Gaza residents, including public employees who are paid by the PA Public Treasury, enjoy free health insurance service. Consequently, exorbitant amounts are wasted and lost by the Health Insurance Fund, which might not be able to provide inclusive and good quality health services.

Manifestations of Corruption in Health Insurance Service

Health insurance is accessible to anyone who directly contributes to paying insurance fees or to a person on behalf of whom a relevant authority undertakes to pay subscription fees. Subscriptions secure resources for the Health Insurance Fund, allowing the provision of health services to the insured. However, favouritism and nepotism are used to access health services not covered by the health insurance system. Discrimination among beneficiaries results in a conflict of interests and abuse of public office by some officials. Trade unions have also attempted to benefit from health insurance fees at the expense of the Health Insurance Fund, negatively affecting the rights of all beneficiaries.

In reality, health insurance subscribers do not always access needed professional, good quality health services on an equal footing. For example, health insurance covers childbirth at governmental hospitals, but the latter do not accommodate all needs, including medicines and devices. Sometimes, patients or their relatives are asked to purchase unavailable services from the private sector. While she was giving birth, a women had a brain stroke, but the hospital did not offer an important and necessary medicine for her to recover. Her husband was asked to buy injections, which were not available at the hospital. He was not told how urgent these injections were (i.e. violation of the right of access to health information). Impov-

18 MoH, https://www.site.moh.ps/Index/Circle/CircleId/19/Language/ar (in Arabic).

19 MoH. (2017). Annual Health Report.

erished as he was, he could only buy the injections three days later, leaving his wife disabled.[20]

Health insurance presumes that the patient contributes a portion to medical treatment. However, it does not provide some potentially necessary services because they are unavailable, expensive or undeliverable due to broken medical equipment, violating the right to health as well as good quality and affordable healthcare services. Though inclusive, these services are unavailable, forcing the poor to take additional burdens and pay the cost of lab tests, medicines and special devices which are not covered by government health insurance, either wholly or partly. Opportunities for corruption prosper, therefore. In addition to favouritism, patron-client networks are created with private service providers, such as pharmaceutical companies, labs, and x-ray providers. Commonly, a physician would transfer patients to a particular centre or prescribe a certain medicine in return for a share of profits. Neither the physician nor the private service provider is held to account.

According to the MoH documentation, it does not seem that any groups are deprived of government health insurance. On the contrary, large groups are exempted of insurance fees. Of all 162,979 insured households, 12,515 enjoy free health insurance. According to a presidential decree, all Gaza residents are insured free of charge.[21] Additionally, treatment of cancer, kidney failure, communicable diseases, psychological disorders, and inmates at juvenile detention centres is free. All Gazans enjoy free insurance and anyone can access needed medical attention, using their Palestinian identity card. A large number of citizens also have access to health insurance based on annual partnership agreements with the Ministry of Social Development (MoSD),[22] Ministry of Prisoner Affairs, Association of Palestinian Local Authorities, Palestinian General Federation of Trade Unions, Palestinian General Union of People With Disabilities, etc.

Still, a nepotistic provision of medical services is felt. Complaint of favouritism practices was expressed by persons with disabilities and chronic diseases. On the ground, day-to-day conduct of medical staff needs to be monitored. Sometimes, a physician can see 25 patients, who can patiently wait their turn. However, a person who is an acquaintance of, or "recommended" to, the physician skips the line and delays another patient, who had already been waiting. An employee at the MoH confirmed this widespread practice. As she told the research team, that employee took a leave to accompany her sister to a doctor at a governmental clinic. The employee's colleagues at the Ministry called the doctor, stating that his colleague from the MoH would visit him so that he would pay extra attention to her sister. Besides, lab tests can take weeks, but are readily available if there is a "connection".[23]

According to MoH staff, access to health services is guaranteed to marginalised groups, including the poor, women and persons with disabilities. No one who accesses the MoH for treatment is turned down. If a patient cannot afford the fees, a "financial commitment" is arranged and paid on long-term basis. The Social Research Committee examines a patient's social status. If it appears that they are unable to pay, patients are exempted or the fees reduced.[24] However, many interviewed patients disagreed. For example, persons with disabilities complained that rehabilitation is not covered by the government health insurance system. Rehabilitation is classified as a specialised service, which requires that a patient transfer procedure be ob-

20 Research interview.

21 In 2006, President Mahmoud Abbas promulgated a decree, providing that all Gaza residents will enjoy health insurance completely free of charge. Insurance covers medical treatment and medicines to alleviate hardship. As a result, the Gaza-based MoH revenues have been limited to deductions from public sector employees. For more information, see https://www.alwatanvoice.com/arabic/news/2016/01/18/852677.html#ixzz53kurQvNh (in Arabic).

22 In January 2018, the MoH and MoSD signed a new agreement, providing that all poor and marginalized households, who benefit from the MoSD services will receive health insurance to access healthcare services. Needed medical aid will be provided in coordination with the MoH.

.Research interview 23

24 Interview with a MoH employee.

tained, offering ample room for human rights abuses and corruption in service provision. Patient transfer procedures are not equally applicable to all persons with disabilities. Service delivery is also affected by a nepotistic practice. Another case in point is kidney patients. According to the MoH, dialysis is free of charge. Nevertheless, patients complaint of the few number of dialysis machines, forcing them to follow a schedule. There is a good chance for favouritism to arrange such a schedule. In effect, patients from remote areas have to pay exorbitant transportation fees if they have late appointments in the evening.

This is also the case of deliveries. Maternity wards are overcrowded and hospital beds are unavailable. Against this background, inclusive coverage of the government health insurance system is ineffective in light of scarce resources and inability to meet all needs. In addition to violating the human right to health, opportunities for corruption can be in place. Most notably, capable patients resort to favouritism to fulfil their needs.

Abuse of Public Office Increases Health Insurance Expenditures

Some health personnel abuse public office and charge government health insurance with costs in the interest of their own office and clinics. This practice negatively impacts others and undermines their access to public health services. In particular, patients at governmental hospitals are forced to purchase unavailable services, creating an opportunity for corruption. Patients and their relatives seek to access service through their networks or by visiting a physician at their private clinic to ensure a proper medical attention. In many cases, a physician facilitates access to services at a governmental hospital, clearly abusing public office for personal gains.

In one case, a premature baby was transferred to the private Istishari Arab Hospital because an incubator was lacking at the governmental hospital. Not to mention physical stress, the mother had to travel every day and pay extra transportation fees to breastfeed her baby. The baby stayed at the hospital for a month. When the baby was about to be discharged, the family were asked to pay 70 percent of the bill (almost NIS 30,000). This was more than a whole year income of the husband, a worker. Some patients are also forced to have lab tests outside the hospital because the waiting list is too long and access to the service can take up to several weeks.

In addition to high acceptability, professional ethics should be maintained in the health insurance system. Several citizens complained against some physicians and health providers, who abused their public office for personal gains. In the Palestinian society, it is generally believed that the shortest way to benefit from government health insurance is through physicians, who operate private clinics alongside their employment at governmental hospitals. At the expense of others, these physicians can influence and provide a more readily and timely access to decisions, schedules and tests to the patients who visit their private clinics. In this vein, the MoH attempted to enforce a decision, which prevents physicians employed in the public sector from running their own clinics or working in the private sector. However, the Palestinian Medical Association precluded enforcement of the MoH decision. The Ministry declined due to strikes and in fear that medical staff leave for the private sector. As a result, physicians continued to abuse public office for personal interests. For example, some physicians request that lab tests be conducted for private patients at the expense of the government health insurance system. Likewise, patients are transferred to receive unnecessary consultancies or additional services in the interest of particular labs, centres and medicine stores to achieve personal gains.

Inadequate development of the treatment agenda and service provision at some hospitals and health facilities has allowed an opportunity for abuse of public office. For personal interests, some physicians transfer patients from governmental hospitals to the private sector. To this avail, the research team heard many testimonies, which indicated that patients could not access good quality health services in

the public health sector unless access was facilitated through a nepotistic practice. Others contracted a physician outside a public hospital to facilitate tests within the public health system. These practices affect equitable provision of health services and right to health. Most often, marginalised patients pay the price of this corruption.

Against some payments, some physicians use public health facilities to operate on patients of their private clinics. In a similar case, a patient filed a complaint to the MoH, but a legal measure was not taken against the physician in question so as to prevent him from abusing public office for personal gains. In grave violation of human rights and professional ethics, the physician raised the patient's concern of having the surgical operation at the governmental hospital. Although a complaint box is available at the MoH, patients do not lodge complaints in fear of probable consequences, deprivation of service, or ill-treatment by physicians. Besides, patients are not convinced of the feasibility of the accountability system in the health sector.

On the other hand, physicians and service providers complain of inadequate qualified cadres, increasing their workload and undermining the quality of health service provision. It also violates the right of access to good quality health services and furnishes an opportunity for corruption, namely, abuse of public office. Along this vein, a Gaza-based physician told the research team that an outpatient clinic received kidney patients on two days only. This is insufficient to meet kidney patients' needs in the Gaza Strip. Deficit is estimated at 60 percent.

Favouritism and Nepotism Dominate the Right to Treatment

A surgical operation can be postponed by giving precedence to another person.[25] The problem with ascertaining such an incident lies in the fact that medicine is a speciality. It features many technical and professional details, which cannot be understood by the public, who are already preoccupied with their owns concerns, feel the pain of illness, and need assistance.

The MoSD provides government health insurance to unsubscribed poor patients with chronic diseases. Every year, the Ministry implements unduly prohibitive procedures, depriving patients of treatment, sometimes for a long time. This process violates the rights of many patients, particularly the poor. Kidney patients are forced to wait because the private health sector does not offer dialysis service. Treatment is so expensive (up to NIS 500 per dialysis session). Hence, poor households have to wait at least three months.[26]

In many health insurance cases, citizens are not aware of their rights and duties. The research team asked a number of insured PA staff about the package of services offered by the government health insurance system. Responses were negative. The health insurance card provides a list of services not covered by the insurance system. It does not include information on the rights of the insured. When queried about this, MoH staff said that there was no need to mention everything not stated on the insurance card.[27] Lack of access to information undermines participation of the insured and prevents them from claiming their rights or holding the MoH to account when proper services are not provided.

25 An interview with a kidney patient's father.

26 An interview with a kidney patient.

27 An interview with a MoH employee.

The Legal Framework of Health Insurance

The health insurance system is not governed by a law, but by a regulation. The MoH Health Insurance Directorate is guided by the 2004 Regulation on Health Insurance. However, a more recent regulation was enacted in 2006, but has not been published in the Palestinian Official Gazette. In several interviews, Minister of Health Dr. Jawad Awwad stressed the need for a law on health insurance. Such a law is important for a variety of reasons. Mainly, the current situation is greatly inefficient, turning inclusiveness into a heavy burden on the health insurance system. In particular, inclusive coverage undermines a key principle of the insurance system, whereby the ''capable pays'' to support the incapable. Government staff are the only people who regularly pay as their contributions are directly deducted from their salaries. Other citizens only pay when they need health insurance. These can also pay retroactively for a period of six months. With this valid health insurance, they can access costly medical services, which take a toll on the PA budget. In other words, the capable pays only when they need insurance, jeopardising the system's sustainability. Many interviewees confirmed this practice. For instance, a patient paid health insurance fees so that she could cover the cost of outpatient treatment. Another paid insurance fees when his wife was expecting so that could deliver at hospital. He suspended the insurance subscription immediately after childbirth.

At primary healthcare centres and hospitals, instructions are posted on walls, encouraging patients to file and leave complaints against health workers or physicians in complaint boxes. The number of lodged complaints is not clear, however. An accessible complaint procedure is a significant development by the MoH. Still, lacking effective investigation and accountability measures undermines public trust in filing and following up on complaints. It also increases the likelihood of abusing the right to health as well as opportunities for corruption.[28]

Three levels ensure control over health insurance fees: at health directorates where fees are collected, at the Financial Department at the MoH, and at the Health Department of the Ministry of Finance where collected fees are audited.

In the health insurance fee collection process, opportunities for corruption are limited. For example, a partner institution issued exempted cards to nonsubscribers, but these were detected and adjusted in the auditing process. Partner institutions are one weak link in the collection exercise. Agreements with these actors are renewed annually by one person and with approval of the Minister. Committees do not examine these agreements, terms and conditions, number of beneficiaries, and percentages of exemptions.

2. Patient Transfers

Based on contracts with other health centres either inside or outside Palestine, health services purchased from outside the MoH are partly exempted and provided by the Ministry to the insured. Patient transfers are regulated by clear protocols and regulations, which were developed with support from donors. The MoH released print and electronic copies of these regulations and protocols in both Arabic and English. However, these have not precluded large-scale complaints against the management of, and practices associated with, health service purchases in the West Bank and Gaza Strip.[29]

Combined with the rising demand of transferring patients outside the public health sector, mediators have frequently intervened in the patient transfer process. Almost 20 years after the PA was established,

28 Interview with a cancer patient in Gaza.

29 At the time writing, a wave of protests erupted on social media networks against suspending patient transfers unless approval is given by the Ramallah-based MoH.

patient transfers are still needed. Therefore, this exercise needs to be carefully reviewed. Some patient transfers involve surgical operations and medical procedures which can be provided in the West Bank or Gaza Strip. Basic requirements need to provided, including chemical drugs for cancer patients or spare parts for dialysis machines. Patient transfers, which are beyond the scope of health insurance, are based on special decisions for the benefit of influential individuals. These unusually costly transfers have not only depleted insurance funds, but also consumed large resources of the PA budget, negatively impacting the rights of the insured, particularly those incapable of purchasing private health services. It also wastes public funds, which can be instrumental in the health sector development process. In addition to building health facilities, devices and equipment can be procured, eventually putting an end to patient transfers.

According to the MoH, patient transfers need to fulfil the following criteria:

a. Unavailable service at government health institutions.

b. Lacking the medical equipment and devices needed for treatment.

c. Unavailable hospital beds due to high occupancy rate.

d. A long waiting list of more than six months.

e. A pledge to pay the patient's contribution to the total cost of the treatment, as provided by the health insurance law.

f. Patient transfer committees' approval of the recommendation made by the relevant government hospital.

g. A valid insurance before the decision on patient transfer is made.[30]

Recently, complaints about patient transfers have been increasingly cited in the Gaza Strip. Patients complain of reducing the number of external transfers. Compared to a monthly average of 200 in the past, only 50 patient transfers are issued now. Many people believe that favouritism and connections play a role in expediting access to patient transfers. This perception is contrary to the MoH statement that a protocol is applicable and ad hoc committees look into each case separately. Also, specialised physicians decide on the priority and importance of patient transfer cases. Recipient health facilities are determined by specialised committees, which decide on the best treatment options and cost. Usually, patient transfers are reserved for difficult pathological cases, for which treatment capacities are lacking.

Some patients complained that they were transferred to an educational hospital in the West Bank despite the fact that their illness is not treated by that facility. It is expected that the hospital profit financially from a patient who stays overnight for medical attention. However, that night might be crucial in the treatment process.

30 MoH, http://www.moh.ps/Index/Circle/CircleId/41/Language/ar (in Arabic).

President Abbas approves the patient transfer, but Al-Hindi rejects it.2

"Yes, there is an official decision, but I do not want to sign the patient transfer of your son. If it is approved, other patients of the same category will likewise be approved. The treatment requires large sums of money." This was the reply of Amirah al-Hindi, Director of the MoH Service Purchases Department. "We have the approval of President Mahmoud Abbas, the Prime Minister and the Minister of Health. Surprisingly, however, Amira al-Hindi, the official in charge of patient transfers, refused to sign the transfer document, allegedly for the large cost of the treatment, which will be secured by the PA." The family are, of course, concerned about son. They managed to reach influential persons – an option that is not available for the overwhelming majority of patients.

Funds Wasted from the Public Treasury by External Patient Transfers

According to AMAN's 2014 report, the MoH does not review Israeli hospital bills, which the Israeli side directly deducts from the PA clearance revenues on a monthly basis. The Ministry did not request bills from Israeli hospitals for the period between 1994 and early 2014. In other words, the MoH did not review the amounts paid to Israeli hospitals. An estimated NIS 600 million were paid to cover the 2003-2012 bill, about 22 percent of expenditure on treatment outside the MoH. Data shows that Israeli agencies in charge of this file have common interests with Israeli hospitals. They exploit the Palestinian side's lack of detailed knowledge of applicable procedures and therapies to receive double the financial entitlements.

The MoH has made extensive efforts to provide needed medical services, either at government or private medical centres inside and outside the PA territory. However, these initiatives were challenged by several shortcomings. Over the past years, the Ministry continued to transfer a large number of patients for treatment outside governmental hospitals. This study shows patient transfers have expanded both in terms of the number of beneficiaries and the financial cost afforded by the PA Public Treasury.

Official authorities also take exceptional decisions, exempting individuals from health insurance fees or securing treatment beyond the service package provided by the health insurance system. These are covered by the budget appropriations of relevant authorities, minimising the amounts allocated to the Health Insurance Fund, allowing room for an unregulated use of resources, and using funds to cover treatment abroad. As a result, funds earmarked for all patients are depleted, negatively impacting the rights of vulnerable patients.

Medical Malpractice

The Palestinian legal framework does not include any provisions on medical malpractice. Law enforcement is restricted to general legal, administrative, civil and penal provisions, which are usually applicable to infringements of occupational standards. Medical malpractice can, therefore, fall within the categories of omission or negligence. In the judicial sphere, the High Judicial Council (HJC) does not have a classification of court decisions and case law to help identify all disposed or pending court decisions and cases associated with medical malpractice. The Palestinian Court of Cassation has not rendered judgements, including special judicial principles in relation to medical malpractice. These would have allowed the Palestinian legislator to adopt relevant regulations.

Clearly delineated information does not show a distribution of medical malpractice cases among private and public health providers. In Palestine, the health sector is not immune to medical errors. However,

both private and public health providers do not apply an integrated system to document and examine medical errors. Accordingly, recommendations would be made regarding applicable procedures with a view to promoting safety standards throughout the treatment process. No government bodies or civil society organisations document and examine these errors in order to learn lessons and reduce the incidence of medical malpractice. Addressing medical malpractice cases is not generally accepted. In most cases where medical errors were admitted, only disciplinary measures were taken against persons proven to have committed these errors. International experience has shown that medical errors are frequently made even in medically and economically developed countries.

Administrative inquiries launched by Palestinian medical investigation committees face a real problem. These rarely convict health personnel involved in an incident of medical malpractice. If needed, investigation committees indirectly recommend a set of procedures to be taken by the facility in question. Neither the Palestinian Medical Association nor the MoH have permanent technical committees to investigate medical malpractice incidents at public and private health institutions. Ad hoc committees are established to investigate incidents only when they occur. Internationally, many studies demonstrate the high financial cost of medical errors, including in terms of the treatment of resulting complications, rehabilitation of injured persons, legal consequences, and financial compensations. In addition, legal provisions on accountability for medical malpractice are lacking on administrative, judicial and legislative levels. A legal framework of compulsory insurance against medical errors is not in place. Also lacking is a regulation for amicable settlement in medical malpractice cases, avoiding recourse to court. There is no clearly defined classification of medical malpractice cases, which courts or the Public Prosecution can make reference to. In addition to lacking a system for documenting medical malpractice cases, administrative investigations in these cases are inadequate. Needless to say, civil and criminal liability are based, at a later stage, on these investigations.[31]

The fact that a law on insurance against medical malpractice is absent negatively affects citizens' right to compensation.

Supply and Storage of Medicines and Food

Pharmaceuticals is a broad sector, which involves countless key players. Many factors impede an effective control of the pharmaceutical market, including private imports and proliferation of uncontrolled medicines, which are not tested at the MoH labs. Prominent examples include weight loss drugs, creams, cosmetics, etc. Trafficking of spoiled medicines and food items has been widespread in light of inadequate government and community control and accountability. Consumer protection plays a key role in preserving citizens' lives, right to protection, and access to healthy food and medicine. It is an integral part of health rights to be maintained and safeguarded.

The MoH provides medicine supplies to governmental hospitals and clinics. The Ministry also has the power to control, monitor and inspect over other medicine providers, including private pharmacies and hospitals. However, some citizens complain of unavailable medicines, particularly expensive drugs, in some governmental clinics and health centres. Hence, they are forced to buy these drugs at their own expense.

Medicines are available, but not for everyone. Priority is determined by who a person is, his connections, and his military rank in case of the Military Medical Services.[3]

According to an interview with MoH officials, several factors affect the availability of medicines. Firstly, the MoH Pharmaceuticals Department compiles a list of essential medicines. The department stressed that the

31 Id'eis, Maen. Medical Malpractice: Towards Balanced Legal Protection of the Parties to Medical Errors. Independent Commission for Human Rights, Ramallah, Palestine.

drug sector has recently seen tangible improvements for several reasons. At the time of writing, a package includes 562 essential items in line with WHO recommendations. On a need basis, the list is upgraded by a specialised committee of the MoH Pharmaceuticals Department. Governed by clear terms of reference, the committee structure is renewed on an annual basis. It convenes regularly to avoid delayed approval of needed items. Secondly, the MoH Procurement Department adopts clear procurement criteria based on the Public Procurement Law. Reporting to the department, committees with clear structures assess needs, invite tenders, and conclude contracts to purchase medicines. Finally, the MoH Public Warehouses Department stores and distributes medicines and disposables as needed to all clinics and hospitals.

According to the research team's assessment, these MoH departments fulfil integrity, transparency and accountability standards. These establish committees, provide terms of reference, publish and transmit decisions to relevant bodies. In addition to setting challenge mechanisms, decisions are posted on websites and social media platforms. For example, the Procurement Department opens tenders in the presence of the bidding firms, publishes results, and receives challenges within a publicly announced period of time.

Inaccessibility to, and untimely provision of, medicines violate the right to health and furnishes an opportunity for corruption.

A case in point is when medicine is not available for a chronic disease or a mental disorder, negatively impacting a patient's health. Patients who receive extra rations deprive others of theirs, with the result of poor storage of medicines at home. In many cases, necessary medicines are not available when needed. Otherwise, they are provided by different companies with different concentrations, confusing and affecting patients.

The Internal Market Regulation Committee is tasked with combating spoiled food. The committee brings together nine agencies, namely the Consumer Protection Department at the Ministry of National Economy (MoNE), MoH, Ministry of Agriculture (MoA), Customs Police, consumer protections societies, federations of food industries, chambers of commerce, and Public Safety and Economic Security Committees of the Preventive Security agency.[32] In Gaza, six government agencies, which play a role in food surveillance activities, are in place. These include the MoH, MoNE, Ministry of Local Government (municipalities), MoA, Police, and Palestine Standards Institution which issues the standards of food supplies. The Food Safety Department reports to the Preventive Medicine Department. In the West Bank, it reports to the Environment Health Department. Food surveillance does not fall within the scope of the powers vested in the Preventive Medicine Department.

An investigative report monitored cases of food poisoning in the course of a whole year. According to doctors' testimonies and MoH statistical data, it was estimated that 500 cases of food poisoning occurred. Thousands of pathological cases are treated by medicinal herbs and popular prescriptions.[33] The number of cases is difficult to estimate, however. In every Palestinian city, commercial premises sell goods approaching their expiry date at cheap prices, putting public health at risk. These are in great demand by the public, particularly low-income people, the poor and marginalised groups. Near-end-of-life goods endanger consumers' lives because they are, or will be, spoiled shortly after they are bought.

MoH sources confirmed to the research team that the Palestinian market is currently open and difficult

32 Khalaf, "Spoiled Food Threatens Consumer's Health in the Palestinian Territory". Al-Hayat al-Jadida 12 May 2015.

33 Khalaf, "Spoiled Food Threatens Consumer's Health in the Palestinian Territory". Al-Hayat al-Jadida 12 May 2015.

to control, particularly in relation to imported food supplies. The Ministry controls less than 30 percent of imported food items, but is almost in full control of locally produced food supplies. The Market Regulation Committee lacks adequate financial resources and logistics. It is also impaired by weak coordination between representative agencies. In addition to multiple legal points of reference, the Penal Law is affected by several gaps. The situation is further compounded by suspension of the law making process due to dysfunction of the Palestinian Legislative Council (PLC) since 2006.

According to the MoH sources, minimum biological tests are conducted, but chemical examinations (e.g. dyes and agrochemical residues) are inadequate. Chemical materials are either unavailable or short. Also, radiation pollution tests are lacking. If unavailable at the MoH, chemical tests can be provided by the MoNE labs. As documented by relevant ministries, the majority of seizures of spoiled food items have been reported by Palestinian consumers, who opt for protecting themselves. Consumer awareness is instrumental, but a legal process and effective deterrence mechanisms against merchants who promote spoiled food supplies are still weak, causing frustration among the Palestinian public opinion.[34]

The MoH provides periodic food surveillance using several mechanisms, including inspection. For example, the Ministry launches campaigns to inspect over bakeries, fruit juice shops, and shawarma restaurants. Several facilities were closed and warnings addressed to others. Usually, managers respond favourably, adjust their positions, and abide by the conditions that should be fulfilled in respective products. A while later, closed facilities are reopened.

The Palestinian Food Safety Strategy 2017-2022 was developed and approved by the Council of Ministers. Multiple bodies, including the Palestinian Society for Consumer Protection, have also worked towards amending the Consumer Protection Law No. 21 of 2005. The society insists that consumer protection procedures are generally slow and do not fit with irregularities, which affect food safety and consumer rights.

The Consumer Protection Law No. 21 of 2005 provides a comprehensive coverage of key consumer-related issues. These include price declaration, combating inequity, fraud, manipulation of prices, food supplies and goods. The law sets up a public protection mechanism by establishing a society and a council for consumer protection. Because they enjoy a representative capacity, societies are allowed to initiate cases on behalf of consumers without need for a power of attorney. The law also highlights issues of coordination between the Society for Consumer Protection and public sector.

The 2005 Consumer Protection Law incriminates trafficking spoiled food. However, relevant authorities, particularly the Public Prosecution, pinpoint constitutional gaps within the Consumer Protection Bylaw. For example, the Bylaw does not define some terms, such as expired, damaged and spoiled food items. Hence, judges apply the Jordanian Penal Law of 1960, which designates corruption crimes associated with medicines and food as simple misdemeanours. In an extended number of crimes, penalties are replaced by fines. In reference of West Bank court decisions in 1996-2014, a sentence to imprisonment for up to 10 year was not rendered. According to the HJC data, one of 10 cases is subject to the statute of limitations due to the lengthy litigation process.

34 https://www.aman-palestine.org/ar/media-center/2284.html

Civil society organisations called for announcing the names of persons accused of promoting spoiled food items and expediting legal proceedings. However, a legal centre contended that the announcement may violate human rights, especially if charges are void or used to settle scores. In this context, AMAN proposed an amended draft of the Penal Procedure Law No. 3 of 2001. Accordingly, Article 59 will be amended as follows: "The procedures of the investigation and the results thereof are among the secrets which may not be divulged, and their divulgence is deemed a crime punishable by law, except in cases relating to consumer protection and health. The Attorney General may release information about them, provided that the released information does not include a confirmation of the conviction of the accused or impingement on the presumption of innocence until ".the accused is proven to be guilty

Due to uncoordinated activity, a control body might end up working in a sector that does not fall within its sphere of competence, leaving it unable to give an accurate technical opinion. Pathological cases have increased due to an inadequate number of health inspectors (just 100), who provide annual or regular inspection over 50,000 licensed establishments, including restaurants, food shops and factories. Responsibilities and tasks of control and licensing bodies also overlap. In addition, the Market Regulation Committee lacks adequate financial resources and logistics capabilities. It is also challenged by weak coordination between representative agencies. Besides multiple legal points of reference, the Penal Law is challenged by several gaps. The situation is further compounded a suspended law making process due to the PLC inactivity since 2006. Consequently, tonnes of spoiled food have dumped the local market, causing 500 poisoning cases a year according to doctors' testimonies and MoH statistical data.

Courts prescribe the minimum penalty because "provisions of relevant laws contradict one another and lack legislative harmony. Multiple legislative enactments also govern a single incident." Between 1996 and 2014, Palestinian courts disposed 210 cases involving spoiled food supplies and goods. Of all cases remitted to courts, statistical data shows that 37 acquittals (18 percent) were rendered.

Number of court decisions	
(Fine (JD 10-100	48
(Fine (JD 100-1,000	40
(Fine (JD 1,000-5,000	15
(Fine (JD 5,000-10,000	1
(Confinement (1 month	5
(Confinement (2 months	3
(Confinement (3 months	42
(Confinement (6 months	2
(Confinement (1 year	1
Acquittal	37
Time-barred actions	21
Referral to the Public Prosecution due to want of jurisdiction	5

Tentative table, showing West Bank court decisions on 210 spoiled food cases over 1996-2014[35]

Medicine Crimes

In 2017, food and medicine crimes proliferated despite the fact that multiple official agencies monitor relevant cases. The situation was compounded by the weak role played by local consumer protection actors. According to statistical data released by the West Bank-based Economic Crimes Prosecution, the statements of Penal Prosecution offices showed that 120 violations and charges were reported between 1 January and 31 October 2017. All these were misdemeanours; none was a crime. While 14 were under

35 Khalaf, "Spoiled Food Threatens Consumer's Health in the Palestinian Territory". Al-Hayat al-Jadida, 12 May 2015.

investigation, 106 cases were remitted to courts. Against this backdrop, medicine crimes were widespread because deterrent penalties were not imposed on violators and offenders.

Notwithstanding irregularities, MoH inspectors are exposed to situations of favouritism and pressure by decision makers. In light of their direct engagement with the private sector, these inspectors are also prone to suspicions of corruption. Enforcement of penalties and legal process against offenders does fall within the mandate of the MoH inspectors. Their primary role is limited offering a technical opinion on food safety, health standards and occupational safety.[36] Communication between the MoH inspectors and food suppliers is routinely in place through an annual process of licence renewal. Inspectors explain and monitor compliance with the key requirements to be fulfilled by food facilities.

The Right of Access to Health Information

Although Prime Minister Rami Hamdallah pledged to publish it in late 2016, the Law on the Right of Access to Information has remained stalled.

The Codes of Conduct for Health Professionals (Community, Private and Public Health Institutions)

The Palestinian Basic Law does not provide for professional codes of ethics for health personnel, either directly or under a separate article. The law prescribes that "[i]t is unlawful to conduct any medical or scientific experiment on any person without prior legal consent. No person shall be subject to medical examination, treatment or surgery, except in accordance with the law." It also states that "work relations shall be organised in a manner that guarantees justice to all and provides workers with welfare, security, and health and social benefits." Additionally, the law stresses that children may not be exploited for any purpose whatsoever, and not be permitted to perform work that might damage their safety, health or education." The Public Health Law No. 20 of 2004 prescribes penalties against violators.

In this context, in collaboration with the Makassed Islamic Charitable Society, AMAN developed a Code of Conduct for Health Professionals at the Makassed Hospital. The code of conduct is grounded in six main principles, reflecting the ethical obligations of health professionals in the course of their duties. These ensure respect for patients' dignity as a fundamental human right. Principles are as follows:

1. Respect for law: To comply with relevant legal norms and provisions of all health regulations, and to enforce court decisions without delay or encumbrances. The principles of rule of law and judicial independence are a pillar of good governance.

2. Impartiality: To act objectively in the cases brought before health professionals far from any other considerations, to deliver services, and to offer guidance and advice in various health issues to all citizens, maintaining the same quality and regardless of their political orientations.

3. Integrity: To provide services both trustworthily and sincerely. Serving, and earning the trust of, citizens is the purpose of public service. Health professionals must seek to maintain and promote citizens' trust and confidence, highlight the significance of health management, and keep the public interest of society. They may not abuse their office and powers or give weight to personal interests in case a conflict of interest arises. Health professionals should report cases of abuse of power, influence peddling and mismanagement once these come to their attention. They may not misrepresent or use official information for personal interests.

36 Interview with a MoH employee.

4. Professionalism: To ensure performance of duties in line with the highest recognised professional standards of aesthetic health service, ensuring high quality and professional service provision and earning the trust and satisfaction of citizens.

5. Discretion: To fulfil their obligations towards citizens with all due diligence, seriousness and attention. Health professionals must bear in mind that citizens are in need and expect much on the humanitarian side and in terms of service delivery. Health professionals should abide by procedural justice in the administrative decision making process, offer proper and timely advice to superior managers, and avoid negligent or indifferent behaviour.

6. Economy and effectiveness: To avoid wasting, misusing or abusing public funds in the context of performing their duties. Health professionals should manage all public resources, including financial and human resources, in a way that safeguards public properties and reviews. They should deliver healthcare services to citizens, ensuring efficiency and high-quality performance.[37]

The Role of Official Control Bodies in Protecting the Right to Health against Corruption

In its 2016 report, the MoH stated that 23 percent of medicines were unavailable in 2016. Although a total of 2,536 cancer cases were reported in the West Bank, 25 percent of cancer medicines were lacking in Palestine. In the same year, 5,148 diabetes cases were reported in the West Bank alone, but only 15 percent of diabetes medicines were provided. While 2,712 psychiatric cases were reported in 2016, just 18 percent of psychiatric medicines were available in Palestine. Kidney failure registered 1,119 cases, but 17 percent of kidney transplant medicines were lacking in Palestine.[38]

According to the 2015 Report of the State Audit and Administrative Bureau (SAACB), the health sector faced many problems:[39]

1. The budget line item earmarked to cover the medicines needed by patients was insufficient, marking a gap of NIS 86 million. This sum was required to meet actual needs for medicines, which were estimated at NIS 290 million in 2015.

2. An approved and clear mechanism was not in place to assess MoH needs for medicines. Needs assessment relies on the MoH budget line items allocated for purchasing medicines. Medicine purchases are not informed by a proper planning process.

3. As a result of poor planning, the amount designated for medicine purchases in the 2015 MoH budget line item was exceeded by NIS 22.7 million, or 11 percent. The budget line item stood at NIS 204.3 million. Hence, purchased medicines were in the amount of NIS 227 million.

4. Medicines listed on the 2015 tender were partially procured to the MoH. A total of 32 items were not delivered to the MoH Central Warehouse. Also, 168 items (30 percent of medicines) were not available in some healthcare centres (The basic list of medicines includes 530 items). Due to inadequate coordination between MoH district pharmacies and main warehouses, the provision of medicines to certain localities was flawed.

5. The MoH is under a debt overhang. Towards 22 July 2017, the MoH owed a total of NIS 791 million (US$ 208) in financial arrears to medicine suppliers.

37 AMAN, Code of Conduct for Health Professionals at the Makassed Islamic Charitable Society Hospital.
38 MoH, 2016 Report.
39 SAACB 2015 Report.

6. Beyond the basic list of medicines, medicines worth 4 million were purchased, highlighting poor planning in medicine procurement. Purchases were approved on an ad hoc basis by the Minister of Health. However, clearly defined and approved criteria were not in place to select the pathological cases, which necessitated the purchase of particular medicines. According to the MoH records, in 2015, the Ministry purchased medicines in the amount of NIS 4 million.

7. Contrary to the law, more than one tender was invited to purchase medicines in 2015, further demonstrating mismanagement and poor planning.

8. Due to date expiry, some items worth NIS 358,000 (approximately US$ 100,000) were disposed of.

9. Tender procedures are implemented in the first half of the year, resulting in the delayed procurement of medicines. However, the tendering process should be initiated during the fourth quarter of the previous year, so that medicines are procured at the beginning of the next year.

10. The MoH does not fully comply with the Law on Public Supplies, relevant instructions, Health Insurance Law, and General Budget Law.

11. The MoH Medicine Purchases Department did not make sure if some medicine purchases were truly needed. It did not engage other MoH departments in the needs assessment process.

12. The MoH procured medicines to the Gaza Strip, without ensuring the actual need for the purchased items. This was also the case of the medicines purchased for the Military Medical Services.

13. The MoH lacks a clearly defined mechanism to assess actual needs.

Between 2010 and 2014, the MoH budget line item comprised 10-11 percent of the PA General Budget. Although the population growth is as high as 3 percent, the natural increase in the number of patients and needs for medicines are not taken into account. According to the Palestinian Central Bureau of Statistics (PCBS), the incidence of infection with one chronic disease is 18.1 percent among individuals over 18 years of age.

14. The mechanisms of purchasing medicines for some rare diseases or high-cost medicines are slow. Although patients have the MoH approval to purchase rare and expensive medicines, procurement procedures take as long as three months.

15. At the MoH, chronic disease medicines are short either intermittently or frequently. Sometimes, medicines are unavailable for several months.

16. Patients' needs for medicines are not clearly planned. The planning process does not take account of the increasing number of patients across governorates.

17. An upgraded database, including the number of patients according to diseases, is inoperable, oftentimes resulting in unavailable medicines.

The Computerised Central Government Complaints System is based on collaboration between complaints units at line ministries, non-ministerial government institutions and security agencies. It is also coordinated with civil society organisations and legal centres. Still, the system faces a number of challenges and obstacles. Many government bodies and local government units also lack an effective complaint handling

system.[40]

Memorandums of understanding on food safety and food control have been signed by all official control bodies. However, these need to be put into effect and serve as the authoritative reference for all relevant agencies, ensuring that human rights are safeguarded and opportunities for corruption reduced. However, due to unclear roles and inadequate coordination between control bodies, control activities are far from regulated. A single commercial premise might be inspected by several control agencies at the same time, confusing the relevant merchant. Therefore, roles should be determined and coordinated so that owners of food facilities are not inspected on a continuous basis. Inspection should also provide a deterrent tool to prevent violations.

The Role of Community Control Bodies (Human Rights Organisations) in Protecting the Right to Health against Corruption

The Independent Commission for Human Rights (ICHR) documents corruption-related human rights abuses. In cooperation with the Palestinian Anti-Corruption Commission (PACC), the ICHR published a report on the right to health and corruption. The ICHR also referred several cases involving the right to health to the PACC.

Human rights organisations have paid growing attention to issues of the right to health and corruption. In summer 2017, in partnership with the Palestinian Centre for Human Rights, the Social and Economic Policies Monitor organised a national conference in Gaza, addressing the right to health and corruption within the Palestinian society.[41] On 15 February 2017, the Council of Ministers announced that all health insurance subscriptions granted to the unemployed would be suspended, starting from 1 March 2017. The decision was widely denounced by civil society organisations. On 15 February 2017, the Palestinian Coalition for Economic, Social and Cultural Rights (including over 55 civil society organisations and trade unions) demanded that the Council of Ministers decline the said decision, which was in contrariety with the Basic Law.[42]

In the Gaza Strip, with support from AMAN, activists launched a community initiative to promote consumer protection and reinvigorate civil society's role in the control and accountability process. In March 2017, the Community Team for Consumer Protection was established to replace the inactive Consumer Protection Society in Gaza. The team met with MoH staff, who confirmed that the government health insurance given to thalassemia patients covers all chronic illnesses and needs.

According to 2017 statistics, new cases resulted from errors made at MoH labs, but responsible practitioners were not held to account. These maintained their positions despite the fact they caused new pathological cases, .which cost the PA at least US$ 20,000 a month

The conditions of thalassemia patients has seen a remarkable improvement over the past 20 years. Patient's life expectancy rose from 8 to 20 years. Also, the number of new cases diagnosed with the disease significantly decreased. However, in 2017, 12 patients died of thalassemia, including 10 in the Gaza Strip. Specialists emphasise that deaths can be prevented by offering the right treatment, at the right time and in the right manner.

According to the MoH, all patients in the Gaza Strip are covered by government health insurance. Never-

40 AMAN, 2016 Report on Integrity and Combating Corruption.

41 Interview with the Director of the Social and Economic Policies Monitor.

42 https://www.al-monitor.com/pulse/ar/originals/2017/02/palestine-free-health-insurance-cancel-unemployment-pa.html

theless, thalassemia patients are challenged by equipment malfunctions. For example, a patient might wait for two or three months to have a MRI or have one at a private health facility at a cost of NIS 300-500.

Chapter 3

Conclusions and Recommendations

Several interlinked problems affect the right to health, including government health insurance, purchase of health services (treatment abroad or procurement of outsourced services), medicine and food. All these are crucial to safeguard the right to health, particularly for the poor and marginalised groups who cannot purchase expensive private health services.

Clearly, the MoH has made great strides towards protecting the health system against corruption. The Ministry has upgraded standards, established committees with regularly renewed structures, published information on websites and social media networks, and developed a complaint handling system. However, some opportunities for corruption are still in place, including:

- Widespread nepotistic practices in access to many medical services, medicines, and treatment abroad.
- Abuse of public office by some medical personnel for personal interests. Public resources are used to serve patients, who can afford private clinic fees.
- Use of influence peddling to access patient transfers and treatment services, which are not covered by health insurance.
- Increasing violations of the right to health by political corruption and internal political divide. Political rivalries have contributed to rising opportunities for corruption, resulting in minimal services and short medicines in the Gaza Strip.
- Inadequate professional control over health service providers, including physicians and technicians. An accountability system is absent so as to ensure that health personnel, who commit medical malpractice, do not practice medicine unless they are rehabilitated.
- A non-transparent process that maintains unrestricted access to, and clear documentation of, information. Accordingly, the insured are not allowed an opportunity to claim their rights as stated on insurance cards. Sometimes, any persons in a powerful position can exploit this lack of clarity. Recommendations
- The government is required to amend and align the Public Health Law and other relevant regulations with international human rights conventions, to which the State of Palestine has acceded.
- The MoH is required to put into effect accountability procedures by launching effective and serious investigations into complaints against abuses of the right to health.
- The Council of Ministers is required to adopt a compulsory, comprehensive health insurance system. To serve as an inclusive national system, health insurance will be informed by social justice and associated with tax payments.
- The MoH is required to localise health services and apply a clear strategy to reduce patient transfers abroad (external health service purchases) as much as possible. The Ministry will also rely on domestic capacities to enhance public trust and confidence in health service provision.

- The Council of Ministers is required to enact a legal framework, which helps to regulate accountability for medical malpractice. To be agreed by all relevant parties, the legal framework will ensure respect for patients and health service providers' human rights, set procedures for control over and accountability for medical errors, and restore public trust and confidence in the national health system.
- Universities are required to offer a course to raise awareness of opportunities for corruption at colleges of medical and health careers, medicine, and pharmacology. This will help to ward off opportunities for, and suspicions of, corruption before they take place.
- The MoH is required to compile and publish a list of all services covered by the government health insurance on the Ministry's website. The website address will also be stated on the health insurance card, to ensure that all the insured have access to the information they need about the services covered by the insurance.
- The MoH is required to put into effect the Codes of Conduct for Health Professionals.

References

Shuaibi, Azmi, and Somod al-Barghouthi. (2017). Guiding Principles for Integrating the Defence of Human Rights and Combating Corruption, AMAN, Ramallah, Palestine.

AMAN. (2014). The Environment of Integrity, Transparency and Accountability in Patient Transfers for Specialised Treatment outside Institutions of the Ministry of Health, Report Series 83.

AMAN. (2016). Ninth Annual Report on Integrity and Combating Corruption.

Independent Commission for Human Rights. Medical Malpractice: Towards Balanced Legal Protection of the Parties to Medical Errors. Legal Report Series 77.

Id'eis, Maen Shihdeh. (2016). The Link between Human Rights and Corruption. Legal Report Series 85. Independent Commission for Human Rights and Palestinian Anti-Corruption Commission.

Hani, Hasan Odeh. (2015). Health Ethics under Palestinian Legislation and Its Impact on Human Resources in the Palestinian Health Sector, http://pelest.com/news/view/id/9982

Peters, Anne. (2015). Corruption and Human Rights. Basel Institute of Governance.

Pose, Roy New. Evidence that Corruption Threatens the Right to Health Care.

http://www.ichrpblog.org/2011/12/new-evidence-that-corruption-threatens.html

Vian, Taryn. (2008). Corruption in the Health Sector. U4: Anti-Corruption Resource Center.

Press Articles

Al-Khatib, Waddah. (2014). "Health Insurance in Palestine: Between Reality and Required Action",

https://pulpit.alwatanvoice.com/articles/2014/01/18/317851.html

Jubeil, Kamel. "The Consumer Protection Society Calls for Announcing Names of Promoters of Spoiled Food", http://www.alquds.com/articles/1511676950950394500/ 27 November 2017.

Khalaf, Khalaf. "Spoiled Food Threatens Consumer's Health in the Palestinian Territory",

https://bit.ly/2K0EXZo, 12 May 2015.

Abu Amer, Khaled. "Palestinians Refuse Government's Suspension of Workers' Health Insurance",

https://bit.ly/2IkK4GM, 27 February 2017

Websites

AMAN, http://www.demo.aman-palestine.org/en

Palestinian Anti-Corruption Commission, www.pacc.pna.ps

World Health Organisation, http://www.who.int/

الائتلاف من أجل النزاهة والمساءلة
aman أمان
Transparency Palestine

The Coalition for Accountability and Integrity (AMAN)

Ramallah

Rimawi building - First Floor - Irsal Street

P.O. Box Ramallah 339 Jerusalem 69647

Tel.: 022989506 – 022974949

Fax: 022974948

Gaza

Dream Building, Haboosh street, branch of Al_shohada st., Gaza

Telfax: 082884767 – 082884766

Email: info@aman-palestine.org

Website: http://www.demo.aman-palestine.org/en

/AmanCoalition

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