



# United Nations Convention against Corruption – Compliance Review

Palestine 2010

# **United Nations Convention against Corruption - Compliance Review**

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Coalition for Integrity and Accountability-AMAN

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### **UNCAC Compliance Review**

The Coalition for Integrity and Accountability-AMAN has prepared this study in cooperation with Transparency International.

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Coalition for Integrity and Accountability-AMAN

# **United Nations Convention against Corruption - Compliance Review**

Promoting Transparency and  
Enhancing Integrity in  
the Arab region

## Table of Contents

<b>Preface</b>	5
<b>Acknowledgement</b>	7
<b>Introduction</b>	8
<b>Executive Summary</b>	10
<b>Foreword</b>	19
<b>First:</b> Effective anti-corruption policies and practices - Article 5	20
<b>Second:</b> Preventive anti-corruption body or bodies - Article 6 (M) & Article 13.2	23
<b>Third:</b> Recruitment, hiring, retention, promotion and retirement of public officials - Article 7.1	30
<b>Fourth:</b> Candidature for and election to public office – Article 7.2.	36
<b>Fifth:</b> Funding of candidatures for public office and of political parties - Article 7.3	42
<b>Sixth:</b> Conflicts of interest - Articles 7.4, 8.5	45
<b>Seventh:</b> Codes of Conduct for public officials - Articles 8.1 – 8.3, 8.6	49
<b>Eighth:</b> Whistleblowing - Article 8.4 (NM), Article 13.2 and Article 33	53
<b>Ninth:</b> Public procurement - Article 9.1	56
<b>Tenth:</b> Management of public finances - Article 9.2	60
<b>Eleventh:</b> Transparent public administration - Article 10 (M), 13.1.b	65
<b>Twelfth:</b> Judiciary and prosecution services - Article 11	69
<b>Thirteenth:</b> Prevent corruption in private sector - Article 12	75
<b>Fourteenth:</b> Participation of society - Article 13	79
<b>Fifteenth:</b> Anti-Money Laundering - Article 14	83
<b>Sources and References</b>	89



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## Introduction

### **The United Nations Convention against Corruption**

The United Nations Convention against Corruption (UNCAC)<sup>1</sup> is the latest in a series of international anti-corruption treaties, a landmark agreement that is the most comprehensive and global one to date--and the only one applying to countries in the Middle East. The Convention, which entered into force in 2005, addresses key issues and measures to prevent and criminalise corruption, to promote international cooperation and technical assistance, and to facilitate the recovery of stolen assets. UNCAC has the broadest and most ambitious scope of any anti-corruption convention, as well as the largest and most diverse number of signatory states. This makes this binding and globally applicable anti-corruption convention an essential international benchmark for analysing, comparing and advancing national anti-corruption frameworks around the world.

In December 2005, the Palestinian National Authority sent a letter to UN Secretary-General at the time, Mr. Kofi Annan, through its then Prime Minister, Mr. Ahmed Qurei, pledging its commitment to voluntarily adopt and implement the Convention in the Palestinian Occupied Territory. It also promised to endorse the Convention upon recognition of the independent Palestinian state.

However, although Palestine enjoys an observer status at the United Nations, it still is a country under occupation. The Palestinian territories (West Bank and Gaza Strip) are administered by the Palestinian National Authority (PNA); their occupation by Israel in 1967 remains a big obstacle for the PNA to develop efficient institutions, hence fighting corruption (including implementing the UNCAC) becomes much more difficult.

### **UNCAC compliance review**

As a consequence of ratifying the Convention, governments are obliged to translate the provisions that it stipulates into national law and practice guidelines. In many countries, complying with the requirements of the Convention represents a significant workload. Independent compliance reviews, undertaken by Civil Society Organisations (CSOs) focussed on corruption issues, are an important tool for identifying the extent and scope of necessary work. Such reviews analyze the anti-corruption framework of a country and benchmark it against the provisions of the UNCAC. These reports provide a crucial independent country-based perspective on government progress towards implementing UNCAC.

The present compliance review, conducted by AMAN focuses on Chapter II of the UNCAC (Articles 5 to 14 inclusive) which lists the preventive measures that must be undertaken against corruption. The compliance review of Chapter II represents the first step towards a comprehensive analysis of the implementation of the UNCAC in Palestinian Occupied Territory (OPT).

### **Compliance review methodology**

This review focuses on the extent to which each article of UNCAC Chapter II has been implemented, in terms of both legal provisions and actual practice in the OPT. The assessment of laws and practice examines the actual situation at the time of writing.

<sup>1</sup> [www.unodc.org/unodc/en/treaties/CAC/index.html](http://www.unodc.org/unodc/en/treaties/CAC/index.html)

The thematic division of the analysis is reflected in the methodology. For the analysis of the legal framework relies on a review of laws and other legal provisions. The assessment focuses on how far these national provisions are congruent with the stipulations of the UNCAC and on those areas in which shortcomings can be observed. For the analysis of UNCAC enforcement, we drew upon interviews with experts, a review of secondary data such as the recently completed National Integrity System study, previous studies on UNCAC compliance, such as the government self-assessment checklist responses and other relevant reports such as the Arab Democracy Index. These sources were used to ascertain the extent to which the legal provisions are being enforced and what factors could be preventing their effective implementation.

The conclusion as to whether and how far the Palestinian National Authority can be seen as complying with the Convention has been reached based on the analysis of these sources. The extent of compliance and the resulting 'gap' between the situation in the OPT and the UNCAC provisions forms the basis for the recommendations on how to address shortcomings in compliance. These recommendations were drawn up together with relevant stakeholders in the Palestinian anti-corruption community.

### **MABDA Programme**

This review of UNCAC implementation represents the closing phase of the 3-year MABDA program (Measuring Anti-Corruption Efforts and Building Demand for Effective National Integrity Systems in Egypt and the Arab World), of which (Country) has been an active participant since the program's inception in October 2007. The MABDA program works on increasing accountability and transparency through a combined research and advocacy approach.

During the first stage of the project an in-depth analysis of the National Integrity System was conducted. This provided an assessment of the key institutions, sectors and specific activities that contribute to integrity, transparency and accountability in the society. A functioning National Integrity System is able to effectively combat corruption within a society; thus, strengthening a country's NIS is the first step to promoting better governance throughout a society. As for the UNCAC compliance review, the review of the NIS focussed on both the legal framework and its enforcement in practice. The findings of the study provided the basis for recommendations on how to improve the NIS and these in turn represented the strategic baseline for advocacy activities promoting reform on a local and national scale.

This UNCAC compliance review incorporates the findings from the Palestinian NIS study but focuses more specifically on the UNCAC as the main international instrument for promoting anti-corruption practices. As such, it links the national scope of the first study to the global fight to identify, prevent and sanction corruption when it occurs.

# Executive Summary

This report assesses the extent of Palestine's compliance with the preventive anti-corruption measures stipulated in Chapter II of the United Nations Convention against Corruption (UNCAC). It focuses on legal frameworks and their practical implementation with the aim of identifying shortcomings in Palestinian legislation<sup>2</sup> in this regard. It also seeks to identify aspects of Palestinian legislation that do not comply with the Convention and those that do, in order to enhance and bolster these.

The report is divided into 15 sub-sections, according to the division of Articles 5-14 of the UNCAC. Each sub-section contains an analysis of the legal and practical frameworks in order to identify the extent of compliance of Palestinian laws with the UNCAC, both at the legal level and in practice. A number of recommendations have been made for each topic, as follows:

- Regarding anti-corruption policies and effective practices, several reform plans and policies have been launched with various goals. However, one criticism that is made of most of these initiatives is that they often resulted from a reaction to a specific corruption case or pressure and represented the ambitions of their initiators rather than being the comprehensive, coordinated and practical policies that anti-corruption action requires. Furthermore, there were no clear measures or procedures for their actual implementation.
- No anti-corruption commissions have been established in the Palestinian context. This has led to a lack of conformity with the stipulations of the UNCAC for specialised preventive institutions. However, a number of institutions with mandates to address certain types of corruption have been established and these do exercise their mandates effectively, despite the lack of sufficient legal and practical mechanisms that would enable them to carry out their tasks efficiently. There are also a number of institutions whose establishment is explicitly stipulated by legal texts, but which had not been put in place by the time of writing this report in early 2010. Examples include the Illicit Gains Commission,<sup>3</sup> the establishment of which is stipulated by the Law of the Illicit Gains Commission No. 1 of 2005, which was amended to become the Anti-Corruption Law No. 1 of 2005, following the decree of Law No. 7 of 2010 which was issued by the directorate of the Palestinian Authority.
- The procedures for appointment, promotion, transferral, deputizing and secondment of public officials are regulated by legal stipulations. However, there have been problems in the practical implementation of these laws. A number of violations relating to appointment and promotion have taken place, in which the decisive criteria was not professional qualifications and – in some cases – security and political considerations played a role.<sup>4</sup>

<sup>2</sup> It should be pointed out that the legal system mentioned in this report is similar to that enforced in Gaza.

<sup>3</sup> Although the term "Illicit Gains Commission" is used here, what is meant is the Anti-Corruption Commission. This is following the most amendment that was issued during the writing and final review of this report and which changed the ruling of the law naming the commission. The commission title became Anti-Corruption Commission rather than Illicit Gains Commission, by decree of Law No. 7 of 2010, which amended a number of sections of Law 1 of 2005.

<sup>4</sup> This refers to the term 'security integrity', where the candidate for appointment shall receive a letter from the security services for security clearance; this may be used politically by excluding any person because of his\her political affiliation, hence making appointments dependent on political affiliation.

## Executive Summary

- Regarding candidature for public office, current elections laws in Palestine regulate issues related to election eligibility and propaganda but they do not require candidates to declare their financial status. However, this declaration is required from members of the Palestinian Legislative Council (PLC), the prime minister and president, according to texts in the Basic Law and the Illicit Gains Law. The stipulations regarding qualifications for candidate eligibility have been implemented in practice and no violations have been recorded. Similarly, election campaigns are subject to clear legal rules and procedures. This did not prevent some discrepancies during the presidential and parliamentary elections but these discrepancies did not attain the level of violations requiring investigation. Palestinian laws also identify requirements and criteria for appointments to senior governmental positions.
- The funding of candidatures for public office and political parties has not been regulated by a law specifically for political parties. This is due to the specific nature of the situation in Palestine as a result of the continued Israeli occupation. Political considerations also obstruct the devising of a specific law for political parties. Most Palestinian factions are resistance factions, which would make the issuing of such a law problematic. These laws regulate issues of funding and spending, as well as the penalties for violations. However, in practice the Central Elections Commission (CEC) does not possess sufficient supervisory and technical means to oversee this matter effectively, particularly in relation to funding sources. In practice, candidates submit detailed statements related to spending but not funding. Even when funding is reported, the CEC does not have the means to verify the information.
- With reference to conflicts of interest, the Basic Law constituted the starting point for treating the subject. It has been followed by other Palestinian laws, of which may be mentioned here: the Illicit Gains Law No. 1 of 2005, the Palestinian Civil Service Law 1995, the Judicial Authority Law No. 1 of 2002, the Board of Financial and Administrative Supervision Law No. 15 of 2004. There are also other Palestinian laws that mention the subject, as it is referred to inconsistently throughout the Palestinian legislation. Despite the fact that the Illicit Gains Law does focus on the subject, some of the relevant sections do contain shortcomings; and although the issue is treated in other areas of Palestinian legislation, there are no clear and explicitly defined procedures for registering or verifying a lack of conflict of interests, or even for exposing cases. It should be noted that there is no official body that verifies or regulates this matter. Moreover, there are no legal procedures for registering gifts, donations or benefits that employees may receive during the performance of their duties, or procedures for investigating the matter.
- No comprehensive code of conduct for public officials is formally disseminated by the government. The General Personnel Council issues a circular; however, this is not an actual code of conduct but rather a simplified description of employees' duties without any reference to how the description should be enforced. Neither does it identify an institution responsible for monitoring commitment to these duties, although this should be the General Personnel Council

itself, since it issued the circular. In addition, other codes of conduct have been disseminated by the Cabinet's Secretariat to ministers and by the Supreme Judicial Council to judges. These codes do not name an enforcement body that would identify violations or impose penalties related to violations. Most if not all codes fail to identify procedures or active enforcement bodies, or to prescribe procedures for monitoring, supervision or investigating violations, a reality that weakens them. AMAN has prepared a code of conduct for public employees that had been signed off by the representative of the Union of Public Employees. However, the Civil Service Bureau has not undertaken follow-up on its implementation.

- The issue of whistle blowing is dealt with in a number of Palestinian laws, albeit sporadically. For example, the Illicit Gains Law, the State Audit and Administrative Control Bureau Law, and the Anti-Money Laundering Decree Law contain references to the subject. However, these laws do not clearly specify reporting procedures, and nor do they identify one party competent to receive reports of corruption. There is no specialised, independent body for combating corruption in Palestine.
- Public procurement and the rules for public tenders are regulated by Palestinian law. They specify the regulations for public tenders, including advertising in daily newspapers, disseminating information to the public, defining the conditions for submitting tenders and the decision-making procedures. Certain problems and shortcomings can be identified. Some of these can be attributed to the law, while others are due to its implementation. These include the absence of a procedure for grievances and the absence of a legal obligation to report cases of corruption. Although local newspapers do advertise tenders, problems can be identified in the use of descriptions requiring technical knowledge that could be lacking. Furthermore, the law stipulates the formation of technical committees in ministries, but in practice, the Central Tenders Committee, due to the lack of other qualified staff, often dominates these committees.
- Several provisions in Palestinian law address the management of public finances. The Public Auditor is responsible for overseeing the implementation of the General Budget and management of the unified accounting program. A manual has been published that regulates accounting procedures and rules related to the financial system for ministries and governmental institutions. Despite the regulating laws, there are exceptions in practice, particularly in the preparation of the General Budget, which has not complied with specified procedures. Most governments did not publish regular semi-annual or quarterly reports on their work, or submit final accounts regularly, as required by law.
- Transparency in public administration is not sufficient due to the lack of a textual basis or a clear established practice. The quality of practice also varies among different institutions. By-laws of the executive, legislative and judicial authorities identify decision-making procedures, but they often do not oblige the executive to publish periodic reports about its activities. Review of the administrations' decisions is subject to constitutional and administrative rules for review and accountability. According to the law, these decisions must be justified by, based upon and attributed to a legal mandate.

Individuals and parties affected by any administrative decision may appeal decisions to the Higher Justice Court. It is worth noting that so far there is no clear procedure to classify files as public information, amid the absence of a legal protective framework for this, namely a law on the right of access to information.

- Regarding the judiciary and prosecution services, despite some shortcomings the Judicial Authority Law addresses the matter appropriately, particularly in terms of appointments and promotions. The law also addresses justification of court decisions, judicial code of conduct and public hearings. In practice, however, some problems arise from the conflicting mandates of the Ministry of Justice and the Supreme Judicial Council, in addition to political interference in the work of the judiciary and the frequent lack of compliance with court decisions. Appointments and promotions are often based on political allegiance rather than merit and seniority, according to reports of some legal organizations. Some problems in the text of the Judicial Authority Law must be addressed in order to prevent them weakening the judiciary.
- Regarding prevention of corruption in the private sector, company laws, and some private laws regulate private sector activity. The Capital Markets Authority (CMA) oversees and regulates companies. It is worth asserting the importance of principles of governance, including corporate management, transparency and disclosure, and their role in preventing corruption, particularly in light of the Code of Corporate Governance adopted by the CMA. In practice, however, conflicts of interest and a lack of fair competition continue to be the most prominent aspects of corruption in the private sector. Despite regulations and instructions about publishing information, supervision of their implementation is still weak. Furthermore, private sector institutions often do not disseminate relevant information to the public.
- Regarding participation of society, the Charitable Associations and Community Organizations Law regulates the work of the non-governmental sector. Certain institutions have been active in combating corruption, by launching some activities or raising awareness about the phenomenon. Nevertheless, the absence of a specialised anti-corruption body, in addition to the absence of a law ensuring the right of access to information, has reduced the level of public participation. Despite the absence of specialised anti-corruption bodies, some institutions, most prominently AMAN, have undertaken the task of combating corruption and raising public awareness of corruption and its various implications.
- Regarding the combating of money laundering, Palestinian laws stipulate the establishment of the Anti-Money Laundering National Committee and Financial Monitoring Unit (FMU). Laws also include provisions pertaining to the customer identification practice "Know Your Customer" (KYC) in the banking sector, in addition to bookkeeping and record-keeping. It also stresses the importance of reporting suspicions of money laundering activities. The Anti-Money Laundering National Committee and Financial Monitoring Unit have been formed in practice, and they perform their activities within the Palestine Monetary Authority (PMA). The FMU has issued general guidance on KYC monitoring and reporting by circulating

forms specifically for this purpose. In terms of measures to detect the movement of money, Palestine is prevented by the Israeli occupation from controlling its borders or border-crossings, making adherence to such rules difficult.

This report reveals that a number of Palestinian laws conform to the UNCAC to some extent; particularly those related to preventive measures, while others do not. Some legal and practical aspects constitute a good foundation to develop preventive procedures and measures against corruption. Moreover, clear progress within the Palestinian National Authority's (PNA) anti-corruption agenda is noted, although it is slow and requires more effort to complement the legislative framework, set up institutions that assist combating corruption and strengthen existing institutions. Despite shortcomings, the findings of this report indicate that efforts are being exerted to combat corruption.

In light of the above findings, this report makes the following recommendations to reconcile the Palestinian legal framework and practice with the UNCAC:

- Adopt the UNCAC at the legal level and in practice, and build an effective national integrity system in the public, private and non-governmental sectors.
- Amend some Palestinian legislation to conform with the UNCAC, particularly aspects that contravene or are inconsistent with the Convention.
- Identify current Palestinian laws pertaining to preventive measures required by the Convention in order to evaluate their effectiveness and the ability to put into practice provisions of the Convention on combating and preventing corruption.
- Implement anti-corruption preventive procedures and measures in practice rather than in theory and text only, to preclude misuse of the law contravening the Convention. In some cases the text of the law may conform well to the UNCAC, but problems may lie in its implementation, where poorly enforced procedures may lead to violation
- Establish the National Anti-Corruption Commission with the mandate of raising awareness about corruption and fighting it at all levels. This should be done by introducing necessary amendments to the Illicit Gains Law in order to grant the Illicit Gains Commission additional competences, in addition to monitoring and legal instruments that would enable it to become the National Anti-Corruption Commission.
- Include clear anti-corruption procedures in governmental programs. Such provisions must appear in the ministerial publication and be binding for the government. Civil society must participate in this process. Palestinian governments and various political levels must adopt unified and intensive national policies against all forms of corruption.
- Enhance and bolster the independence of existing bodies, such as the State Audit and Administrative Control Bureau (SAACB), Public Auditor, Illicit Gains Commission and Anti-Money Laundering National Committee, enabling them to perform their duties freely and without being subjected to any form of pressure. Moreover,



those institutions whose establishment is stipulated by law and which has not yet taken place should be founded.

- Complete the legislative process by issuing regulations to ensure effective implementation for specific laws. There are a number of Palestinian laws that have been issued, but for which no mandates or procedures regulating their implementation have been specified.
- Adopt a clear approach toward the civil service, end the intervention of security services in hiring, and ensure the neutrality of the General Personnel Council and governmental departments.
- Install necessary systems to ensure disclosure of funding sources for candidates and political parties, especially in light of the current inability to enact a political parties' law due to problems specific to the current situation in Palestine.
- Set up a body or activate existing institutions to address the issue of conflict of interest and identify such cases, as well as to record and document gifts, donations and any other benefits received by employees within the context of their duties.
- Activate the role of the Illicit Gains Commission<sup>5</sup> and enable it to fulfill its mandate of declaring the financial status of senior public officials. This issue has not received enough attention despite its importance for the public and the individuals who declare their financial status.
- Adopt a code of conduct for public employees which is distributed by the government and to which senior PNA members must adhere.
- Adopt clear, specific and approved measures for reporting corruption cases and granting protection for those who report such acts, especially if done so in good faith.
- Harmonize laws regulating public procurement, and form an independent body or commission responsible for procurement.
- Adhere to legal procedures related to preparing the general budget and the timely submission of final accounts in order to make the PNA's financial status public.
- Enact a law on the right of access to information in order to strengthen transparency.
- Introduce amendments to the Judicial Authority Law to identify and clearly delineate competences of the Ministry of Justice and Supreme Judicial Council in order to avoid overlapping of functions.
- Activate anti-corruption tools for the private sector by encouraging companies to adopt the Code of Corporate Governance.
- Activate the role of civil society institutions and citizens, and raise their awareness concerning their role in combating corruption.
- Activate anti-money laundering procedures and measures.

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<sup>5</sup> This became the Anti-Corruption Commission, following the last amendment of Article 6.4, by decree of Law No. 7 of 2010, which was released during the writing of this report.



There is no universal or specific definition of the concept of corruption –with its various meanings, forms and patterns– because researchers' attempts to define corruption are influenced by their specialised scientific fields and their perspectives toward explaining it. Hence, there is no universal definition of all dimensions of corruption that enjoys consensus among all researchers. Corruption has various types, forms and patterns, and its existence assumes varying degrees in all sectors of societal activity – private and public, political and administrative. For practical purposes, pertaining to this report, corruption is defined as 'the use of public office for personal interests'.

Corruption in its various forms and patterns has become a major obstacle and challenge that obstructs the right to development and progress of peoples. Accordingly, combating, eliminating and alleviating corruption has become a core concern of the UN and the international community, as they endeavor to confront this phenomenon and alleviate its detrimental repercussions on states and individuals by consolidating a comprehensive and sustainable international strategy to combat and prevent its proliferation.

The UN has exerted relentless efforts to combat corruption. It adopted General Assembly Resolution No (4/58) on 3 October 2003, which ratified the Draft International Convention against Corruption (UNCAC) and adopted 9 December as International Anti-Corruption Day. The UNCAC is the first general convention that identifies and legalizes a set of procedures and measures to be adopted by the international community in order to combat and eliminate corruption.

The UNCAC consists of a preamble and 71 legal articles divided into eight chapters. These constitute the measures and procedures that state parties must enforce, and that stipulate how to develop their legal, administrative and judicial systems to combat and prevent corruption.

Notwithstanding the specific Palestinian situation –namely the lack of statehood that international law requires for treaty ratification and which may be problematic for the legal value of the Convention in the Palestinian Territories– the PNA believes nothing prevents it from unilaterally declaring the applicability of the Convention over its territories or compliance with it. Hence, the PNA through its president can declare its compliance with the Convention and can incorporate its provisions in domestic law. Indeed, in a letter to the UN Secretary-General in 2004, the Palestinian prime minister explicitly declared the intention of the Palestinian government to comply with the UNCAC, adopt, and incorporate its provisions into Palestinian law.

This report focuses on Chapter II of the UNCAC, particularly Articles 5-14, which address the preventive measures to be taken by state parties in order to prevent, alleviate and eliminate corruption. These include establishing specialized anti-corruption bodies, procedures and measures pertaining to candidature and election to public office, financing election campaigns and managing public finances. It also focuses on analyzing the legal and practical aspects of each preventive measure prescribed in the UNCAC and making recommendations for better compliance.

The report aims to shed light on the preventive measures state parties must take in their endeavor to detect corruption before it occurs and combat

## Foreword

it by means that may help the stability of these states. Consequently, the report seeks to evaluate the extent of compliance with the Convention's provisions, particularly preventive measures, identify shortcomings in laws by analysing the legal framework, and identify shortcomings in actual practice, with the aim of finding legal and practical solutions to overcome these shortcomings.

Regarding the methodology, the report focuses on preventive measures adopted by Chapter II of the UNCAC. It analyses the legal and practical frameworks; identifies shortcomings, successes and failures in implementing provisions of the Convention; and makes recommendations for each item, using descriptive and analytical methods.

Such a methodology requires designing a matrix that includes questions for evaluating and analysing the legal framework and practice. This information is categorised and synthesised in a manner that serves the purpose of the report. The report's major sources are relevant laws, reports of Palestinian bodies and institutions working in relevant fields and expert interviews.

This report is part of the MABDA (Measuring Anti-Corruption Efforts and Building Demand for Effective National Integrity Systems in Egypt and the Arab World) project, which aims to enhance transparency and integrity in the Arab region. The project aims to analyze anti-corruption systems; enhance the role of the media, citizens, governments, the private sector and other relevant parties in this regard; and identify effective means of combating corruption.

**First: Preventive anti-corruption  
policies and practices**

Article 5 of the UNCAC identifies anti-corruption policies and practices and specifies that they must be based on evidence and risk analysis of corruption. Policies must be effective and coordinated, promote the participation of society, enjoy the full and open support of the executive, and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. Sufficient information about corruption must be available.

### **a- Legal framework**

Several local reform plans and policies have aimed at fighting corruption, based on the 1996 Report of the Public Control Commission. This report was referred to a special Palestinian Legislative Council (PLC) committee and ultimately led to the resignation of the government in mid-1998.<sup>6</sup>

The PLC declaration on developing and reforming PNA institutions on 16 May 2002 included its vision towards reforming and developing PNA institutions. The Hundred-Day Reform Plan emerged from late President Yaser Arafat's speech to the PLC, in which he announced and warned of mistakes that required rectification. Furthermore, a PLC declaration during the same period included several proposals and reform programs to be implemented.<sup>7</sup>

There were other local initiatives, such as the civil society organisations reform document and the private sector reform document, which expressed a practical vision towards reforming the Palestinian political and economic systems. Finally, the Reform and Development Plan (PRDP) 2008-2010 was launched under the caretaker government and was directly linked to organisational and financial reform.<sup>8</sup>

Successive Palestinian governments approved programs and plans that asserted the importance of preventing and alleviating corruption. Although the various plans involved a number of reform attempts, these were not coordinated or comprehensive, and neither did they benefit from any continuity.

Initiatives included drafting a framework for a comprehensive anti-corruption policy and submitting it to the government.<sup>9</sup> This initiative was taken by AMAN and other civil society organisations in coordination with the government. The team finalised the detailed plan and the national strategy for implementation as a step towards its final approval by the government. The national team was also assigned the task of carrying out the UNCAC self-evaluation questionnaire, but the government did not follow this up with implementation.

In most cases, reform initiatives were isolated expressions of particular aspirations or came as a result of certain exigencies or incidents. In other

<sup>6</sup> AMAN, *The National Integrity System*, Palestine, Ramallah, 2009, 17.

<sup>7</sup> *Ibid*, 29. See also: AMAN, *Integrity, Transparency and Accountability against Corruption*, 1st edition, Ramallah, 2007, 138.

<sup>8</sup> AMAN, *Palestinian Anti-Corruption Policies and Legislations, Analysis*, Ramallah, 1st Edition, 2008, 29.

<sup>9</sup> The Council of Ministers approved the formation of a national team for preparing a national plan for enhancing and promoting transparency and integrity in public affairs during its meeting on 18 August 2008. The team comprised representatives of several ministries, public and private sector institutions, in addition to AMAN as a representative of civil society organisations.

words, they constituted a reaction rather than a consistent strategy, though it is difficult to generalize. Furthermore, they were not monitored and lacked executive procedures and a serious will for enforcement. In some aspects, these initiatives conform to the UNCAC, particularly Article 5\1 on the participation of the society and the need for clear and systemic anti-corruption policies, but no procedures for implementation were specified.

## **b- Practice**

The Palestinian Basic Law was approved in 2002 and amended in 2003. The Hundred-Day Plan followed this, and the adoption and implementation of a number of activities included in the Reform and Development Plan (PRDP). The Ministry of Finance endeavored to implement the content of the PRDP, including the rationalization of some aspects of expenditures and controlling revenues. It also worked on establishing financial regulations and on a full rehabilitation of qualifications as part of the PRDP.<sup>10</sup>

The national anti-corruption plan,<sup>11</sup> which was prepared by the national anti-corruption team, had not been officially implemented as of the writing of this report. This is because it has not yet become a priority on the government's agenda. Rather, specific anti-corruption activities have been implemented at various levels.

A simple reading of the legal text relating to this section would show that a number of efforts at reform have been undertaken. However, the majority of these can be described as emotional pacification and attempts to reduce pressure exerted as a result of a specific case or incident. The mechanisms necessary for their implementation were not put in place. In other words, these efforts did not attain the level of genuinely serious undertakings.

## **Recommendations**

- 1- Demand that the government approves the national anti-corruption plan, adopts a comprehensive strategy and supports it with measures and procedures for implementation on the ground.
- 2- Civil society must participate in policy-making and implementation.
- 3- The government must show a genuine desire to fight corruption by installing executive procedures and measures, and making Palestinian laws consistent with the UNCAC.

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<sup>10</sup> State Audit and Administrative Control Bureau, 2008 *Annual Report*, 182.

<sup>11</sup> See page --- of this report

**Second: Preventive anti-corruption  
body or bodies**



Article 6 of the UNCAC indicates that each state party must ensure the existence of bodies for the prevention of corruption. These must benefit from the independence, ability and authority to investigate and to implement anti-corruption policies. They must also be able to disseminate and increase knowledge about them. Article 13\2 of the UNCAC also indicates the need for state parties to inform the public about these bodies.

## a- Legal framework

According to the Basic Law and other legislation currently in force in the Palestinian territories, certain institutions have been established to address some aspects of corruption. These institutions have been granted specific control competences. However, they do not constitute the national anti-corruption bodies prescribed by Article 6\2 of the UNCAC. They include the **State Audit and Administrative Control Bureau (SAACB)**,<sup>12</sup> **Illicit Gains Commission**,<sup>13</sup> **Anti-Money Laundering National Committee**,<sup>14</sup> **internal audit and inspection departments**, and the **Public Accountant**.

### 1- State Audit and Administrative Control Bureau (SAACB)

Article 96 of the Palestinian Basic Law (amended in 2003) provides for the establishment of the SAACB. The State Audit and Administrative Control Law No. 15 of 2004 was issued for the implementation of this law and grants the Bureau some degree of independence.<sup>15</sup> In particular, Article 2 stipulates granting the Bureau a degree of administrative independence and its own budget within the PA general budget.<sup>16</sup>

Consequently, the law represents a relatively satisfactory degree of compliance with Article 6\2 of the UNCAC regarding the SAACB's administrative and financial independence.

In terms of human resources, Article 4 of the State Audit and Administrative Control Law No. 15 of 2004 grants the SAACB's director the authority to hire enough employees to enable the Bureau to perform its functions.<sup>17</sup> Article 23\3 of the law grants the SAACB the authority to set up necessary programs and courses to train its staff.<sup>18</sup> In addition to its general mandate of financial and administrative control of all institutions under its jurisdiction, the law grants the Bureau full authority in other matters, including:

- The authority to demand auditing accounts, documents and all information it deems necessary<sup>19</sup>

<sup>12</sup> Article 96 of the Palestinian Basic Law Amended in 2003 and Article 2 of the State Audit and Administrative Control Law No. 15 of 2004.

<sup>13</sup> Article 3 of the Illicit Gains Law No. 1 of 2005, which was altered as a result of Article 4.6 of the decree of Law No. 7 of 2010 to become the Anti-Corruption Law No. 1 of 2005. As indicated previously, the Illicit Gains Commission became the Anti-Corruption Commission as a result of this amendment.

<sup>14</sup> Article 19 of the Anti-Money Laundering Law No. 9 of 2007.

<sup>15</sup> See Article 23 of the State Audit and Administrative Control Law No. 15 of 2004 for the competences of the Bureau, bearing in mind that there are other competences mentioned in other parts of the Law.

<sup>16</sup> Article 2 of the State Audit and Administrative Control Law No. 15 of 2004.

<sup>17</sup> Article 4 of the State Audit and Administrative Control Law No. 15 of 2004

<sup>18</sup> Article 23\3 of the State Audit and Administrative Control Law No. 15 of 2004

<sup>19</sup> Article 24 of the State Audit and Administrative Control Law No. 15 of 2004

## Second: Preventive anti-corruption body or bodies

- Access to all reports, documents and information<sup>20</sup>
- The right to obtain information and subpoena power<sup>21</sup>
- The capacity of judicial police during the staff's performance of their functions.<sup>22</sup>

### 2- Illicit Gains Commission<sup>23</sup>

Law No. 1 of 2005 regulates the composition, mandate and functions of the Illicit Gains Commission. Article 3 of the law prescribes the establishment of the Illicit Gains Commission as a legal entity with administrative and financial independence, with its own budget as part of the PNA general budget. The commission has the following competences in accordance with Article 8 of the law:

- Maintain all declarations of financial status and request any relevant data or clarifications
- Examine the financial status of those subject to the law's mandate
- Investigate complaints about illicit gains<sup>24</sup>

These provisions indicate that the commission enjoys administrative and financial independence<sup>25</sup> as required by the UNCAC. Such independence is stressed in Article 7 of the law, which grants the commission's chief and staff full independence in their work, by virtue of the immunity they enjoy in performing their functions. The fact that the commission's director can only be removed upon the approval of an absolute majority of PLC members<sup>26</sup> reflects such immunity.

An overview of the competences of the commission makes it possible to conclude that it is not equivalent to a national commission for fighting, preventing or raising awareness of corruption. This is especially clear when comparing its competences to Article 6, Paragraph b of the UNCAC, which stipulates that the commission's competences include increasing and disseminating knowledge about preventing corruption. The Illicit Gains Law, however, may constitute a good building block that can be amended and to which some competences may be added to become a national anti-corruption commission.

<sup>20</sup> Article 25 of the State Audit and Administrative Control Law No. 15 of 2004

<sup>21</sup> Article 29 of the State Audit and Administrative Control Law No. 15 of 2004

<sup>22</sup> Article 47 of the State Audit and Administrative Control Law No. 15 of 2004

<sup>23</sup> It should be noted here that during the preparation and revision of this report a legal decree was issued altering the Illicit Gain Law. This was Decree of Law No. 7 of 2010 which changed the name of the Illicit Gains Law NO. 1 of 2005 to the Anti-Corruption Law No. 1 of 2005. Similarly, the law changed the name of the Illicit Gains Commission to the Anti-Corruption Commission. The law also amended the class of individuals who are subjected to the authority of the commission, as well as its specialisations and competences, to correspond to its new status as the Anti-Corruption Commission. For more information see Decree of Law No. 7 of 2010. As referred to earlier, the director has been appointed for the Illicit Gains Commission, which subsequently became the Anti-Corruption Commission by virtue of Decree No. 1 of 2010, as issued by the presidential authority. It remains to be noted that the Anti-Corruption Commission has begun its work, although it is still in the set-up and preliminary stage.

<sup>24</sup> Article 8 of the Illicit Gains Law No. 1 of 2005.

<sup>25</sup> During the preparation of this report, the Chief of the Illicit Gains Commission has been appointed by a Presidential Decree; the Commission has not been though until the date of writing this report.

<sup>26</sup> Article 6 of the Illicit Gains Law No. 1 of 2005

### **3- Anti-Money Laundering National Committee.**

Article 19 of the Anti-Money Laundering Decree Law No. 9 of 2007 stipulates the formation of the Anti-Money Laundering National Committee. Article 20 identifies the committee's competences, which include:<sup>27</sup>

- Formulating public policies to combat the crime of money laundering
- Formulating policies that guide the operations of the Financial Monitoring Unit and ensure the independence of its work
- Coordinating with the relevant authority when implementing various policies and procedures. This ensures the smooth flow of information between the Unit and the authority in question.
- Cooperating with the supervising authority relevant for specific policies to ensure the compliance of all parties under its jurisdiction
- Keeping abreast of international and regional anti-money laundering developments
- Representing the PNA at international anti-money laundering forums
- Coordination with the relevant authorities when preparing periodic reports containing information relating to these authorities' work.<sup>28</sup>

The law also stipulates the establishment of an independent anti-money laundering unit, namely the Financial Monitoring Unit, based at the PMA, which has several competences in accordance with Article 23 of the law, including:

- Requesting and receiving information about operations suspected to involve money laundering from parties subject to the law's provisions
- Analysing the information mentioned in Paragraph (1) of this Article
- Disseminating the information and analysis findings regarding proceeds of transactions suspected to involve money laundering in accordance with the provisions of this law

It is worth noting that the president of the PNA issued Decree No. 174 of 2008 prescribing the formation of the Anti-Money Laundering National Committee. This consists of nine persons representing most ministries, in addition to the PMA Governor and a number of financial, legal and economic experts.

### **4- Internal control committees and financial auditing and inspection departments**

The legal basis for these committees is Decree No. 43 of 2005, issued by the Council of Ministers on the Financial System of Ministries and Governmental Institutions. Decree No. 130 of 2006, also issued by the Council of Ministers, stipulates setting up internal control units at ministries.

<sup>27</sup> Article 20 of the Anti-Money Laundering Law No. 9 of 2007

<sup>28</sup> The commission has a number of other specialisations, not all of which can be summarised here. For more information see Article 20 of the Anti-Money Laundering Law No. 9 of 2007.

## Second: Preventive anti-corruption body or bodies

Article 145 stipulates appointing internal financial controllers at each governmental department, while the Ministry of Finance (MOF) undertakes issuing regulatory and executive instructions for these units.

Internal controllers undertake the following tasks:

- Oversee the departments' collections and receipts to verify their actual value, and their timely collection and deposit in secondary collection accounts
- Verify the accuracy of monthly revenue reports before they are submitted to the competent authorities at the ministry
- Oversee the departments' expenditures, whether financed by the General Budget or through grants
- Verify the accuracy of monthly expenditures reports before they are submitted to the competent authorities at the ministry
- Oversee the bank adjustments of revenues, expenditures and grants
- Coordinate with the responsible financial departments to follow up SAACB comments and respond to its inquiries.<sup>29</sup>

Article 151 prescribes the establishment of an internal audit department that reports to the minister in accordance with the internal financial auditing system of the ministry itself, to ensure the optimal economic use of public resources and the compliance of all departments and units with enforced financial laws. These departments report on their findings and recommendations to the minister.

The Decree also stipulates setting up inspection committees, whereby each December the minister appoints committees for inspection and inventory that perform their identified functions, including inspecting and running an inventory of the funds, imports, authorization stamps and documents of financial value. These committees report to the Minister of Finance and submit copies of their reports to the relevant minister within a maximum of 10 days from their appointment, in order for these reports to be analysed and evaluated, and deviations rectified.<sup>30</sup>

### 5- Public Auditor

The PNA, particularly the MOF, embarked on creating the position of Public Auditor in accordance with the Decree Law No. 3 of 2008, amending the Law regulating the General Budget and Financial Affairs No. 7 of 1998. Article 3 of the Decree Law grants the Public Auditor, as a responsible party within the MOF, the following competences:

- Financial planning and cash-flow projections
- Monetary management and organising PNA banking arrangements
- Management, regulation, oversight and control of various sources of financing
- Management of PNA bank accounts

<sup>29</sup> Article 146 of the Financial System of Ministries and Governmental Institutions No. 43 of 2005. This list of authorities is not exhaustive. See more in Article 146.

<sup>30</sup> Article 147 of the Financial System No. 43 of 2005.

## Second: Preventive anti-corruption body or bodies

- Management of PNA financial and fixed assets
- Management of public debt
- Management of grants and loans
- Implementation of the PNA general budget
- Accounting and issuing reports

### a- Practice

The SAACB's functions mainly revolve around monitoring financial and administrative performance and identifying financial and administrative irregularities, including abuse of public office. SAACB reports reveal that the Bureau performs its functions by requesting administrative and financial reports from institutions under its jurisdiction, participating on the monitoring of public tenders, following up grievances and complaints from the public, and detecting administrative, financial and legal violations of employees while performing their functions. The SAACB suffers from limited human resources, which affects its ability to perform its control functions. Furthermore, although SAACB employees need additional training, there is a lack of funding.<sup>31</sup>

The SAACB has a broad mandate under the law. However, it does not exercise it fully due to a scarcity of resources on one hand and weak administrative and financial independence on the other. The SAACB does not have the necessary tools and instruments to fight corruption, since its decisions are non-binding recommendations.<sup>32</sup>

Although its establishment is prescribed by law, the Illicit Gains Commission had not been founded as of the writing of this report. Hence, it is not possible to evaluate its performance in fighting corruption. Nevertheless, a director for the Commission was appointed during the preparation of this report and an amendment to the law relating to it was issued. As a result of this amendment the law became the Anti-Corruption Commission Law No. 1 of 2005, amended by Decree of Law No. 7 of 2010.

The Anti-Money Laundering National Committee has been established. It consists of nine members representing institutions and ministries, in addition to independent experts. It convenes four times annually at the Financial Monitoring Unit offices at PMA<sup>33</sup> headquarters. The Financial Monitoring Unit will be financed by the PMA for three initial years, after which it will have its own budget within the PNA general budget.<sup>34</sup> Both the FMU and the Anti-Money Laundering National Committee exercise their functions.

Internal control committees and auditing committees have been established in most Palestinian ministries, in addition to some general administrations in certain ministries. These report to the minister according to their mandates. The performance of these committees varies among ministries. An SAACB report indicates that some ministries and institutions either lack internal control units or have units disproportionate

<sup>31</sup> SAACB, *Quarterly Report 2009*, Ramallah, 2009, 51.

<sup>32</sup> Ibid, 5.

<sup>33</sup> Personal interview with Mr. Riyadh Aweidah, Director of Financial Monitoring Unit, PMA premises, 14 January 2010.

<sup>34</sup> Articles 23 and 24 of the Anti-Money Laundering Law No. 9 of 2007.

to their size and scale of activity.<sup>35</sup> It also indicates that internal control and audit units in most ministries subject to SAACB mandate were not performing their functions effectively, as their control did not cover all activities of their relevant ministries and institutions.<sup>36</sup>

The position of Public Auditor was established at the MOF, and an auditor has been appointed and is performing his functions. He is responsible for accounting programs and preparing the budget from the beginning. Nevertheless, in practice he reports to the Minister of Finance despite the presence of an external auditing committee.

In general, it is possible to say that the Anti-Corruption Committee had not been formed in the fullest sense of the word by the time of writing this report, given the amendment of the Illicit Gains Law which, as referred to previously, became the Anti-Corruption Commission Law and for which a director was appointed. Despite this, some institutions and commissions relevant to the fight against specific aspects of corruption have been established. However, these tended to lack qualified staff on the one hand and sufficient human resources on the other. In addition, they did not fully exercise the competences that the law had given them. And despite the fact that the law stipulates their establishment, some have not yet begun to exercise their responsibilities fully due to delays in their installation or activation.

### Recommendations

- Develop the Illicit Gains Commission into a specialised anti-corruption body by adding authorities and legal instruments
- Establish the Illicit Gains Commission in practice, in accordance with the provisions of the Illicit Gains Law, in order to perform its functions in practice
- Promote the administrative and financial independence of the SAACB by adopting a special financial and administrative system granting it the competences and independence prescribed by law
- Provide full training for the SAACB and ensure that the staff is qualified so that it can perform its functions with regard to institutions under its jurisdiction
- Grant the SAACB the power to refer cases to the Attorney General
- Grant the Anti-Money Laundering National Committee some degree of administrative and financial independence, and provide it with qualified staff and the necessary tools to perform its functions
- Activate the internal control and audit departments at ministries and provide them with competent staff to enable them to perform their functions, and establish such departments in all ministries and institutions
- Promote the independence of the Public Auditor from all financial centers, including the Minister of Finance

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<sup>35</sup> See *SAACB Report 2008*, 9

<sup>36</sup> *Ibid*, 11.

**Third: Recruitment, hiring,  
promotion and retirement  
of public employees**

This issue is addressed by Article 7\1 of the UNCAC. It indicates that each state party shall regulate the hiring, promotion and retirement of public sector employees, and adopt clear rules for promotion, based on principles of integrity, transparency and experience; adopt appropriate wage scales; conduct sufficient education and training programs, and adopt procedures for selecting and training public employees.

### **a- Legal framework**

Article 7\1 of the UNCAC indicates that state parties shall adopt and establish human resource management systems in the public sector based on principles of efficiency, transparency and objective criteria.

The regulatory framework for civil service and public employment at the PNA is the Civil Service Law No. 4 of 1998; the amended Civil Service Law No. 4 of 2005 and its regulations, including the Civil Service Regulation No. 45 of 2005 and the Council of Ministers Decision and its Amended Regulation No. 14 of 2008. This is in addition to several regulations addressing benefits, promotions, appointments and other matters related to the civil service.

The Civil Service Law identifies the procedures and measures for hiring by advertisement in local newspapers, and written and oral competitions. It also identifies procedures for promotion, employee grading, secondment, transfer, authorities, disciplinary measures, wages, incentives, leaves and other employment procedures.

#### **- Hiring mechanisms**

The Civil Service Law No. 4 of 1998 and its amendments and regulations regulate procedures and measures for hiring public employees. Article 14 stipulates that no civil servant shall be hired unless s/he meets eligibility requirements. Combining two jobs is not permitted.<sup>37</sup>

This report aims mainly to demonstrate the procedure for hiring and applying for a vacancy. These are the procedures as prescribed by law:

- 1- Government departments announce a vacancy in at least two daily newspapers and within two weeks of the post becoming available. The party most qualified for the relevant field carries out the recruitment for the position. The advertisement must include all information about the vacancy and requirements for hiring, and the Civil Service Bureau is notified of the announcement. .
- 2- For positions that require written and oral competitions for recruitment, written competitions are advertised, and only those who pass the written test are summoned for the oral test. The names of candidates who pass the oral test are announced according to the final results of the competition.
- 3- Selection committees announce the names of the candidates admitted to sit for the competition in at least two daily newspapers and for at least two consecutive days; the announcement must include the time and venue of the competition.

<sup>37</sup> Article 14 of the Civil Service Law No. 4 of 1998. We do not intend to go into the requirements for hiring each category separately. The appointment of the director of the Civil Service Bureau is subject to special procedures, while hiring heads of independent governmental departments is subject to special conditions, while hiring employees of the first and other grades is also subject to special conditions.



- 4- Appointment is done according to the order of the final test results. When two candidates are equal in order, the candidate with higher qualifications and longer experience is appointed; if this is equal then the older candidate is appointed. Successful candidates who do not claim their appointment within one year following the announcement of the test results lose the rights that these entailed.
- 5- The appointment process starts one month after the announcement of the results.
- 6- Vacancies announced must be filled within one year of the announcement of the test results.<sup>38</sup>

Article 26 of the Civil Service Law also prescribes the formation of committees for selecting employees for vacant positions in government departments, consisting of representatives of the relevant department and the Civil Service Bureau. Regulations provide details of the process.

In this context, the Presidential Decree No. 8 of 2005 includes criteria for hiring in government ministries, institutions and commissions. Article 1 prescribes the following criteria:

- 1- The needs of each ministry, commission or institution
- 2- Organisational and administrative structure
- 3- Financial support from the MOF for the position
- 4- Prior announcement of the vacancies
- 5- Selection for the required vacancy must be based on principles of competition and transparency

#### **- Procedures for promotions**

Article 43 and the following articles of the Civil Service Law address the promotion of public employees. The law indicates promotions can only be made upon the availability of a vacancy in the approved budget, and on condition that the employee has completed a minimum of five years in his\ her grade. The law also stipulates that promotion to Grade 1 is conditional upon obtaining an evaluation of 'very good', while promotion for other grades requires a 'good' evaluation for the last three years of service. The promotion decision for Grades 2 and 3 is made by the competent head of the department, while promotion for other grades is made according to years of service. The law also addresses the matrix of minimum years of service<sup>39</sup> and provides further details on promotions, although space restrictions do not permit these to be discussed here.<sup>40</sup> Article 57 and the following articles address secondment, deputation and transfer.<sup>41</sup>

<sup>38</sup> Article 19-22 of the Civil Service Law No. 4 of 1998 and its Amendments. These procedures concern appointments for a vacancy.

<sup>39</sup> Article 34 of the Civil Service Law No. 4 of 1998 and its Amendments.

<sup>40</sup> For details see Civil Service Law No. 4 of 1998 and its Amendments, and the relevant Regulations.

<sup>41</sup> For further information, see Article 57 and beyond of the Civil Service Law No. 4 of 1998 and its Amendments

**- Incentives and bonuses**

Article 56 of the Civil Service Law addresses incentives. The Civil Service Bureau and the competent department shall set up a financial and moral incentives system for employees that ensures achieving goals, improving performance and rationalizing expenditures. The system shall include categories and conditions for financial incentives. The competent department is entitled to disburse bonuses for employees who implement actions or conduct research that improve performance and rationalize expenditures.

**- Disciplinary measures**

A number of articles in the Civil Service Law including Article 68 address disciplinary measures against employees proven to have violated applicable civil service laws, regulations, instructions and decisions. Disciplinary penalties are imposed in accordance with the law.

**- Retirement**

The Public Retirement Law No. 7 of 2005, the Decree Law No. 5 of 2007 amending the Public Retirement Law, and the Decree Law No. 1 of 2008 amending the Public Retirement Law, in addition to the subsequent regulations, may be linked with the Civil Service Law. These address employees' rights after retirement and procedures for subscription, contributions and deductions.<sup>42</sup>

The Civil Service Law does not contain any provisions that require political neutrality of public employees. While the law provides room for grievances, it does not include provisions that provide protection for employees who report cases of corruption.

Regarding rotation of work, most Palestinian laws stipulate that public employment – particularly influential positions that may be vulnerable to corruption because of their scale, influence or significance – shall be for fixed terms that mostly do not exceed four years.<sup>43</sup>

Regarding training, the Civil Service Bureau has continued the implementation of its 2004 strategy within the framework of the Public Administration Reform Plan adopted by the Council of Ministers in 2004, includes plans for training and building the capacity of employees.<sup>44</sup> The Civil Service Law No. 4 of 1998 granted the Civil Service Bureau the power to establish a civil service training center with branches in Palestine to train public employees. It also granted the Bureau the power to formulate plans for training and scholarships with the aim of improving performance.<sup>45</sup> In general, most articles of the Civil Service Law are compliant with the UNCAC, particularly Article 7\1.

<sup>42</sup> Article 27 of the Public Retirement Law No. 7 of 2005 and its Amendments.

<sup>43</sup> Palestinian laws identify criteria and requirements that must be fulfilled by appointees to some important positions in public institutions and departments.

<sup>44</sup> Civil Service Bureau, 2008 Annual Report, 60.

<sup>45</sup> Ibid, 59.

## **b- Practice**

In practice, appointments are governed by the Civil Service Law, and there is general compliance with its provisions. However, there have been cases of non-compliance due to 'wasta' (favoritism) or personal and factional interests.<sup>46</sup> This has been mentioned in reports by some control bodies such as the SAACB, which mentioned in its 2008 Annual Report that substantial violations include promotions to senior positions that were not based on integrity, transparency and equal opportunity, and the fact that some institutions hired employees without having available vacancies.<sup>47</sup>

In the West Bank and Gaza strip serious violations of the right to public employment as stipulated in Article 26\4 of the Palestinian Basic Law have been identified by the Independent Commission for Human Rights (ICHR). An ICHR report<sup>48</sup> asserts that several employees have been improperly dismissed whilst others have had their wages suspended or have been refused appointment following recommendations from the security services, under the pretext of so-called 'security integrity'.

Some of the most serious problems that the Civil Service Bureau faces<sup>49</sup> include inflated numbers of employees and the continued politicisation of recruitments. This has led to inefficient human resource management, manifested by:

- The Bureau's failure to organize and control the recruitment process in the public sector.
- A lack of necessary skilled staff at the council.

Information pertaining to appointments and promotions is secret in some cases, although the Civil Service Law requires the internal review of the departments' administrative decisions of recruitment or promotion.<sup>50</sup>

Regarding incentives, they are applied in practice to eligible employees.

Rotation is stipulated for some sensitive positions and is usually but not always implemented in practice.<sup>51</sup>

As has been indicated, there are a number of laws that regulate civil service and the procedures for filling civil service vacancies are applied in practice. However, there are some laws that require amendments to rectify shortcomings that could be exploited. In addition, some violations can be identified, particularly in the appointment process, which may be subjected to favoritism, "wasta", or in some cases to party-political factors. Dismissal may also be motivated by political factors.

<sup>46</sup> AMAN, The National Integrity System in Palestine, Ramallah, 2009, 78. See also: SAACB, previous reference, 11.

<sup>47</sup> See SAACB 2008 Annual Report, previous reference, 11-14.

<sup>48</sup> See ICHR Report No. 14, 2008, 110-120.

<sup>49</sup> AMAN, The National Integrity System, previous reference, 78.

<sup>50</sup> Ibid, 78.

<sup>51</sup> Rotation is sometimes overlooked for political considerations or because of the dysfunction of the PLC for some appointments that require its approval.

### **Recommendations**

- Issue instructions on the neutrality of the civil service
- Adhere to the Civil Service Law and its amendments on recruitments and promotions
- Stop all interventions in recruitment procedures, especially the security integrity requirement and recruitment based on political allegiance
- Train and develop human resources of the General Personnel Council and provide it with competent staff in order to improve its work.

**Fourth: Candidature and election  
to public office**

Article 7\2 of the UNCAC indicates that each state party shall adopt appropriate legislative and administrative measures to prescribe criteria concerning candidature for and election to public office.

### **a- Legal Framework**

The General Elections Law No. 9 of 2005<sup>52</sup> was enforced in the presidential and legislative elections of 2005 and 2006. The Basic Law, amended in 2003, regulated the right to candidature and election to public office until the General Elections Decree Law No. 1 of 2007 annulled Law No. 9 of 2005. Law No. 10 of 2005 and the Amending Law No. 12 of 2005 constitute the legal framework that regulates local elections.

The General Elections Law and the Local Councils Elections Law regulate the subject of candidature and qualifying conditions for candidates. This complies with Article 7/2 of the UNCAC, as follows:

#### **- Identification of eligibility for candidature in the General Elections and Local Councils Elections laws.**

##### **1- General Elections Law**

The General Elections Law<sup>53</sup> prescribes candidature conditions for presidency and membership on the Legislative Council as follows:

##### **- Candidature for presidency**

Article 36 of the law identifies eligibility conditions for candidature for presidency, including:

- 1- To be Palestinian, born to Palestinian parents
- 2- To be at least 40 years of age by Election Day
- 3- To be a permanent resident of the Palestinian Territories
- 4- To be registered in the final voter register and have met the voting eligibility requirements
- 5- To uphold the PLO as the sole and legitimate representative of the Palestinian people, the Declaration of Independence and provisions of the Basic Law

##### **- Candidature for the Legislative Council**

Articles 48\2 and 3 of the General Elections Law prescribe conditions for candidature to PLC membership, including:

- 1- To be at least 28 years of age by Election Day
- 2- Not to have been convicted of any felony or misdemeanor of breach of trust or honour

##### **- Eligibility for candidature in the Local Councils Elections Law**

Article 18 of the Local Councils Elections Law No. 10 of 2005 stipulates eligibility requirements for candidature for local council elections,

<sup>52</sup> This law has been annulled by the PNA president the Decree Law No. 1 of 2007, particularly Article 119.

<sup>53</sup> The General Elections Law means the currently applicable Decree Law No. 1 of 2007 issued by the PNA president, which annulled Law No. 9 of 2005.

#### Fourth: Candidature and election to public office

including:

- 1- To be at least 25 years of age by Election Day
- 2- Not to have been convicted of any felony or misdemeanor of breach of trust or honour
- 3- Not to be an employee (or staff member) or lawyer of the Ministry of Local Government, the security services or local councils, unless the application for candidature includes a resignation and its acceptance

#### **- Political (elections) campaigns; “electoral propaganda”**

The General Elections Law No.1 of 2007 and the Local Councils Elections Law regulate conditions for election campaigns, including:

- Specifying the time period for electoral propaganda
- Neutrality of the official media; and
- Neutrality of the Executive Authority

The law also regulates publicity in the media, granting equal media rights to all candidates. It imposes some restrictions on campaigns, such as libel, slander and defamation, and prohibits publicity activities in public places such as mosques, churches, near hospitals or in the premises of public institutions.

#### **- Requirements for declaration of financial status**

The Palestinian Basic Law explicitly stipulates the need for certain public officials to declare their financial status, particularly in Articles 54\2 and 80. Article 54\2 stipulates that PLC members must disclose their financial status, and that such declarations be deposited with the Higher Justice Court. Article 80 stipulates that the prime minister and ministers declare their financial status. These provisions address two matters: the financial status statement submitted to the PNA president, and avoiding conflict of interest in transactions or upon assuming public office.

The Illicit Gains Law (Article 11)<sup>54</sup> addresses the financial declaration of the PNA president, to be entrusted to the Higher Justice Court. Article 2 of the law identifies the groups which are subject to the declaration of financial status. Nevertheless, a comparison of Article 2 with Article 16 of the same law shows that the former stipulates that the president, prime minister, ministers, members of the Judiciary and PLC members must submit such declarations to the Higher Justice Court. Article 16\2, however, indicates that the Illicit Gains Commission may have access to these declarations by means of a request to the Higher Court. Thus the legislature causes confusions by stipulating that financial declarations must be submitted to the Higher Justice Court, whilst the request to review them must be submitted to the Higher Court. The two institutions are referred to interchangeably. It may be noted that the Higher Court consist of two chambers; the Higher Justice Court, which is an administrative court, and the Cassation Court, which is a court of law. The legislator stipulates in Article 16 that the submission of financial declarations by individuals other than those mentioned previously should be made to the same commission, meaning that the financial declaration be submitted to the

<sup>54</sup> The content of this article has not changed since Amendment No. 7 of 2010.

Illicit Gains Commission. This law is also criticized for not specifying any procedures for retaining these declarations or accessing them.

Articles 2, 16\2 and 8 of the Illicit Gains Law indicate that the Illicit Gains Commission is the competent authority to be entrusted with financial declarations. This is problematic because this provision is general, referring to the declarations of the president, prime minister and PLC members, although other articles indicate these declarations shall be kept at the Higher Justice Court, with no mention of submitting them to the Illicit Gains Commission. Thus, this article is only applicable to public employees other than those identified above. This formulation of the law is flawed and needs to be amended to clearly define the categories of officials who should submit their declarations to the Illicit Gains Commission.

The General Elections Law has no provisions for the declaration of financial status during the period of candidature. It is worth noting that regulations on the declaration of financial status are currently being drafted and are currently on the government's legislative agenda.

## **b- Practice**

Rules of eligibility for candidature for public office are clear and detailed in the General Elections Law, and are enforced in practice with no violations.<sup>55</sup>

Presidential, legislative elections and local elections have been conducted in the following manner:

- Presidential and legislative elections were held in 1996, in accordance with Elections Law No. 13 of 1995; positions were held for 10 years.
- Presidential elections were held in 2005 and legislative elections in 2006, in accordance with Elections Law No. 9 of 2005. It should be noted that the PLC term ended on 25 January 2010, but the political conflict and internal Palestinian division between the West Bank and Gaza Strip disrupted the legislative, presidential and local elections scheduled for that same day. This resulted in a legal problem pertaining to the presidential and legislative terms.

The local elections were scheduled for 17 July 2010. However, these were cancelled and postponed indefinitely by a decree of the Council of Ministers. In relation to the elections of charitable associations and non-governmental organisations, the Council of Ministers issued Decree No. 181 of 2004 stipulating that elections be held in non-governmental organisations. This resulted from the Law of Charitable Associations and Non-Governmental Organisations No. 1 of 2000 and its Regulation No. 9 of 2003.

Election campaigns have clear and specific rules and procedures that are implemented in practice and in accordance with the law, without any violation of the General Elections Law. The Central Elections Commission (CEC) has adhered to the criteria prescribed in the applicable elections law.

<sup>55</sup> Personal interview with Mr. Hisham Kuheil, CEC Executive Director, CEC headquarters, Ramallah, 18 January 2010.



#### Fourth: Candidature and election to public office

During the presidential and legislative elections of 2005 and 2006 respectively, some violations took place, although they were not serious breaches. These violations were dealt with and resolved in the electoral offices within the governorate centers, and no complaints were raised to the headquarters of the CEC. Complaints at this level would have represented a contesting of the decisions of electoral districts, since the CEC executive management constitutes the second stage in the complaints and contests process, and addresses them only if the electoral district's decision was incorrect, or if any of the candidates contests its decision. In such a case the complaint is submitted to the executive management of the CEC, which prepares a comprehensive file about the case. This is then submitted to the members of the CEC for them to examine and reach a decision. The Elections Court constitutes the third stage to resolve complaints and appeals, though it has received no appeals. Penalties do exist, but as yet the nature of recorded violations has not been serious enough to warrant their implementation.<sup>56</sup>

The CEC does not include a regulation for the financial disclosure of candidates amongst the requirements of candidature application.<sup>57</sup> The fact that the Illicit Gains Commission had not been established by the time of writing of this report,<sup>58</sup> despite the existence of a legal framework requiring this, complicates the possibility to enforce declarations of financial status for the categories subject to the commission's jurisdiction in accordance with the law.

Another shortcoming of the Illicit Gains Law is that it does not identify procedures for keeping declarations or accessing them. Moreover, it does not identify a single institution for receiving declarations. For example, the prime minister and ministers submit their declarations to the PNA president, while those of PLC members are kept at the Higher Justice Court, and those of other categories of public employees are submitted to the Illicit Gains Commission. The absence of one party that maintains all declarations is problematic with respect to the responsibility of receiving, keeping and organising access to these declarations, lack of harmonised procedures, and consequently the absence of an oversight body for these declarations, as well as the inability to update them regularly and the lack of serious follow-up to ensure compliance.

A simple reading of this section would show that the Palestinian legislation has regulated the subject of candidature to public office and the qualifying conditions for candidature and the mechanisms and procedures that should be followed in this respect. It has also regulated the subject of propaganda campaigns. However, the regulation of some matters, such as financial disclosure, is not wholly compliant with the requirements of the UNCAC. The regulation of this matter is unclear and contains ambiguities in some areas. Similarly, the means and mechanisms by which financial declarations may be retained are not clearly defined, and no single party responsible for dealing with this has been specified.

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<sup>56</sup> Personal interview with Mr. Hisham Kuheil, CEC Executive Director, Ramallah, 18 January 2010.

<sup>57</sup> Ibid.

<sup>58</sup> As mentioned earlier, the Commission was established and a director appointed in early 2010, although the law relating to this was issued in 2005. A law was subsequently issued regarding its amendment and it was renamed the Anti-Corruption Commission.

**Recommendations:**

- Enact a law that regulates political parties, election campaigns and sources of funding of campaigns and parties, despite concerns stemming from the fact that these parties are mostly resistance factions.
- Enforce penalties against violations of conditions for election campaigns in the Elections Law.
- Consider the Illicit Gains Commission the sole competent party for submitting declarations of financial status.
- Put in place and clarify procedures for keeping declarations of financial status and accessing them.
- Require all parties that must declare their financial status to submit declarations in a timely manner; data and files must be updated regularly.

**Fifth: Funding candidature for  
public office and political parties**

Article 7\3 of the UNCAC regulates funding of candidatures for elected public office and political parties. It stipulates that each state party shall take appropriate legislative and administrative measures to enhance transparency in the funding of candidatures for elected public office and the funding of political parties.

### **a- Legal framework**

At the time of writing this report, no law for political parties in Palestine had been enacted. This is due to a number of national and political considerations, the most significant of them being the continued Israeli occupation, lack of sovereignty, and the fact that most parties are PLO resistance factions. It is therefore difficult to have a law that regulates political parties under Israeli occupation. While several draft laws on political parties have been submitted to the PLC, they have been rejected because of these reasons, although legal grounds for the right to form political parties lie in the Palestinian Basic Law amended in 2003.<sup>59</sup>

#### **- Funding candidates**

Article 68 of the General Elections Law No. 7 of 2007 addresses the financing of election campaigns, and prohibits any direct or indirect funding from foreign or external non-Palestinian sources. The article obliges each electoral list or candidate to submit a detailed statement of all sources of campaign funding and expenditures. The law also entitles the CEC to request auditing statements by a certified auditor.

Article 69 of the General Elections Law No. 1 of 2007 limits spending for presidential election campaigns and electoral lists to US \$1 million.<sup>60</sup>

The Local Councils Elections Law stipulates that a detailed financial statement of the cost of the election campaign, sources of funding and items of spending must be submitted to the CEC no later than one month after the completion of the election process. The CEC may request a certified auditor to audit statements.

#### **- Penalties for violating provisions of expenditures and disclosure**

The General Elections Law imposes several penalties for violating expenditure and disclosure provisions. Article 111 of Law No. 1 of 2007 stipulates that 'imprisonment for a maximum period of six months and a fine of a minimum value of US \$6,000 or its equivalent in the currency legally used, or both penalties shall be imposed on any person who violates provisions of Articles 68 and 69 of the law; the court may remove the name of the perpetrator from the list of candidates and confiscate the funds.'

The Local Councils Elections Law does not prescribe specific penalties for failure to disclose funding sources and items to the CEC. However, it is possible to enforce Article 67\2, which states that 'a person who ignored, abstained from, overlooked or neglected any duty required by law is considered a perpetrator of an offense, unless a special penalty has been imposed'. Given that financial disclosure is one of the requirements of this law, it is possible to impose the sanctions of Article 67, despite the absence of an explicit provision in this regard.

<sup>59</sup> Article 26 of the Palestinian Basic Law amended in 2003.

<sup>60</sup> Article 69 of the General Elections Decree Law No. 1 of 2007.

## **b- Practice**

The General Elections Law imposes some restrictions on election campaigns in terms of foreign or external funding sources and a spending ceiling. The law, however, does not provide the CEC with procedures that would enable it to perform the necessary control function to ensure enforcement of the relevant legal provisions.

Nevertheless, several violations have been identified in the campaigns of some candidates, such as using government vehicles, telephones and staff.<sup>61</sup>

Article 68 of the General Elections Law addresses funding sources and requires candidates to submit detailed statements that include funding sources and expenditure items. However, in practice candidates' expenditure statements do not include funding sources for their election campaigns, as there is no clear system that authorizes the CEC to oversee funding sources, amid the absence of a law for political parties. Further, the CEC does not have the technical capacity to perform this task, which requires many employees. Moreover, CEC staff lacks the necessary training and skills to perform such a control function.<sup>62</sup>

A review of the General Elections Law reveals the absence of binding provisions for the CEC to publish its reports on funding sources. Nevertheless, the CEC has published on its website financial reports that cover expenditure items for winning candidates, out of its belief in transparency and integrity.

Regarding penalties for violating provisions of expenditures and disclosure in elections laws, penalties were imposed on four candidates who violated provisions of the law and refrained from disclosing expenditures during the presidential and legislative elections in 2005 and 2006. The CEC submitted its cases to the Attorney-General for legal action, along with the case of one candidate who exceeded the expenditure limit.<sup>63</sup>

### **Recommendations:**

- Enact legislation for political parties identifying their obligations, particularly in relation to the funding of election campaigns. Although enacting such a law would be difficult, it is possible to have regulations that set procedures for funding election campaigns based on the General Elections Law, which grants the CEC the competence to issue regulations without reference to the Council of Ministers.
- Compel candidates to submit detailed statements on funding sources for election campaigns.
- Enforce penalties stipulated by the General Elections Law for violations of disclosure requirements.
- Issue CEC regulations for funding sources for election campaigns until a law on political parties is enacted.

<sup>61</sup> AMAN, *The National Integrity System*, Ramallah, Palestine, 2009, 56.

<sup>62</sup> Personal interview with Mr. Hisham Kuheil, CEC Executive Director, Ramallah, 18 January 2010.

<sup>63</sup> Personal interview with Mr. Hisham Kuheil, CEC Executive Director, Ramallah, 18 January 2010.

## Sixth: Conflict of Interest

## Sixth: Conflict of Interest

Article 7\4 of the UNCAC addresses the issue of conflict of interest. It states that 'Each State Party shall endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest through providing clearly defined disclosure procedures that include organising the process of recording cases of conflict of interest, and imposing appropriate penalties on pertinent violations.'

### **a- Legal framework**

Palestinian laws address the issue of conflict of interest in a non-systematic fashion. Article 80 of the Basic Law refers to conflict of interest in relation to the prime minister and ministers. The absence of regulations and instructions that help to enforce these provisions, however, is problematic.

The Illicit Gains Law, particularly Article 11\2, addresses this issue with respect to the PNA president. It forbids the PNA president to buy, lease, sell, grant or give away as a gift any state property or any public legal entities, or to have any financial interests in any contract signed by any government or administrative parties. During his presidential term, the president is not permitted to become a member of any board of directors of a company, practice trade or any other profession. Neither may he receive any salary, reward or grant from any other person or in any other capacity than in his role as president.<sup>64</sup>

Article 54\1 of the Basic Law reflects this with regard to PLC members, stating that 'it is not permitted for Legislative Council members to abuse their membership in any private business and in any form'. Within the same context, the Law on Duties and Rights of Members forbids PLC members to buy, rent or lease any state property or to sell, barter or reach a contract pertaining to any of his personal property as a provider, supplier or contractor.<sup>65</sup>

The Palestinian Civil Service Law No. 4 of 1998 and its amendments also mention the issue of conflict of interests in article 67, which prohibits employees from combining two positions, or abuse of office for personal interest or gain, or accepting gifts, rewards, grants or commissions for performing their functions.

The law, however, does not prescribe establishing a department or institution responsible for recording or notifying of cases of conflict of interest, gifts or donations. Personnel departments at various ministries stipulated by the Civil Service Law, in coordination with the General Personnel Council, should perform this function.

It is worth noting that the SAACB Law No. 15 of 2004 explicitly addresses the issue of conflict of interest with respect to the director, the deputy and the general manager of the Bureau, and prohibits them from assuming any other job.

Several other laws address conflict of interest in a less methodic manner. These include the Monetary Authority Law, Investment Promotion Law, Industrial Estates and Free Zones Law, Labor Law, Water Law, Banks Law,

<sup>64</sup> Article 11\2 of the Illicit Gains Law No. 1 of 2005.

<sup>65</sup> Article 4 of the Law on the Duties and Rights of Members of the Legislative Council No 10 of 2004. See also AMAN, *Conflict of Interest in the Palestinian National Authority*, Series, Report No. 12, 2007, 8.

## Sixth: Conflict of Interest

Capital Markets Authority Law, Civil and Commercial Procedures Law, Charitable Associations Law and the Auditing Profession Law.

On the other hand, some laws overlook the issue of conflict of interest, including the Local Councils Law No. 1 of 1997, Public Procurements Law No. 9 of 1998 and the Public Tenders Law No. 6 of 1996.<sup>66</sup>

In general, laws addressing conflict of interest do not contain regulations or procedures that contribute to their implementation and no mechanisms for overseeing compliance by institutions and individuals. Further, there is no effective body to verify conflicts of interest, record incidents or impose penalties against violations.

### **b- Practice**

Despite numerous legal provisions that indicate the need to avoid conflict of interests – including those in the Basic Law (the protector and source of all rights) and other laws mentioned earlier – in practice there are no clear, specific procedures that enable avoiding or detecting such conflicts. Furthermore, there are no regulations or detailed instructions for investigation processes and no oversight body with the competence to control and impose penalties for violations.

While Article 67 of the Civil Service Law forbids civil servants to abuse office for personal gain, no regulations or restrictions on receiving gifts or registries for gifts have been put in place. There is no party or department that registers gifts, and this issue is addressed in a dispersed and sporadic manner in Palestinian laws.

Consequently, Palestinian laws partially conform to the UNCAC but are lacking in certain aspects, such as the absence of registry offices or commissions, and effects to detect and verify such acts.

The issue of conflict of interests is not ignored in the Palestinian Basic Law, amended in 2003. Neither can this be said to be the case in other Palestinian legislation, despite the fact that some important laws lack a section relating to this subject. In general, the legislation is faulted for failing to identify a single party responsible for monitoring the issue or specifying the mechanisms that would help to reveal it or even to regulate it more closely. The departments responsible for pursuing the matter are not identified, which makes it impossible to investigate a conflict of interests in public institutions.

<sup>66</sup> AMAN, *Conflict of Interest in the Palestinian National Authority*, previous reference, 15.



**Recommendations:**

- The Council of Ministers should issue regulations or instructions on conflict of interest. These should identify procedures and measures to regulate the issue and to register gifts, donations and benefits. It should also create instructions and regulations stipulating the need for disclosure in cases of conflict of interest.
- Identify a competent authority or activate existing bodies within the civil service in charge of controlling, overseeing, monitoring, reporting and providing directives related to conflict of interest. This body should develop procedures to detect cases of conflict of interest and to register gifts.
- Amend some Palestinian laws to include conflict of interest, including the Local Councils Law, Public Procurements Law, Public Tenders Law and Income Tax Law.
- Add provisions on penalties for unreported conflicts of interest.

# Seventh: Codes of Conduct for public officials

Article 8, paragraphs 1, 3 and 6 of the UNCAC prescribe codes of conduct for public officials. They indicate that state parties shall promote principles of integrity, honesty and responsibility among public officials, and require state parties to inform their citizens of the relevant initiatives of regional, interregional and multilateral organisations, such as the International Code of Conduct for Public Officials, and to take disciplinary and other measures against public officials who violate these codes.

## **a- Legal framework**

### **1- The Circular on the duties and conduct of public employees**

The Civil Service Bureau issued a circular on the duties and conduct of employees on 31 December 2005, identifying the obligations and prohibitions imposed on employees. The circular addresses all ministries and prescribes that public employees must perform their duties and respect the public. It prohibits combining public office with any other employment and abusing public office by receiving gifts, rewards or donations in return for performing functions. The circular also addresses the need to build skills and capacity, and the need for public employees to submit proposals for improving competence and performance.<sup>67</sup>

This circular does not identify procedures or executive or control measures to implement these rules. Nor does it specify the competent party for enforcement, since the General Personnel Council is responsible for the civil service. The circular also does not identify any disciplinary measures for violations, possibly because the Civil Service Law addresses these.

### **2- The code of conduct of ministers at the PNA**

The General Secretariat of the Council of Ministers has developed and distributed a code of conduct for PNA ministers for implementation. This is in conformity with the UNCAC requirement to have a code of conduct for public officials. This document, however, has not been approved at the legislative level.

### **3- Code of conduct for public employees**

AMAN, in cooperation with MIFTAH (the Palestinian Initiative for Global Dialogue and Democracy), has developed the Principles of a Code of Conduct and Ethical Standards for Public Employees. It was signed by the Union of Public Employees, Teachers Union and the Health Services Union during AMAN's 2006 annual conference. This code has several goals, including:

- Identifying criteria for the desired conduct and ethics of employees working in government departments
- Promoting professional criteria and ethical conduct

The code also addresses the role of senior officers in those departments in a manner that conforms to Article 8 of the UNCAC, as it identifies the following principles for their conduct:

- Adopt and promote codes of conduct and incorporate these into training sessions for employees of various levels;
- Identify scales and functions for various departments, and job

<sup>67</sup> See the official website of the General Personnel Council: [www.gpc.gov.ps](http://www.gpc.gov.ps)

descriptions and mandates for employees; and

- Adopt and publicize measures for employment and promotion that preclude political intervention.

The code also addresses the role of senior administrative staff, which includes:

- Refraining from using public property and resources for the benefit of specific parties and for special political and social considerations;
- Departments shall train employees on the content of the right of citizens to access to information.<sup>68</sup>

The code also addresses the relationship between governmental departments, conflict of interests, general principles for the conduct of employees and functional and political neutrality. The code, however, has neither been disseminated nor officially approved by the government, nor have the employees responsible for its implementation received any relevant training.

#### **4- Local councils code of conduct**

The local councils' code of conduct includes the following principles:

- Strengthen citizens' relations with their local councils through active participation in defining priorities and activities
- Identify criteria and restrictions which both council members and staff must adhere to
- Avoid conflict of interest
- Encourage local councils and local communities to report any malpractice to local council members or staff.<sup>69</sup>

These codes largely comply with the UNCAC, as they identify the responsibilities of employees and address the role of senior officers in public institutions. However, most if not all codes fail to define a single party responsible for implementation and oversight of violations. These codes are weak because they do not identify procedures or executive parties that monitor violators or hold them accountable.

Consequently, one may conclude that while these codes conform to the general approach of the UNCAC, they violate in particular paragraphs 3 and 6 of Article 8, which stipulate that state parties shall inform their citizens of relevant initiatives taken by states. Furthermore, there is no code of conduct for senior officials in the executive.<sup>70</sup>

#### **b- Practice**

The government has not officially circulated a comprehensive code of conduct for public employees, except for the previously mentioned circular issued by the General Personnel Council. This is little more than

<sup>68</sup> For further information see: AMAN, MIFTAH, *Principles of Code of Conduct of Public Sector Employees*, 2007, 44.

<sup>69</sup> AMAN, *Integrity, Transparency and Accountability against Corruption*, 1st Edition, Ramallah, 2007, 44.

<sup>70</sup> AMAN, *The National Integrity System*, Previous reference, 41.

a manual of employees' duties that lacks any means of enforcement, compulsion or identification of a monitoring body, although this should be the General Personnel Council itself, which issued the circular.

The above-mentioned codes do not identify an enforcement body that identifies violations or imposes disciplinary measures for them.

The circular issued by the Civil Service Bureau addresses capacity building and skills development. The code of conduct of public sector employees adopted by several trade unions has not been approved or disseminated by the government, nor have any of the other codes. The code of conduct of ministers has been prepared and disseminated to ministers in the Palestinian government, but it has not passed through any legislative channels.

A number of codes of conduct have been prepared, whether in relation to public officials, the private sector, the charitable sector or to ministers. However, none of these codes of conduct have been formally adopted for implementation, as stipulated by the UNCAC. In addition to this, the codes do not specify any means and mechanisms for effective implementation.

### **Recommendations:**

- The Council of Ministers should make the code binding on all public employees without exception. So long as codes of conduct do not have any governmental or legislative framework, they are meaningless.
- The Council of Ministers should designate a department at the Civil Service Bureau or Council of Ministers to monitor the implementation of and compliance to the code of conduct.
- Effective procedures and measures to monitor implementation of these codes should be established.
- Codes of conduct should include measures for continuous training of staff.
- Clear measures for raising awareness of these codes should be installed.

## **Eighth: Whistle-blowing**

Articles 8\4, 32 and 33 of the UNCAC focus on whistle-blowing in corruption cases. They stipulate that state parties shall establish measures and systems to facilitate the reporting by public officials of acts of corruption to the appropriate authorities when such acts come to their attention while performing their functions. Parties shall also establish appropriate measures to protect those who report acts of corruption.

### **a- Legal framework**

Whistle-blowing is addressed in a relatively unsystematic fashion in Palestinian legislation. The laws that refer to whistle-blowing include:

#### **1- State Audit and Administrative Control Bureau Law**

This law, particularly Articles 35 and 44, obliges financial auditors to report any financial violation of payment procedures. It stipulates that all parties subject to the mandate of the Bureau must report any financial or administrative violations.

#### **2- Illicit Gains Law**

In accordance with the UNCAC, Article 19 of the Illicit Gains Law stipulates that public employees are obliged to report illicit gains that come to their attention while performing their functions. The Article also imposes restrictions that prevent harassment, disciplinary measures or other means of affecting the positions of whistle-blowers.

#### **3- Anti-Money Laundering Decree Law**

Article 14 of this law stipulates that financial and non-financial institutions and businesses must report any transaction or revenues suspected to be the outcome of a crime or an act of money laundering to the PMA's Financial Monitoring Unit. Palestinian legislation also grants citizens and public officials the right to submit complaints or report cases of corruption or financial or administrative misdemeanour. Each complaint should be submitted to the authority to whom the law has granted the relevant competences to respond to the complaint.

The laws, however, do not identify a single party responsible for receiving reports on acts of corruption. Furthermore, most laws do not address the issue of comprehensive protection for whistle-blowers in this respect.

These Palestinian laws partially conform with the UNCAC, particularly Articles 8\4, 32 and 33, in terms of reporting in general, but they do not conform in terms of adopting measures for reporting.

### **b- Practice**

The Anti-Money Laundering National Committee and the Financial Monitoring Unit have been put in place. The latter has issued a number of circulars to banks, including circulars on reporting money laundering and suspicious transactions. The committee has also prepared reporting forms and relevant guidelines.<sup>71</sup> The General Personnel Council obliges the institutions subject to its mandate to report any financial and administrative violations. The Illicit Gains Commission had not yet been

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<sup>71</sup> Interview with Mr. Riyadh Aweidah, Director of the Financial Monitoring Unit on 14 January 2010.

## Eighth: Whistle-blowing

established as of the time of writing this report, despite efforts by the Council of Ministers.

The Palestinian legislation has been faulted for its failure to identify a single party specifically dedicated to corruption issues and to receiving reports about corruption. This may change, following the decree of the Amendment to the Illicit Gains Law, which became the Anti-Corruption Law, following the Decree of Law No. 7 of 2010. With this, an anti-corruption institution was established. It is likely that this institution will undertake the relevant tasks and the procedures necessary to receive reports about corruption and to protect the persons who submit these reports.

### **Recommendations:**

- Establish clear and specific procedures for reporting acts of corruption, especially in the civil service, and establish clear measures for investigating reports.
- Identify a single party responsible for receiving reports on acts of corruption in order to facilitate follow-up, investigation and the taking of appropriate action.
- Laws must grant protection to people who report acts of corruption from any penalties, when such reporting is made in good faith.
- Accept anonymous reports of acts of corruption, due to the absence of sufficient institutional protection for those who report them.



## **Ninth: Public procurement**

Article 9\1 of the UNCAC regulates public procurement. It stipulates that state parties shall take measures necessary to establish appropriate procurement systems based on transparency, competition and objective criteria in decision-making that are effective in combating corruption. These steps shall conform to certain basic standards such as the procedures for distributing information about contracts, publicising conditions for competition and effective systems of internal review.

### a- Legal Framework

The legal framework that regulates public procurement in Palestine consists of the Law on General Supplies No. 9 of 1998, Instructions No. 1 of 1999 on Public Procurements and the Law on Tenders for Governmental Works No. 6 of 1999.<sup>72</sup> The Central Tenders Department was established by virtue of these laws. According to Article 3 of Law No. 6 of 1996, the department's competences include the authority to supervise, monitor and classify contractors; to audit and analyze tenders for provision of governmental works and technical services and to harmonize public contracting conditions.

According to Article 6 of this law, the following three committees shall be formed:

**1- Central Tenders Committee:** This committee has a broad mandate, including government buildings, water, irrigation, wastewater and dams. It was first established by a Council of Ministers decision on 2 August 2002, reestablished by the Council of Ministers Decision No. 57 of 2004, and reestablished by Decision No. 123\2005.<sup>73</sup>

**2- Departmental tenders committees:** These committees shall be formed in each department and are competent to call for tenders whose value does not exceed US \$150,000.

**3- Governorates' tenders committees:** These committees are formed in each governorate and are competent to call for tenders whose value does not exceed US \$25,000.

Chapter 3, Article 5 of the Law on Tenders for Governmental Works No. 6 of 1996 identifies the rules on tenders, stipulating they must be announced in daily newspapers, that the principle of competition must apply and that the best tenders must be awarded.

Article 5 of the law stipulates that information be made public in a timely manner, indicating the need for advertising tenders in the local daily newspaper. More recently some tenders have been advertised on the official websites of relevant ministries. The law identifies clear restrictions and conditions on participation and decision-making. However it does not identify an effective review system or means of submitting complaints to the Central Tenders Committee, which deprives bidders of the most important right in this respect, although the Basic Law grants the right to appeal administrative decisions.

The law does not identify an independent body for regulating special procurement procedures. However, the Central Tenders Department at

<sup>72</sup> AMAN, *Governmental Tenders*, Ramallah, 2008, 3.

<sup>73</sup> AMAN, *Palestinian Anti-Corruption Policies and Legislations, Analytical study*, Ramallah, 1st Edition, 2008, 62.

the Ministry of Public works has been established. This department has its own system and the directorates necessary for performing its duties.<sup>74</sup> Nevertheless, a draft 'unified' public procurements law, which is in its final phase, stipulates the formation of an independent procurement body.

At another level, Article 17 enables contracting, either through invitation for offers or through direct contracts in certain cases. Such tenders, though, must be restricted to extreme necessity.<sup>75</sup>

The law does not address the need for employees working on tenders, bids and contracts to disclose their financial status. Nor does it clearly identify a specific party to whom grievances, appeals against awards, requirements or committees' decisions may be addressed. This contravenes Article 9\ d of the UNCAC, which requires the establishment of an effective system of appeals.

The law clearly obliges employees to report cases of corruption during tenders but does not provide them with any protection upon such reporting.<sup>76</sup>

### **b- Practice**

The Central Tenders Department was first set up at the Ministry of Public Works in accordance with the Law on Tenders for Governmental Works No. 6 of 1999, as well as the Central Tenders Committee and the department committees. Article 14 of this law, however, stipulates forming technical committees at the Central Tenders Department as well as in other departments. This is problematic since the Central Tenders Department in fact participates in the composition of these committees with the relevant ministries because of the lack of qualified staff.<sup>77</sup> Relevant ministries adhere to the various interconnected and sequential stages of announcing tenders and identifying requirements, including advertising in local newspapers<sup>78</sup> and preparing the tender booklet, which includes specifications and conditions. There is a problem related to defining specifications and the existence of such Palestinian specifications for local products. These are mainly the responsibility of the Palestinian Standards Institution (PSI).

The standards for decisions about examining tenders and the conditions for awarding them,<sup>79</sup> as defined in the booklet, the technical committee and all other stages, show complete compliance with all requirements of the law.<sup>80</sup>

According to the law, a committee shall be formed in each department with the mandate to receive wares from suppliers. However, there is often

<sup>74</sup> Article 2 of Law No. 6 of 1999 Concerning Tenders For Governmental Works.

<sup>75</sup> Personal interview with Eng. Bassam Jaber, Acting Director of the Central Tenders Department, Ministry of Public Works, 13 January 2010.

<sup>76</sup> AMAN, *Governmental Tenders*, 8.

<sup>77</sup> Personal interview with Eng. Bassam Jaber, Acting Director of the Central Tenders Department, Ministry of Public Works, 13 January 2010.

<sup>78</sup> Ibid.

<sup>79</sup> It is possible to note here that these standards and conditions include recommended pricing, quality, the most competitive offer and the ability to deliver within the specified time period.

<sup>80</sup> Personal interview with Eng. Bassam Jaber, Acting Director of the Central Tenders Department, Ministry of Public Works, 13 January 2010.

a problem related to the lack of technical expertise within the committees responsible for receiving goods and their inability to verify that the supplies conform to the specifications identified in the tender booklet.

The State Audit and Administrative Control Bureau (SAACB) oversees tenders; it attends and has the observer capacity at tenders.<sup>81</sup> The Ministry of Finance conducts internal financial control and only permits payment after auditing all relevant documents.

The main procurement-related problems to be addressed are:

- 1- The lack of qualified staff, particularly in setting technical requirements, evaluation, oversight and monitoring.
- 2- The clear lack of expertise and competence of technical committees, particularly in highly technical areas.
- 3- The absence of effective control systems on all tenders, and the ineffective and unclear role of internal control units.

In Palestine, a framework regulating public procurements exists both in theory and practice. However, it does require some improvement to make it more effective and in better conformity with best practices. Amongst the criticisms made about the framework is that it does not specify a single complaints mechanisms for cases of corrupt tenders. Neither does it identify any mechanism for reporting corruption, despite the fact that this is emphasized by the law and those working in the field. In addition to this, the law needs to be harmonised; something that is likely to take place during the final stages of the preparation of the public procurement law.

### **Recommendations:**

- Harmonize laws regulating tenders and jobs in one law on the government's public procurements. The relevant draft law is in its final stages, and should take into consideration the shortcomings of previous laws.
- Set up a central and independent body or commission responsible for government tenders.
- Avoid conflict of interest at the committees, so no members have any direct interests related to any tender submission.
- Train staff responsible for overseeing tenders.
- Install clear procedures and measures for appeals and grievances.

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<sup>81</sup> Ibid.

# Tenth: Management of public finances

Article 9\2 of the UNCAC regulates management of public finances, stating that each state party shall take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass procedures for adopting the national budget, timely reporting on revenues and expenditures, a system of accounting and auditing standards, and related systems of risk management.

### **a- Legal framework**

The Ministry of Finance constitutes the major institution that addresses financial affairs, including collecting taxes and direct and indirect fees, expenditures and accounting, preparing budgets and submitting them to the PLC for approval, and issuing regulations and instructions that regulate financial affairs.

The PNA has issued laws that regulate public finances and their management, including the important aspects of estimating expenditures and revenues and controlling disbursement processes. These laws include the Palestinian Basic Law, which addresses preparing the PNA general budget; the Financial System of Ministries and Governmental Institutions No. 43 of 2005; and PLC Bylaws on procedures for approving the general budget.

The General Budget Law No. 7 of 1998 stipulates that the Council of Ministers prepares a draft general budget law and submits it to the PLC at least two months prior to the beginning of the fiscal year.<sup>82</sup>

The PNA, particularly the MOF, established the position of Public Auditor in accordance with Decree Law No. 3 of 2008, amending the Law Regulating the General Budget and Financial Affairs No. 7 of 1998. The Public Auditor is responsible for supervising the unified accounting system, in which all transactions pertaining to implementing the budget are conducted, starting with budget entry until issuing final accounts. This includes financial orders, monetary projections, transactions, disbursements, collections, accounting records and liabilities. It also includes control measures in and around the system, and issuing all necessary financial reports and data, and registering assets.

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<sup>82</sup> According to Law No. 7 of 1997, the General Budget Department prepares the annual draft budget of ministries, public institutions and PNA institutions, including the financing budget. The Public Accountant is responsible for implementing the budget in accordance with Law No. 3 of 2008 amending the Law Regulating the General Budget and Financial Affairs. See the mandate of the Public Accountant mentioned earlier in this report. Article 3 of Law No. 7 of 1997 prescribes the following measures for submitting the general budget:

The Council of Ministers submits the general budget draft law to the PLC at least two months prior to the beginning of the fiscal year.

The PLC refers the draft law to the Budget and Financial Affairs Committee to examine and provide detailed opinion, and submits its recommendations back to the PLC.

PLC holds a special session to discuss the general budget draft law in light of the recommendations of the committee; it either approves the draft law with amendments before the beginning of the fiscal year, or returns it to the Council of Ministers within a maximum period of one month from the date it had been initially submitted, accompanied with the PLC comments, and in order to incorporate the required amendments and send it back to the PLC during a maximum period of two weeks to approve it.

Each chapter of the budget is subject to separate voting,

In a manner that is not in contravention with the law, it is only admissible to shift items of the budget in between chapters with PLC approval.

This system aims to improve management control and transparency in the management of public finances in line with the UNCAC, particularly Article 9\2.

This compliance is strengthened by the modernization of the financial and accounting systems which brings them into conformity with international accounting standards. Also, the system works to attain optimal management of public treasury accounts by implementing a monthly cash-flow plan and introducing the concept of a unified treasury account, and the accompanying zero-sum accounts.

Moreover, the system aims to identify the immediate and future financial status of the treasury and ensures the timely availability of sufficient liquidity. This is a requirement of the UNCAC, as it enhances efficient public debt management. There has been a shift from the conventional concept of partial control to the concept of total control, based on the actual need for disbursing allocations and linking them to desired results.

The Financial System of Ministries and Governmental Institutions No. 43 of 2005 is a financial manual that identifies the financial and accounting principles and rules, as well as competences and mandates. It identifies receipts, documents, models and records, and rules for financial bookkeeping<sup>83</sup> to which ministries must adhere, in line with Article 9\2 of the UNCAC. It also addresses procedures for preparing the general budget, recording revenues and expenditures, transferring and collecting revenues, keeping cash amounts, rules of spending and disbursement, and types of expenditures and rules for implementing agreements. It also prescribes establishing internal financial auditing units, internal control units and internal controllers at ministries. Article 12 identifies procedures for retrieving documents, and Article 14 prohibits destroying documents without obtaining the necessary approvals.

Article 11 of the Public Debt Law No. 24 of 2005, which regulates public debt, grants the Minister of Finance the power to borrow on behalf of the government, pending approval of the Council of Ministers. The law also sets a maximum ceiling for borrowing. Article 39 prescribes the need to submit foreign debt agreements to the PLC for approval, subject to publication in the official Gazette. This has also been asserted in Article 92 of the Basic Law.<sup>84</sup>

Several decrees pertain to management of public finances, including on procedures for contracting suppliers of ministries and public institutions, linking financial control and financial auditing departments at ministries and public institutions to the MOF, and unifying the payroll administration.

The Palestine Investment Fund (PIF) plays a significant role in managing public finances, as it constitutes a main tool for managing PNA funds. The PIF started operations effectively in 2003, after a number of PNA trade and investment assets were transferred to and consolidated at PIF, which has assumed full responsibility for them. It manages the assets in a manner that contributes to economic development and preserves them as national and strategic reserves, ensuring adequate returns to the PNA Treasury. The PIF currently operates as a limited public shareholding

<sup>83</sup> Article 11 of the Financial System identifies procedures and methods for record-keeping.

<sup>84</sup> AMAN, *Palestinian Anti-Corruption Policies and Legislations*, previous reference, 62.

company owned by the Palestinian people. It is financially and administratively independent, with an independent board and general assembly. The PIF manages several investment portfolios and specialised affiliate companies, which in turn invest in a number of important enterprises. The PIF is managed in a highly professional manner, based on sound principles of transparency, accountability and governance, thus providing a distinctive administrative and investment model. It is under the supervision of a board of administration consisting of seven qualified and experienced members. It also has a general assembly consisting of 30 Palestinian members with long-established experience from the public and private sectors, including a number of representatives of private and public institutions as well as civil society leaders.<sup>85</sup>

## **b- Practice**

In practice, the procedures of managing public finances face the following problems:<sup>86</sup>

- Poor transparency in managing revenues and expenditures due to non-compliance with submitting the draft budget law on time and the lack of commitment to procedures of participatory budget preparation. Since 2006 (the 10th government) until now, no budgets have been approved by the PLC because it is dysfunctional, and budgets are only approved by the PNA president. In the Hamas-controlled Gaza Strip, there is no implementation of a budget in the legal sense.
- The absence of regular financial reporting to the PLC, as governments have not complied with the requirement to submit quarterly or semi-annual reports.
- Subsequent Palestinian governments have not presented regular final accounts.
- Frequent lack of adherence to certain requirements of the General Budget law relating to the presentation of information.
- Absence of verified information about the PNA's financial performance.
- Deterioration of the PLC's role in financial control.

It should be noted that within the context of the Palestinian Reform and Development Plan adopted by the current government, the financial regulation of the Ministry of Finance has been renewed and work was begun on this in the beginning of 2008. This is regarded as one of the most modern financial regulation systems complying with international accounting standards. One of its most important advantages is that it enables the submission of quarterly or annual financial reports on the financial situation of the PNA. This permits the Ministry of Finance to demonstrate their commitment to submit final and unified reports.<sup>87</sup>

In general, the financial regulation of the PNA shows a clear and continuous improvement, particularly after the renewal of the position of the Public

<sup>85</sup> See [www.pif.ps/index.php?lang=ar&page=124402202521](http://www.pif.ps/index.php?lang=ar&page=124402202521)

<sup>86</sup> AMAN, *The Financial Performance of the Palestinian National Authority - Revenues and Expenditures in 2006 and the First Half of 2007*, Ramallah, August 2007, 10-11.

<sup>87</sup> State Audit and Administrative Control Bureau, *2008 Annual Report*, previous reference, 182.



Auditor and the implementation of the unified accounting system and the accounting systems that correspond to international auditing standards. However, the financial administration is criticised for its failure to submit the General Budget to the Legislative Council, due to the fact that this has not met for political reasons. Also, it has in some cases failed to fulfil its commitment to submit regular reports and the Palestinian governments have failed to submit a final declaration. This is despite the fact that some progress has been made, given the submission in 2009 of a final account to the PNA for the year 2008.

**Recommendations:**

- Submit the PNA General Budget Law in a timely manner and in accordance with the law
- Present PNA final accounts regularly
- Present and disseminate quarterly and semi-annual reports
- Present documented and timely information and reports about the PNA's financial performance
- Conduct legislative elections
- Maintain the independence of the Public Auditor.

# Eleventh: Transparency in public administration

Articles 10 and 13\1 of the UNCAC address transparency in public administration, stating that each state party shall take measures to enhance transparency and accountability, facilitate public access to information about the organisation and decision-making processes of its public administration, simplify administrative procedures in order to facilitate public access to the competent decision-making authorities, and publish relevant information. Each state party shall take measures within its means that promote the active participation of civil society organisations in the prevention of corruption, through raising public awareness regarding the concept and different forms of corruption.

### **a- Legal framework**

A basic condition for the success of any effort to fight corruption is the availability of a database that provides information about the activity of the administration. The Palestinian Central Bureau of Statistics (PCBS), regulated by the Law on Public Statistics, constitutes an advanced database on the population, economy, media, culture, labor, unemployment, development and various social topics. Such data informs about the Palestinian society and context, enables informed diagnoses, detects progress, strengths, weaknesses and shortcomings, and enables action for change and development.

Specialised websites and networking possibilities that link government institutions with radio and television stations, newspapers and magazines as well as other media outlets and networks provide an enormous information network that is conducive for social dialogue and interaction in Palestine. These provide a real opportunity for intervention and wide participation in decision-making processes. For example, it is possible to access the annual budget from the MOF website, and laws and draft laws from the PLC website. This applies to all institutions.

Public administration is a very broad subject that includes all ministries and government institutions. This section will provide a brief summary of transparency in public administration and how some administrations address the issue.

#### **1- The Executive (Council of Ministers and Presidency)**

The Basic Law is the foundation that regulates both parts of the executive: the president and Council of Ministers. In practice, though, there is no law that regulates the operations of the Council of Ministers, but merely the Council of Ministers' Bylaws, which regulate its operations, decision-making processes, dissemination of decisions, meetings and other issues. Similarly, no law or regulation regulates the operations of the presidency, except for the Basic Law. Furthermore, laws that oblige the executive to submit periodic reports to any party are ambiguous, although there are laws that oblige various ministries to report to some parties regularly. In general, the Council of Ministers publishes all of its decisions on its website.

Review of administrative decisions by government departments is one of the rules of constitutional accountability adopted by the Basic Law. According to the law, these decisions must be based upon, supported by and justified with reference to a mandate granted by law. Individuals and parties affected by an administrative decision are entitled to appeal

it to the Higher Justice Court. In this context, the PNA Official Gazette (Al-Waq'eh) plays a major role in publishing certain administrative decisions.

## **2- The Legislature**

The PLC's Bylaws, as well as the Law on the Rights and Duties of the Members of the Legislative Council, constitute the legal framework that regulates PLC operations, in addition to pertinent articles of the Basic Law. PLC Bylaws regulate its meetings, tasks, operations, the tasks of its committees, voting and other issues. The Bylaws also stipulate publishing laws in the Official Gazette and provide for the possibility of publishing the minutes of confidential sessions if the absolute majority of the PLC vote to support this. The Bylaws (Article 100 and thereafter) provide for the possibility for any citizen to submit petitions or complaints to the PLC and stipulate that petitions and complaints be recorded, receive a serial number according to the date of receipt, include the name, profession and place of residence of applicant, and a summary of the subject. The PLC Speaker may order that petitions and complaints that do not fulfill the required conditions be left on file and that the applicant be notified. The PLC may request clarifications from ministers about petitions. It is not accountable to any other power, and no law binds the PLC to report to any other party or power.

## **3- The Judiciary**

The Judicial Authority Law regulates the operations of the judiciary, stipulating that court hearings must be public and that judges must provide justifications for their decisions. The Higher Justice Court has the competence of reviewing administrative decisions, as the Basic Law does not grant immunity from appeals to any administrative decision. The Judicial Authority submits annual reports to the president, which are available to the public on the website of the Supreme Judicial Council. Every citizen has the right to access a copy of his own file. Furthermore, some laws such as the Civil and Commercial Procedures Law entitle all citizens to obtain copies of decisions. However, there is a question as to whether justice can be administered merely through access to knowledge and information, and amid the absence of a protective framework.

To answer this question, it is noted that the Palestinian legal framework is deficient at the legislative level, given that, other than the legal stipulations implied by international laws or conventions,<sup>88</sup> there is no national law that grants the right of unlimited access to information from its source. Despite the absence of such legislation, Palestinian laws address this subject sporadically, in the Publications and Publishing Law, Public Statistics Law, Environment Law and others.

## **b- Practice**

Despite progress in the PNA's anti-corruption agenda and the establishment of some institutions that help disseminate certain relevant information to the public, the concept and nature of files classified as public had not been identified as of the writing of this report. In practice, no

<sup>88</sup> This refers to the commitments permitted by internal laws and international conventions such as the International Statement of Human Rights and the International Covenant on Civil and Political Rights and conventions concerning the rights of ethnic minorities. These commitments include the right to possess private property, the right to security-related information, financial security, security, public order and public health.

## Eleventh: Transparency in public administration

legislation so far regulates the procedures for obtaining such information. A draft law on freedom of access to information was prepared in 2005 but has not yet been approved. The PLC does not publish periodic reports on its activities to the public and has no regular newspaper, newsletter, or radio or television station. Though PLC sessions are open to the public, committee meetings are confidential. Nevertheless, it is customary for the office of the Speaker to submit reports about PLC achievements from the previous session, and the PLC publishes decisions, laws and draft laws on its website.

In practice, all decisions related to the executive are either published on relevant websites or in the Official Gazette. The reviewal process for administrative decisions is also applied in practice. It is noted, however, that citizens refrain from contesting these decisions because of a lack of public awareness.

The Judicial Authority submits its annual reports to the president, and they are accessible to the public. It also publishes decisions by the Higher Court on its website. It is possible to appeal court decisions in accordance with the law, and to do so at the Constitutional Court in case of a violation of the Constitution.

When talking about transparency in public administration the stumbling block is the freedom of access to information. This has not yet been dealt with sufficiently by the legislation of the PNA, which only refers to the subject sporadically. Similarly, there is no clear means of classifying information as public or of defining what files may be accessed for review and what files may not be accessed for review.

### **Recommendations:**

- Expedite the enacting and approving the law of freedom of access to information, since this law will identify procedures and processes for accessing information and specify the nature of public and classified files.
- Identify clear and specific criteria for classified information and files to preclude the possibility of all files becoming classified and therefore inaccessible.
- Establish procedures and measures that enable the public to access the information that they desire on the public administration.
- Publish PLC decisions.
- Develop government institutions related to adopting the electronic-government (E-government) model.

# Twelfth: The Judiciary and Prosecution Services

Article 11 of the UNCAC addresses the subject of judicial and prosecution services. It prescribes that each state party shall establish measures that prevent opportunities for corruption among members of the judiciary and court staff, and adopt appropriate measures that ensure independence of the judiciary and promote transparency in appointments in the judiciary; adopt a code of conduct for judges; provide appropriate training for the judicial police; adopt appropriate court procedures; open courts to the public; compel judges to justify their decisions; and provide judges with sufficient remuneration.

### **a- Legal framework**

The Palestinian Basic Law and its Amendment of 2003 constitutes the main legal framework for judiciary and prosecution services. It lays the foundations for the Palestinian judicial system, stipulating its independence in the Constitution, particularly Article 97, which states: 'The judicial authority shall be independent and shall be exercised by the courts at different types and levels. The law shall determine the way they are constituted and their jurisdiction. They shall issue their rulings in accordance with the law. Judicial rulings shall be announced and executed in the name of the Palestinian Arab people.'

Articles 98 and 99 of the Basic Law also assert this. Article 100 established the Supreme Judicial Council: 'A Supreme Judicial Council shall be created. The law shall specify the way it is constituted, its responsibilities and its operating rules. The Supreme Judicial Council shall be consulted about draft laws relating to the Judicial Authority, including the Public Prosecution.'

The Basic Law also identifies some general principles, such as public trials and implementation of court decisions.

Article 107 of the Basic Law addresses the appointment of the Attorney General. However, the matter has continued to be open for extensive debate, since the law states that the position shall be appointed by the PNA president, meaning that the Attorney General reports to the president. This ranking is not the sense intended by the legislature, which leads to practical deficiencies in the way in which the text may be interpreted. Article 108 of this law indicates that the composition of the office of the Attorney General and the conditions for appointing its members and their competences shall be regulated by law. In accordance with this article, the Judicial Authority Law No. 1 of 2002 was issued to regulate all judicial affairs including the prosecution, covering appointments, promotions and secondments, and identifying the types of courts and other matters. Articles 1 and 2 of the Judicial Authority Law stress the principle of independence. Article 3 stipulates the financial independence of the judiciary, indicating that the Supreme Judicial Council shall prepare its draft budget and submit it to the Minister of Justice for following legal procedures in accordance with the provisions of the Law Regulating the General Budget and Financial Affairs. The Supreme Judicial Council oversees its implementation.<sup>89</sup>

Article 5 addresses the requirement to justify decisions, stating: 'Judgments shall be issued and executed in the name of the Arab Palestinian people.'

<sup>89</sup> Article 3 of the Judicial Authority Law No. 1 of 2002.

Judgments shall specify the reasons upon which they are based'. Chapter 3 addresses appointments and promotions, but its treatment of the subject is insufficient because it does not identify procedures and measures for appointments.

The law also identifies certain principles regarding appointment and promotions, but they require further elaboration. To overcome this gap, the Supreme Judicial Council issued some decisions concerning appointments, such as advertising in newspapers and conducting competitions and interviews. It also issued some decisions concerning seniority of judges, including Decision No. 5 of 2006, which covered the absence of clear and accurate provisions in the Judicial Authority Law regarding procedures for promotions, performance evaluation, and conditions and procedures for appointments.

Article 32 of the Judicial Authority Law stipulates salaries and remuneration for all ranks of judges, in accordance with two tables annexed to the law. The salaries are lucrative given the general economic conditions in Palestine and compared to prevailing wage scales in neighboring Arab countries.<sup>90</sup>

Regarding the conduct of judges, the Supreme Judicial Council formed a judicial inspection department and a judicial disciplinary council to consider professional violations. The Supreme Judicial Council also issued a code of conduct for judges and the judiciary in accordance with the Supreme Judicial Council Decision No. 3 of 2006. This code, issued by the chief justice, includes several themes including 'judicial independence, safeguards of trials and judicial conduct'.

In addition to the Judicial Authority Law, there are a number of other laws that contribute to the regulation of the judicial system. These include the Regular Court Formation Law, the Civil and Commercial Procedures Law No. 2 of 2001 and the Criminal Procedures Law No. 3 of 2001. These laws identify procedures that must be adopted in courts in regard to civil and criminal cases.

The Judicial Authority Law also identifies procedures for appointing members of the prosecution and its formation. The Attorney-General issued Decision No. 4 of 2006 identifying conditions and procedures for appointing prosecutors, stipulating the establishment of a selection committee consisting of the head of the inspection department, one of the assistants of the Attorney-General and the head of the technical office, in an attempt to improve the law and address current shortcomings in the legislation relating to appointments. Such regulations, however, must be issued by the Council of Ministers in order for them to have more leverage. Furthermore, there is a need to introduce necessary amendments to the Judicial Authority Law in order to overcome some existing legislative shortcomings.

To improve transparency in the judiciary, the law stipulates that trials shall be public and that adversaries are entitled to obtain copies of their own files. The Civil Procedures Law grants all citizens the right to obtain copies of final decisions. The Supreme Judicial Council has issued instructions to permit journalists to attend and record trials by video, subject to certain conditions. The establishment of a media and public relations department in 2008<sup>91</sup> constituted a major development.

<sup>90</sup> The Supreme Judicial Council, *Third Annual Report, 2007*, 21.

<sup>91</sup> Supreme Judicial Council, *Fourth Annual Report, Ramallah, Palestine, May 2009*, 41.



## b- Practice

The Supreme Judicial Council and the judicial authority, just like all other institutions, suffered from some problems in the aftermath of the division of the two parts of the homeland, and the consequent establishment of a higher justice council in the Gaza Strip in parallel with the Supreme Judicial Council in the West Bank. This situation has caused several problems related to the existence of two frames of reference and the fact that some judges have abstained from working in Gaza Strip. Consequently, the Hamas government appointed judges and promoted others in order to fill the vacuum resulting from the abstentions.<sup>92</sup>

The Basic Law and later the Judicial Authority Law ensured the full independence of the judiciary. The implementation of the Judicial Authority Law, however, was slow because of the lack of political will to achieve such independence and the continuous disagreement between the judiciary and other institutions such as the Ministry of Justice. This disagreement revolved around the distribution of competences and mandates, in addition to issues regarding responsibility for the courts, budget and training of judges. Most of the disagreements have been resolved *de facto* rather than *de jure* in favour of the Supreme Judicial Council, which threatens to create a lingering problem.<sup>93</sup>

Some reports of the Independent Commission for Human Rights (ICHR) indicate that the executive frequently fails to honour court decisions, especially those related to political arrests, dismissal from civil service for political considerations<sup>94</sup> or where decisions contravene the executive's desires or political or social considerations.<sup>95</sup> Furthermore, the judiciary and judges face significant attempts to influence their decisions on some cases.<sup>96</sup>

Regarding transparency and independence of judges, the law prohibits removing judges except in accordance with the law. No precedent of removing a judge has occurred in Palestine.

The judicial authority mostly complies with appointment procedures, but several promotions have occurred, mostly before 2006, without consideration of the principles of seniority and aptitude. Appointments and promotions were often influenced by political and factional affiliation. Nevertheless, vacancies are currently advertised in newspapers and candidates sit for written and oral exams.

The Judicial Authority Law also addresses the issue of conflict of interest and stipulates that judges declare their financial status every three years. This practice has alleviated cases of corruption. However, there are no provisions for supervising judges after they assume their posts.

The Supreme Judicial Council has conducted regular and surprise field visits of the judicial inspections department in order to enhance accountability. Despite progress, some obstacles continue to impede the activity of this department, including a lack of staff and sufficient means

<sup>92</sup> AMAN, *The National Integrity System*, previous reference, 70.

<sup>93</sup> Ibid, 72.

<sup>94</sup> Ibid, 70.

<sup>95</sup> AMAN, *Problems of Separation of Powers in the Palestinian Political System - the Status of the Judiciary System*, Series, Report No. 6, February 2007, 5.

<sup>96</sup> Ibid, 5-6. See also AMAN, *The National Integrity System*, previous reference, 71.

of transportation.<sup>97</sup>

Other legal obstacles that impede the effectiveness of the Judicial Authority Law include:

- Legal provisions about decision-making processes in the Council, in particular the quorum.
- Legal provisions on appointments to judicial and support positions, which stipulate that the Council follows procedures according to the Civil Service Law, which can extend the length of time that the appointment process requires.
- Legal provisions on promotions, which may impede the promotion of more competent staff.<sup>98</sup>

The strongest criticism that is made of the activities of the judicial authority is the intervention of the executive in its work. This is particularly in relation to decrees that it may issue, which may affect its neutrality. This is in addition to other interventions and pressure that influential persons may bring to bear on the judicial authority. A good indication of this is the opinion polls organised recently by Palestinian institutions. The results of the opinion polls of this year revealed that the judges are subjected to pressure and interventions from various agencies attempting to influence the judgement and in a more serious fashion than that revealed by the poll of the judiciary in 2009. It reveals direct and indirect pressures exerted by a number of sources. The study showed that the proportion of judges who believed themselves to have been subjected to pressure from the Supreme Judiciary Council, whether to a small, medium or greater extent, reached 41% this year, in comparison to 31% last year. The proportion of judges who believed that they had given way to these pressures was 86%. The proportion of judges who believed that they had been subjected to pressure from members of the legislative council reached 20% in surveys of this year, in comparison to 10% in the surveys of the previous year.<sup>99</sup>

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<sup>97</sup> Supreme Judicial Council, *Fourth Annual Report*, previous reference, 33.

<sup>98</sup> Supreme Judicial Council, *Third Annual Report*, 2007, 110.

<sup>99</sup> This survey was carried out by Alfa in April 2010. It compared the situation to that of 2009, using a survey carried out by Awrad. See the following link: [www.alquds.com/node/277995](http://www.alquds.com/node/277995). The survey was carried out on a sample of 70 judges.

**Recommendations:**

- Enforce the principle of separation of powers and end executive intervention in and pressure on the judiciary and judges to influence their decisions;
- Identify the respective mandates of the Supreme Judicial Council and Ministry of Justice and divide authorities according to those mandates;
- Adopt sound procedures and measures for appointments and promotions that discount personal considerations;
- Enforce declarations of financial status and install measures to identify cases of conflict of interest;
- Implement the right of citizens to access judicial information;
- Commit the executive to implement judicial decisions;
- Decide on the nature of the prosecution and whether the Attorney-General and members of the prosecution shall report to the Supreme Judicial Council or the Ministry of Justice, since the Judicial Authority Law grants the Minister of Justice a form of administrative supervision whose boundaries are not sufficiently clear;
- Adhere to criteria of aptitude and experience in all appointments; and
- Introduce necessary amendments to the Judicial Authority Law and other pertinent laws in order to address legislative shortcomings, solve particular problems and improve the quality of the work of judges.

# Thirteenth: Prevention of corruption in the private sector

Article 12 of the UNCAC addresses the prevention of corruption in the private sector, indicating that each state party shall take measures in accordance with appropriate accounting and auditing standards and provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures. Each state party shall promote criteria and procedures of integrity including codes of conduct, promote transparency among private entities (such as the identity of legal and natural persons), prevent the misuse of procedures regulating private entities, and disallow the tax deductibility of expenses that constitute bribes.

### a- Legal framework

The private sector in the Palestinian Territories is regulated by the Companies Law No. 12 of 1964 in the West Bank, and Law No. 18 of 1929 and Law No. 19 of 1930 in Gaza Strip. As these laws are outdated, they do not provide sufficient and effective protection from corruption. Other relevant laws include the Capital Market Authority Law, Monetary Authority Law, Banks Law, Securities Law and the Auditing Profession Law. Company-related laws in Palestine stipulate appointing external auditors and not disclosing any information they obtain. Companies shall not appoint auditors who are partners with any board members, in order to avoid conflict of interest. This concern is also reflected in the Auditing Profession Law, which imposes conditions and restrictions on practicing the profession. These restrictions have led to a degree to prevention and protection from corruption in the private sector.

The Capital Markets Authority (CMA) regulates and oversees the capital markets and their development, as well as the companies subject to its jurisdiction. The CMA has developed instructions on the code of conduct in the stock market, disclosure and listing. The Companies Law, PMA instructions and the CMA require companies and banks to disclose their budgets and activities and make them available to the public.

Corporate governance plays a major role in alleviating corruption, as it constitutes an important tool for engaging the private sector in fighting corruption. Palestinian business laws – such as Companies, Insurance, Monetary Authority, Capital Markets Authority, Auditing Profession, Securities and Banks – include rules and principles that constitute principles of good corporate governance, enforced through a package of laws and regulations that lead to transparency and the rule of law.<sup>100</sup>

To keep abreast of developments, the CMA, certain private sector institutions and a number of private sector, academic and legal experts formed the Corporate Governance National Committee. They formed a technical team to develop a corporate code of conduct that was adopted in 2009 and published on the websites of these institutions. The code applies to listed and unlisted companies, and mortgage finance, leasing and securities companies. The basic principles of corporate governance enshrined in the corporate code of conduct to promote transparency and accountability include:

- **Corporate management:** The code identifies a set of rules and procedures for corporate management, in particular the relation

<sup>100</sup> AMAN, *Integrity, Transparency and Accountability against Corruption*, previous reference, 160.

between the administrative board and executive management, specifying procedures for the composition of administrative boards, election of the board, and conditions of membership and responsibilities. It also requires a self-evaluation of the board's performance that should be made at least once annually and addresses the issue of conflict of interest.

- **Auditing:** The code requires that administrative boards form an auditing committee, which constitutes a branch unit of the administrative board, and is authorized to study draft financial statements and assess corporate risks. Furthermore, the code addresses measures, goals, systems and reporting procedures of internal auditing and the evaluation of the performance of internal auditing units.
- **Disclosure and transparency:** In particular the code focuses on principles of disclosure and transparency, stressing the need to ensure equal rights for shareholders, the rights of stakeholders to access information and the need to implement all appointments and tenders in public. Amongst other aspects, it stresses the importance of disclosure and compliance with disclosure requirements in accordance with laws and regulations, and identifies recipients of disclosed information, the parties required to disclose information, information that must be disclosed.
- **Other stakeholders in the company:** In addition to shareholders, other stakeholders that have common interests with companies include the staff, customers, creditors and other persons who have relations with the company. The code requires companies to honour the rights of these stakeholders, treat them equally, enable them to report potential violations and ensure their right to access information.<sup>101</sup>

## b- Practice

The private sector is considered to be more susceptible to corruption, in terms of bribes and commission, than any other. However, it is difficult to discuss this generalization in a scientific sense. Since the inception of the PNA, the private sector has suffered from corruption, despite some slow progress that has been made. The absence of fair competition and conflict of interests are the most prominent corruption issues in the private sector. Although a disclosure system and instructions have been put in place, measures to monitor companies and their activities continue to be generally weak.

Despite legal control over companies, shareholder-owned companies continue to suffer from several shortcomings related to shareholder rights and transparency, in addition to conflict among various official parties over the competence to conduct financial and administrative control, and the fact that some public and private shareholding companies do not comply with due procedures in making relevant information available to the public.

Moreover, there is no clear and published information about corruption or bribery in the private sector, because the private sector does not release

<sup>101</sup> Capital Markets Authority, Corporate Governance National Committee, Palestinian Corporate Code of Conduct, 2009.

such information and the media does not conduct thorough investigations. Neither has the private sector implemented the relevant code of conduct, despite the contribution that this has made to spreading the principles of integrity and transparency in sector transactions. However, the existence of a corporate code of conduct, together with the principles of integrity and transparency that it prescribes, does help establish some practices on the ground. The CMA and the Corporate Governance National Committee have approved the code, and the CMA has embarked on enforcing it in a gradual manner.

Similarly, some laws such as the Auditing Profession Law impose disciplinary measures or even criminal liability for violating its provisions. It prohibits auditors from certain acts that may lead to corruption, such as disclosing information about companies to third parties, or testifying or signing on to the accuracy of data or final accounts that are false and do not express the actual status of the company.

Applicable company-related laws in Palestine hold the company and its presidents and members of administrative boards liable for violations. They stipulate a form of governmental control over company activities. This may be in the form of a company controller, whose competences include annulling the company's registration or freezing its operations for one year, should he detect violations. Annulment of registration can only take place after the company has been notified and permission has been obtained from the Minister of Economy. Alternatively, governmental control may also be undertaken by the Minister of Economy, whom the law grants the competence to investigate certain activities of companies if it is deemed necessary.

Company-related laws also impose criminal penalties for violations such as fraudulent activity that are committed by members of companies either during the founding period or during their performance of operations.

Despite the presence of a legal framework regulating the work of the private sector, many sections of this framework require improvements. The existence of corruption in the private sector is taken for granted but there are no clear studies about it, how it manifests itself or the aspects in which it is concentrated. More research and studies in this field are needed. Similarly, the mechanisms for declaration are not sufficiently effective for monitoring the private sector.

### **Recommendations:**

- Create an anti-corruption culture within the private sector, through awareness and education campaigns about the forms and types of corruption and pertinent social responsibility.
- Publish periodic reports, studies and statistics about acts of corruption in the private sector.
- Enforce the corporate code of conduct for the companies that fall within its mandate and introduce binding provisions and penalties for violations.

**Fourteenth: Participation of society**



Article 13 of the UNCAC discusses participation of society. It indicates that each state party shall take appropriate measures to raise public awareness regarding the existence, causes and the gravity of the threat posed by corruption; ensure that the public is aware of the existence of anti-corruption body/bodies; promote effective participation of civil society organisations in monitoring and reviewing national and international anti-corruption policies; and ensure public access to relevant anti-corruption documents, such as policies, reviews and evaluations.

### **a- Legal framework**

The Charitable Associations and Community Organizations Law No. 1 of 2000 constitutes the legal framework for civil society organisations.

This report attempts to answer the following question: What is the role of these organisations in raising awareness towards various forms of corruption and the means of fighting it at all levels? An answer to this question is that each civil society organisation has its own agenda and programs. Some are active in aspects not relevant to corruption while others are specialised in fighting corruption and raising public awareness about the forms and types of corruption and means to prevention it. AMAN is the most prominent Palestinian organisation specialised in combating corruption and raising public awareness of it.

The various initiatives and conferences held by civil society and non-governmental organisations constitute a positive indication of anti-corruption efforts and reflect their will to exchange knowledge and experience in combating corruption.

At another level, trade and popular unions are mostly concerned with laws and policies that influence their members, and reflect to a high degree their intellectual, organisational and partisan backgrounds. Trade unions and professional associations play a major role in promoting participation in government and establishing social values and ideas.

Raising awareness and incorporating the concept of fighting corruption into the curricula of both schools and universities reinforces these notions and contributes to raising a generation that embraces and depends upon these values, rather than the culture of fear of breaking rules.

So far there is no legislation regarding access to information. The absence of a national anti-corruption commission limits citizens' opportunities to access the information and files they need or their effective participation in this regard.

### **b- Practice**

The absence of a national anti-corruption commission reduces the ability of civil society organisations and citizens to participate in the fight against corruption. Nevertheless, the role of some effective organisations such as AMAN in spreading an anti-corruption culture, raising public awareness and attempting to engage the public through seminars, workshops and national campaigns against corruption helps to mobilize community participation in preventing corruption.

## Fourteenth: Participation of society

Some civil society organisations are working to contribute to the fight against corruption in Palestine. Some are active in anti-corruption activities and promoting good governance. Several organisations have taken firm positions against corruption and demanded holding corrupt persons accountable and strengthening transparency of public and non-governmental institutions. Others have been active in observing presidential, legislative and municipal elections, and have published detailed reports about the conduct of candidates and violations.

AMAN has been a pioneer in this respect. Since its establishment, it has taken the initiative to confront and combat corruption. To this end, it has implemented several programs, workshops and public awareness campaigns about corruption. It has also published several reports, some of which have been considered extremely bold. AMAN has also attempted to introduce certain values to the governmental and non-governmental sectors by preparing the code of conduct for public employees.

In general, AMAN's main contributions to the battle against corruption are:

- Lobbying and advocacy efforts to promote anti-corruption and disseminate principles of transparency, integrity and accountability
- Conducting several studies and research projects on corruption, in addition to the annual report of corruption in Palestine
- Celebrating International Anti-Corruption Day on an annual basis and presenting integrity and transparency awards
- Conducting awareness campaigns and producing educational pamphlets about combating corruption and training on their implementation

The question is whether the efforts of civil society organisations and government institutions are concerted. Civil society organisations have launched initiatives, produced documents and taken positions against corruption. AMAN, in coordination with the government and in cooperation with other NGOs, prepared the draft framework for a comprehensive national anti-corruption plan, which was submitted to the government in 2008. On 18 August 2008 the Council of Ministers established a national team for preparing a national plan to promote and develop transparency and integrity in the public domain, comprising representatives of several ministries and institutions, as well as representatives of private sector and non-governmental institutions, in addition to AMAN as a civil society representative. The team has prepared the detailed plan and the national strategy for implementation as an introduction for obtaining final approval of the government. The national team has also been requested to develop the UNCAC self-evaluation form, but the government has not monitored its implementation.<sup>102</sup>

In general, it is possible to say that there some civil society organisations with a direct link and an integral relationship to anti-corruption issues and awareness-raising. Others conduct programs relating to the subject, whilst others have adopted an anti-corruption stance or undertaken

<sup>102</sup> Civil society organisations developed several initiatives and documents. For further information see previous chapters of this report. See also: AMAN, *Palestinian Anti-Corruption Policies and Legislations, Analytical study*, previous reference, 29.

certain efforts to combat corruption. However, it is possible to note an absence of serious and concerted effort to confront and to reduce the phenomenon of corruption. In addition to this, the implementation means at the disposal of civil society organisations are weak, with the exception of the national body formed to prepare a national strategy to promote and develop transparency and integrity in business. The development of this strategy was not followed up with its implementation.

### **Recommendations:**

- Strengthen the values of integrity, transparency, accountability and fighting corruption amongst civil society organisations and activate the implementation of codes of conduct for civil societies who play a significant role in the participation of society
- Activate participation of citizens in the prevention of corruption by organising programs and campaigns that engage citizens and raise their awareness about combating corruption
- Launch national campaigns that aim to introduce the idea of combating corruption
- Harmonize NGO anti-corruption efforts and programs
- The government should take the initiative to engage citizens and civil society organisations in the prevention of corruption, and to bridge the gap and build confidence between the government, citizens and civil society organisations by granting these organisations membership in public commissions that combat corruption
- Clarify the role of civil society organisations in the prevention of corruption through continuous awareness and educational campaigns
- Strengthen the role of civil society organisations in holding the Cabinet accountable through convening hearing sessions
- Lobby PNA institutions to adhere to principles of integrity and transparency

# Fifteenth: Preventing money laundering

Article 14 of the UNCAC addresses the topic of preventing money laundering. It indicates that each state party shall take the necessary measures to use the best international practices including requirements for customer and beneficial owner identification, record-keeping and the reporting of suspicious transactions. Each state party shall introduce measures to grant the competent authorities the ability to cooperate and exchange information at the national and international levels, establish a financial intelligence unit, and introduce measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, obtain accurate and meaningful information on the originator of electronic transfer of funds, apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator, and develop and promote global, regional, and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money laundering.

### **a- Legal framework**

The legal framework to prevent money laundering in Palestine is the Anti-Money Laundering Decree Law No. 9 of 2007, which stipulates establishing the Anti-Money Laundering National Committee and the Financial Monitoring Unit at the PMA. The law grants the committee several competences, including formulating public policies to combat corruption and policies that direct the operations of the unit. The first articles in the law define the crime of money laundering and its scope in conformity with the Convention.

Regarding customer and beneficial owner (actual beneficiary) identification, the Anti-Money Laundering Law requires banks to identify their customers (natural or legal persons) and the actual beneficiary, and to verify their identities through documents or data.<sup>103</sup>

Regarding bookkeeping, the Companies Law and the Banks Law No. 2 of 2002 (Article 40) stipulate that banks operating in Palestine must always keep records and books that show their accounts, operations and financial positions. They are also required to produce annual final accounts that accurately reflect their results and in accordance with accounting standards and procedures.

The Anti-Money Laundering Law stipulates that financial institutions and non-financial businesses and professions keep their records and documents for no less than 10 years from the start or completion of a financial or business transaction. This is in order to clarify financial transactions and commercial or monetary contracts, whether local or international, and to maintain records of accounts, trade correspondence copies of personal identification documents.<sup>104</sup>

The law also stresses the importance of reporting. Article 14 stipulates that 'financial institutions and non-financial businesses and professions must, when they have reasonable grounds to suspect that the money is the proceeds of a crime, or when they know of an incident or activity that may constitute an indication of a money laundering crime, report it to the Unit in a timely manner and in accordance with the relevant instructions issued by the Unit'.

<sup>103</sup> Article 6 of the Anti-Money Laundering Law No. 9 of 2007.

<sup>104</sup> Article 10 of the Anti-Money Laundering Law No. 9 of 2007.

Regarding exchange of information, Article 45 stipulates that, 'The Financial Monitoring Unit may exchange information with its counterpart units based on the pertinent agreements signed by the PLO and without contravening the applicable laws in the PNA territories.'

The law prescribes the establishment of a financial monitoring unit rather than a financial intelligence unit. The goal of the Financial Monitoring Unit is to receive and follow up on financial reports of suspicious transactions from competent parties.

The law installs measures to detect and monitor the movement of money and negotiable financial instruments across borders. It imposes restrictions on cross-border transactions with corresponding banks, including identification and verification of recipient institutions with which they have bank relationships, gathering information about activities of recipient institutions and other legal obligations. In this context, it should be noted that the PNA has no control over its borders due to the continuing Israeli occupation, which continues to control the borders and all border crossings of the Palestinian Territories.

Regarding the transfer of money and obtaining meaningful information from originators of telegram transfers, the law is highly responsive to UNCAC requirements and its articles conform to its provisions. The law stipulates that financial institutions must verify the origins of electronic transfers and keep the information for at least 10 years. The law also stipulates that financial institutions, whose activities include transferring money by telegram, telephone or electronically, must obtain and verify details such as full names, account numbers and addresses.

The law imposes fines on legal entities that engage in the crime of money laundering and penalises liable persons. It stipulates that financial institutions that suspect a financial operation must refrain from executing it.

The law does not address international judicial cooperation on money laundering issues, because of Palestinian specificities and the continued occupation, which weakens Palestinian sovereignty. The law also does not stipulate the extradition of money laundering offenders or procedures for extradition, but indicates that the Financial Monitoring Unit may request information from counterpart units with whom the PLO has signed bilateral agreements.

Many articles of the law comply with UNCAC provisions, and the law also adopts the optional provisions.<sup>105</sup>

### **b- Practice**

The Anti-Money Laundering National Committee was established by the Presidential Decision No. 174 of 2008. It comprises nine members representing most ministries in addition to the PMA Governor and a number of financial, legal and economic experts. The committee convenes four times per year at the Financial Monitoring Unit at PMA headquarters.<sup>106</sup> The Financial Monitoring Unit was established at PMA headquarters and exercises its operations as an administratively independent unit without

<sup>105</sup> Bilal Barghouti, critical Review of the Decree Law No. 9 of 2007 on Money Laundering,3, 2009.

<sup>106</sup> Personal interview with Mr. Riyadh Aweidah, Director of Financial Monitoring Unit, Financial Monitoring Unit office, PMA headquarters, 14 January 2010.

## Fifteenth: Preventing money laundering

any form of intervention in its operations.<sup>107</sup>

The committee has issued several anti-corruption instructions to banks, the CMA, insurance companies, mortgage finance companies and the stock market. For example, Article 6 of the Anti-Money Laundering Law No. 9 of 2007 prescribes the need to identify customers. Institutions mentioned have implemented these instructions, which contain detailed instructions addressed to banks.<sup>108</sup>

In terms of money transfers, the law largely conforms to UNCAC requirements, prescribing that financial institutions verify originators of telegram transfers and keep the information for at least 10 years. It also prescribes the establishment of the Financial Monitoring Unit and that any person entering Palestine must declare her/his money.

All financial institutions and non-financial businesses and professions adhere to the requirement of keeping all records and documents for at least 10 years from the start or completion of a financial transaction or the end of the business relationship, through clarifying the financial operations and the local and external commercial and monetary transactions, and keeping the accounts, commercial correspondence and copies of personal identification documents, as stipulated in Article 10 of the Anti-Money Laundering Law No. 9 of 2007.

The legal ground for reporting is Article 14 of the Anti-Money-Laundering Law. There are several reporting forms approved by the Anti-Money Laundering National Committee, in addition to its instructions about reporting procedures.

Regarding exchange of information, Article 45, which prescribes the exchange of information with counterpart units in accordance with the agreements signed by PLO, is enforced.

Regarding the establishment of a financial intelligence unit, the Financial Monitoring Unit has been established and has the competence of receiving, analysing and disseminating financial reports; it is not competent to conduct daily oversight activities. The unit exercises its functions at PMA headquarters.

Since the PNA does not control its borders and border-crossings due to the continued Israeli occupation, it is not easy to adhere to procedures of detecting the movement of funds.

Despite major difficulties encountered in identifying the scale of money laundering and its impact because of lack of experience in the PNA territories, an initial assessment based on a number of facts indicates money laundering in the Palestinian Territories is affected by the spread of the phenomenon in Israel. In particular, it is almost restricted to trading with Israeli traders (and settlers in the Israeli settlements built on Palestinian land in the West Bank), who sell expired goods, weapons, and smuggling goods such as electronics into PNA territories. Money gained by corrupt means is sometimes transferred through banks from abroad to individuals, companies or institutions established to serve this purpose.<sup>109</sup>

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<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> AMAN, *A report on the Palestinian experience in Combating Money Laundering*, 2008, 13.

In order to reduce this form of crimes, several institutions such as the PMA, local banks and the CMA have taken precautionary measures to combat the phenomenon and report and combat suspicious transactions. Based on the Monetary Authority Law No. 2 of 1997, the PMA has taken the following measures and decisions that aim to achieve bank stability and protect the Palestinian economy from abuse and exploitation:

- 1- Establish the Financial Monitoring Unit and implement a plan for preventing money laundering, through collecting and analysing information on suspicious transactions and reporting them to Judicial authorities;
- 2- Issue circulars to the Palestinian banking sector that explain the role of banks in prevention, and compel them to report suspicious transactions. These circulars stipulate that banks should:
  - a- Appoint compliance officers in accordance with Basel recommendations in order to monitor and verify banks' compliance with laws, regulations and instruction issued by the PMA, through monitoring banking and financial operations to maintain the reputation of the banking system and protect it from risk and abuse.
  - b- Provide the Financial Monitoring Unit with timely information about suspicious transactions.
  - c- Update customers' data; obtain sufficient information about them, their businesses and their aims for opening accounts.<sup>110</sup>

The CMA is the competent oversight body for capital markets and operating institutions. The CMA puts in place and provides means for verifying the compliance with regulations of financial institutions within its jurisdiction. This includes installing controls over these parties and identifying measures these institutions must take in order to adhere to these controls.

To avoid money laundering operations and in accordance with the Anti-Money Laundering Law, the CMA has taken several measures, including the following:

- Apply the 'Know Your Customer' principle, which forbids financial broker firms from accepting cash payments or disbursements. All monetary transactions are executed through bank accounts, so banks can identify their customers. The PMA has also applied this practice in accordance with the Monetary Authority Law No. 2 of 1997.
- Apply the policy of declaration of financial status. The CMA requires all staff of the institutions under its jurisdiction, especially senior staff such as general managers and board members, to declare all their financial transactions and those of their first-degree relatives, and that all such transactions are subject to control and auditing.<sup>111</sup>

<sup>110</sup> AMAN, *Corruption Report 2008*, Ramallah, 14.

<sup>111</sup> Ibid.



**Recommendations:**

- Grant the Anti-Money Laundering National Committee and the Financial Monitoring Unit a higher form of administrative and financial independence
- Develop regulations for the Anti-Money Laundering Law in order to implement it properly
- Intensify awareness activities about the crime of money laundering
- Provide training to ensure that there are sufficient staff that are fully qualified to combat money laundering
- Activate the role of the parties who have the responsibility to report suspicious transactions

## Sources and References

## Legal Documents

- United Nations Convention against Corruption 2003
- Law of Civil Service No. 4 of 1998
- Law on Tenders for Governmental Works No. 6 of 1999
- Judicial Authority Law No. 1 of 2002
- Amended Palestinian Basic Law of 2003
- Law of the Duties and Rights of Members of the Legislative Council No. 10 of 2004
- Financial Audit and Administrative Control Bureau Law No. 15 of 2004
- Council of Ministers Decision No. 144 of 2004
- Illicit Gains Law No. 1 of 2005
- Public Retirement Law No. 7 of 2005
- Financial System of Ministries and Governmental Institutions No. 43 of 2005
- Decree Law No. 5 of 2007 amending the Public Retirement Law No. 7 of 2005
- Council of Ministers Decision No. (02\04\09\MO\AQ) issued on 15 March 2005
- Decree Law of General Elections No. 1 of 2007
- Anti-Money Laundering Law No. 9 of 2007
- Decree Law No. 7 of 2010 amending Illicit Gains Law n. 1 of 2005

## Books

- AMAN, MIFTAH, *Mabadi' mudawwanet As-solouk wa al Ma'aer al-Akhlaqiya li Muwazzafee al-Qita' al-Am (Principles of a Code of Conduct and Ethical Standards for Public Employees)*, 2009
- AMAN, *The National Integrity System*, Palestine, Ramallah, 2009
- AMAN, *Palestinian Anti-Corruption Policies and Legislations*, Analytical study, Ramallah, 1st Edition, 2008
- AMAN, *Governmental Tenders*, Ramallah, 2008
- AMAN, *An-Nazaha wa-Shafafiya wa-al Musa'alah fi Muwajeheet al-Fasad (Integrity, Transparency and Accountability against Corruption)*, 1st Edition, Ramallah, 2007
- AMAN, *The Financial Performance of the Palestinian National Authority - Revenues and Expenditures in 2006 and the First Half of 2007*, Ramallah, August 2007
- AMAN, *Problems of Separation of Powers in the Palestinian Political System - the Status of the Judiciary System*, February 2007
- AMAN, *Conflict of Interest in the Palestinian National Authority*, Series, Report No. 12, 2007
- Barghouti, Bilal, *Muraja'a Naqdiya li'qrar bi-qanoun 9 li Sant 2007 bi-Sha'n Ghasl al-Amwal (A Critical Review of the Decree Law No. 9 of 2007 on Money Laundering)*, 2009

## Reports

- The Supreme Judicial Council, Fourth Annual Report, Ramallah, Palestine, May 2009
- The Supreme Judicial Council, Third Annual Report, 2007
- AMAN, At-tajrubeh al-Filistinieh fi-Man' Ghasl al-Amwal (The Palestinian Experience on the Prevention of Money Laundering), 2008
- AMAN, Corruption Report 2008, Ramallah, 2008
- State Audit and Administrative Control Bureau, Quarterly Report, 2009, Ramallah, 2009
- State Audit and Administrative Control Bureau, Annual Report 2008, Ramallah, 2008
- General Personnel Council, Annual Report 2008, Ramallah, 2008
- Capital Markets Authority, the Corporate Governance National Committee, Palestinian Corporate Code of Conduct, 2009
- The Independent Commission for Human Rights, Ombudsman, Fourteenth Annual Report, 2008

## Personal interviews

- Personal interview with Eng. Bassam Jaber, Acting Director of the Central Tenders Department, Ministry of Public Works, 13 January 2010
- Personal interview with Mr. Riyadh Aweidah, Director of Financial Monitoring Unit, PMA headquarters, 14 January 2010
- Personal interview with Mr. Hisham Kuheil, CEC Executive Director, CEC headquarters, Ramallah, 18 January 2010

## Websites

- Official website of the General Personnel Council: [www.gpc.gov.ps](http://www.gpc.gov.ps)
- Official website of the State Audit and Administrative Control Bureau: [www.saacb.ps](http://www.saacb.ps)
- Official website of the Palestine Investment Fund: [www.pif.ps/index.php?lang=ar&page=124402202521](http://www.pif.ps/index.php?lang=ar&page=124402202521)



