



الائتلاف

من أجل

النزاهة

والمساءلة

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Conflict of Interest in the Palestinian National Authority

AMAN Coalition is implementing the national campaign for combating corruption in cooperation with the United Nations Development Program / Palestinian People Aid Program

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Introduction

The concept of maslaha (interest)

In Arabic, the word maslaha (interest) is derived from “reparation,” and is contrary to corruption (Lisan Al-Arab, Ibn Manthour, 711 Islamic Hijri, 2/516). According to Al Ghazaly, it originally meant the bringing of benefit and removal of harm. In Islamic terminology, maslaha is defined as the preservation of the five elements that humans are required to protect and preserve in life, namely faith, body, mind, offspring and property.

Whatever preserves these elements is in people’s “interest,” and whatever harms them is because of corruption (Al Mustafa Men Elm Al Osoul, Al Ghazaly, 505 Islamic Hijri, 1/636). On such a basis, anything that brings benefit, whether by acquisition or appropriation (like the obtainment of benefits and pleasure), or by exclusion and prevention (like the avoidance of harm and pain) should fall under the definition of “interest”.

The concept of conflict of interest

Conflict of interest can be defined as any situation by which the personal interest of an individual – or those of his relatives or other persons with whom he shares personal or commercial interests – deflects from the interests of the professional positions he occupies, influencing decision-making and creating an impression of a lack of personal integrity and honesty.

In the state of Texas in the United States of America, the law on conflict of interest expands the concept to incorporate the misuse of public office where “a government employee, or any of his close relatives, uses the institution for financial gains through taking advantage of his official post.”

According to the Teachers’ Manual on Conflict of Interest developed by Michigan University, conflict of interest takes different forms. One example of this is “when a teacher who, due to relations with an external institution, exploits his position for private financial gains through influencing the decisions of the educational institution to interact with this external institution.”

The Rotterdam Convention of 2004, issued by the United Nations Food and Agriculture Organization (FAO) regarding the approval of chemical materials and dangerous pesticides in international trade, has also defined conflict of interest. The Convention states that “when an expert or their partner or administrative unit, which the expert works for, has financial or other relations that would inappropriately affect the status of the expert in relation to the issue under study, apparent conflict of interest occurs when the benefit does not go directly to the expert, but may compromise the objectivity of the expert. A potential conflict may also arise when an interest would make any sound person unconfident of the necessity of whether to inform or not inform about such a conflict.

Finally, the Code of Conduct related to Transparency and Accountability for Civil Society identifies conflict of interest as occurring in the following situations:

1. A conflict between public employees and personal interests in the civil service;
2. A situation in which there is a possibility for private benefit that would negatively affect the performance of their tasks and authorities;
3. Any situation where an employee participates in taking decisions in a public matter while being influenced by his private interests.

Based on the above, it is clear that conflict of interest takes place when the objectivity and independence of a public employee is influenced by material benefit, whether personally or to any of his relatives or cronies, or when an employee’s performance in a public post is influenced directly or indirectly by personal interests.

Determinants of conflict of interest

Conflict of interest can be controlled by several important determinants:¹

¹ Transparency International, Arab Integrity System for Combating Corruption, reference book, Lebanese Center for studies, 2005, pp. 201-203.

1. Ethics:

Morals are said to be a primary factor in ensuring the non-exploitation of professional position by the employees. It is normal for public employees to be exposed to situations where job and personal interests are in conflict. Thus, specific mechanisms should be made available to reduce the likelihood of such occurrence by warning and training employees in situations where conflict of interest may arise. Additionally, employees should be provided with different types of incentives for protection from temptation.

2. Laws and legislations:

The law itself is not sufficient to guarantee the avoidance of conflict of interest. However, the existence of clear legislations with a specific definition of conflict of interest oblige public employees to disclose information related to the assignment they perform and inflict clear punishments in case of violation. Such a law would also constitute a tool for raising public awareness on this phenomenon, and for raising legal and social issues against conflict of interest.

3. Employee's reputation:

The employee's reputation could be harmed by any suspicion or rumor related to conflict of interest, even if the decision she/he takes is correct and is in the interest of the job. In all cases, it is better for the employee to avoid suspicion and adopt the principles of transparency and clarity for the justification of decisions they take. The higher the position or the rank of the employee in the hierarchy, the more important it becomes to pay attention to the smallest details which may trigger suspicions of a conflict of interest.

4. Institution's reputation:

Suspensions of conflict of interest may arise in relation to employees and institutions as well. Therefore, institutions hold a special responsibility to control procedures and ensure their safeguard. The institution's reputation shapes the level of the public's trust in the institution in general and in the executive branch in particular. The institution is also responsible for promoting the principles of

transparency and integrity to its personnel and encouraging them to apply and practice those principles in their daily work. Institutions should also develop and adopt a code of conduct for the execution of administrative procedures under their authorities.

Differences between "conflict of interest" and other concepts pertaining to integrity and transparency:

To avoid a mix-up between conflict of interest and other concepts relevant to corruption, it should be noted that corruption has many manifestations that would reflect in a number of behaviors on the part of some of those who occupy public positions. Despite the occasional similarity and overlap between concepts, the manifestations of corruption can be summarized as follows²:

- **Bribery:** the obtainment of money or any other benefit in return for the execution of a specific task, or the refrain from thereof, in violation of the appropriate procedures.
- **Nepotism:** the execution of tasks for the benefit of an individual or commission to which the person is connected -- such as party, family, region or other -- who otherwise were not eligible for.
- **Favoritism:** the preference of certain party over others with regard to the unlawful receipt of services in order to obtain specific interests.
- **Wasta/cronyism:** the intervention in favor of an individual or group without adherence to proper procedure or required qualification, such as the appointment of an individual to a certain post or occupation based on family relation or political affiliation, although this person is neither qualified nor deserving.
- **Looting of public funds:** the unlawful acquisition and disposal of state funds under various pretexts.
- **Blackmail:** the obtainment by threats of money from a particular party in the community in return for the performance of interests related to the position occupied by a corrupt employee.

² Web Page of the Coalition for Accountability and Integrity: www.aman-palestine.org

Conflict of interest in international conventions

A number of international conventions against corruption, and the code of conduct for public employees, are keen to oblige state parties to incorporate anti-corruption legislation into their domestic legislation and to strengthen transparency and prevent conflict of interest. The most important of these is the United Nations Convention against Corruption (UNCAC) of 2003, which states in Article 7/4 that “each state party shall, in accordance with the fundamental principles of its domestic law, endeavor to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.”

Article 8/5 from the same convention, concerning the behavior of public employees, states that “each state party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems that oblige public officials to disclose information to appropriate authorities regarding, inter alia, financial returns from external activities and employment, investments, assets and substantial gifts or benefits from which may lead to a conflict of interest with respect to their functions as public officials.” Paragraph 6 of the same article states, “each state party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.”

Article 12 of the UNCAC, concerning the private sector, states that:

1. Each state party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.
2. Measures to achieve these ends may include, inter alia:
 - a. Promoting cooperation between law enforcement agencies and relevant private

entities;

- b. Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the state;
- c. Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;
- d. Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities;
- e. Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure.

(The International Code of Conduct for Public Employees, 1996), sets forth a number of controls to prevent employees from falling into the traps of conflict of interest:

1. Public officials are prohibited from using their official authority for the improper obtainment of their own or their families' private or financial interests. Public officials are not permitted to engage in transactions, assume any position or occupation, or have any financial, commercial or any other interests inconsistent with the requirements of their positions, functions, duties or performance of their tasks.
2. Where a possible conflict of interest may occur, public officials, in as much as required by their position and, in accordance with the law and the administrative policies and

procedures, shall disclose information on their private business, commercial and financial interests, or any activities they undertake for financial gain. In cases of possible or perceived conflict between their duties and their private interests, measures should be executed to reduce or eliminate that conflict.

3. Public officials are prohibited at all times from illegally using public funds, properties, services or information they acquire during or because of the performance of their official duties or perform activities not related to their official work.
4. Public officials shall comply with the procedures established by the law or determined by administrative policies to prevent the exploitation of their official positions improperly after expiry of their official terms.
5. Public officials, as much as required by their official position and/or as permitted or required by the law and administrative policies, shall comply with their acquirements of personal assets and liabilities owned by them or their spouses and dependents, when possible.

Conflict of interest in comparative experience

Many of the comparative legislations, despite the differences in the subject matter, opt for adoption of controls that prevent conflict of interest between individuals and the positions they occupy as one of the methods for combating corruption. This report will address experiences of a few other countries and their legislation in relevant fields:

In **Yemen**, Article 21/c/d/e of Anticorruption Law No.39,2006, states that anti-corruption commission should study, assess and recommend to the related authorities suggestions for the development of recruitment systems in order to strengthen the principle of transparency in civil service and prevent conflict between the interests of the posts and those of their holders. The Anticorruption Law also specified a certain period of time before civil servants could undertake commercial or professional activities after the expiry of their contract of terms in office, in order to ensure the employee did not use his public position for the achievement of illegal gains and benefits.

The legislation has also devised systems that aim at demonstrating the proper professional conduct and the effective performance for civil servants, and strengthening the administrative disciplinary actions to prevent exploitation of public position for private interests.

In the same context, Article 97 of the Public Tenders and Auctions Law No. 23, 2007, prohibits officials and employees in bodies subject to this law from submitting tenders themselves, or through others, or in the name of partners, directly or indirectly, for the execution of any works, procurement, consultancy or any other services regardless of its type.

The same article bans the purchase of items, assignments or properties sold by the institution they work for and prohibits all contracting between the local authority or the branches of the central agencies in the same administrative unit, and between any member of the local council of administrative unit, either by themselves, through others, or in the names of their partners, directly or indirectly, for the execution of any works, supplies, contracting, consultancy or other services regardless of their type, as well as from the purchase of any item, assignment, or property offered for sale by the local authority or branches of central agencies.

The article considers absolutely void all procedures and contracts executed in contravention to these provisions without prejudice to the right of the central control bodi(es) or the local council in the administrative unit to take the specific legal actions specified by the legislations and bylaws in force.

In **Egypt**, the *Manual on the Rules and Standards of Governance in the Arab Republic of Egypt*, No. 332 for the year 2005, contains a number of regulations to avoid conflict of interest in the private sector, such as:

1. Each firm should have a written system familiar to members of its board of directors, managers and staff members concerning the avoidance of conflict of interest, provided that that system include the rules contained in the pertinent section of the manual.

2. Members of the firms' board of directors, managers and staff are prohibited from executing transactions in their equity holdings for a certain period of time prior to the announcement of stock activity, financial results or any other effective financial information. They are also forbidden to trade on the firm's shares for a certain period following sudden events that may affect the firm's performance and its financial position until such information is disclosed to the public, and in accordance with the provisions of the law and the established rules.
3. The firm should, in consultation with its employees and clients, develop its own professional code of conduct that includes:
 - a. Rules on conducting transactions on the firm's shares (by sale, purchase or other activity);
 - b. Delegated authorities;
 - c. Method of announcement of new policies;
 - d. Established health and safety standards;
 - e. Sound professional standards for the interaction between employees and managers, and between the firm's personnel and external parties.
4. The firm must develop an internal system for monitoring of actual application of its professional code of conduct.
5. The firm should, through its dealings with suppliers, strive to select a supplier at the same professional and moral level, a matter that the firm should be internally concerned with.

Article 148 of the **Jordanian** Corporate Law No. 17, 2003 discusses extensively the issue of avoidance of conflict of interest. The most important provisions of this article can be summarized as follows:

- A. Any public post holder may not become a member of the board of directors of any public shareholding firm, except in the capacity as a representative of the government, public institution or institution with a legal personality.
- B. Any member of the firm's board of directors or its general manager may not become a member of the Board of another firm specialized in a

similar business to that of the firm in which he is a Board member, has identical objectives, or is a competitor thereof. In addition, members of the board are not entitled to carry out any business which competes with the business of the firm in which he is a member of its board.

- C. The chairman of the board of directors of any firm, its members, general manager or any of its employees shall not have a direct or an indirect interest in its contracts, projects and relationships which are concluded with or for the firm.
- D. Exception to the provisions of paragraph (c) of this article include construction works, contracting and public tenders in which all competitors have an equal opportunity to submit their offers. Should the best offer be submitted by any of those mentioned in paragraph (c) of this article, a two-thirds majority approval of the members of the Board must be obtained provided that the said member shall not have the right to attend the session in which his offer is being discussed. Such approval, when granted, shall be renewed annually by the board of directors if the said contracts or undertakings are of a renewable and periodic nature.
- E. Any person of those referred to in paragraph (c) of this Article shall be discharged of their office or position in the firm, in the event of violation to the provisions of the said paragraph.

Moreover, legislators in **Kuwait** enacted a special law entitled "The Conflict of Interests Law" part of which can be summarized as follows:

- A. Any member of a board of directors, or a committee with the power to take decisions or propose recommendations for the matter before them, is prohibited from participation in discussions or voting for a decision in a matter related to them or they have direct or indirect interest to him/her or for in his/her capacity as a custodian, guardian, trustee, or agent, paid or unpaid, to anyone that are relate to in matrimony, kinship, and affinity to the fourth degree. The provisions of this paragraph are applied to any member of an administration or committee, who is simultaneously a member of the firm's board of directors or a partner in

a firm that has a direct or indirect interest in the decision or recommendation in question. Prior to the start of the discussion, the member should disclose the interest and leave the meeting until the discussion is concluded on that specific issue.

- B. Any violation to the previous article is punishable by a fine not exceeding 3,000 dinars, in addition to the termination of membership, and denial from the membership in any board or committee for three years starting from the ruling. The decision issued by the board or committee can be voided by the affected person.
- C. Provisions of this law are applicable to members of councils and committees at the ministries, public directorates, official entities, institutions and cooperative committees.

Conflict of interest is often raised as an important issue pertaining to the conduct of parliamentarians. Many parliamentary laws and systems are devoted to prevent parliamentarians from any action that might lead to conflict of interest. In the **United States of America**, no congress member can join federal position and membership in the Congress. In spite of that, American law actually permits congress members, in accordance to Commercial Expansion Law for the year 1962, to become consultants in the United States delegations in conferences, meetings and international negotiations related to commercial agreements.

The American Congress has also enacted a few number of laws concerning the prevention of exploitation of parliamentary power, such as the anti-bribery law and the conflict of interest law that criminalize congress members who attain advantages and special services through abuse of their parliamentary power. The United States Supreme Court criminalized a congress member for using his powers to convince the Ministry of Justice to cancel an investigation on one of his institutions. Another member was also criminalized for using his parliamentary powers at the transportation authority for the obtainment of an airline³.

3 Lauren Fisher, *The policy of Power Sharing: the Congress and the Executive Authority*. Translated by Mazen Hammad, third edition, Al-Ahleyya for Publication and Distribution, p. 79 to 90

In **Great Britain**, it is generally permitted for members of the House of Commons to hold another job during their parliamentary terms, depending on the nature of the job. The established procedure requires that the member submit a request to this effect to the Bureau of the House of Commons. Members of the House of Commons are generally prohibited from occupying positions that may lead to conflict of interest between their parliamentary duties and their other occupation. To prevent such a conflict of interest, the House of Commons' bylaws have defined the general conduct expected from members. For example, when members are elected they must present sufficient and detailed information regarding their financial contributions or partnerships outside the House. Such information must be publicly disclosed and made available to the public.

Additionally, members must inform the House bureau of rewards and compensations obtained from public and private firms, including those the members contribute to individually or collectively, and must inform the House of any gift or donation they receive, both during their candidacy for elections or during their parliamentary terms if the collective value exceeds £1,000, whether from single or multiple sources. Any gift given to members or their spouses or partners which value exceeds 1% of the member's annual parliamentary emoluments should also be informed of. Members should also disclose to the House the trips abroad for themselves or their spouses or partners when not being financed by the United Kingdom. Finally, House members should disclose to the Secretariat information about any properties owned by themselves or their spouses or partners⁴.

In **Israel**, members of the Knesset are barred from taking on secondary occupations or professions, including civil organizations, except for voluntary work without compensation. Moreover, Knesset members do not take on any additional occupation or profession, even without compensation, if such undertaking may affect the Knesset's dignity or the positions of its members or their performance as a precaution to avoid abuse of position, or attainment of special advantages or privileges as result of being Knesset members. A similar

4 For more information about this topic, see: Guide to the Conduct of members of the British House of Commons at: www.parliament.the-stationery-office.co.uk

prohibition bans the members from joining public commissions, even without pay, and accepting, directly or indirectly, any material benefits in return for activities they perform using their positions as Knesset members. The ethics committee is mandated to investigate situations where Knesset members do not perform their duties, or when they violate the Knesset's code of conduct⁵.

In **Egypt**, members of the People's Assembly (parliament) are not allowed to combine membership in the Assembly with membership in local councils or popular committees or occupying the positions of mayors, tribe leaders or governors. Members are similarly not permitted to hold a position in the government or the public sector unless the Assembly determines their exclusions from full-time membership, as specified by the Law on People's Assembly. As soon as members are elected, a legislative ban established under the Arab and Foreign Capital Investment Law is enforced on their employment at any foreign firm or project. The same ban applies to membership on boards of directors of shareholding firms or limited liability firms unless the member was one of the firm's founders, holds at least 10% of the firm's capital shares, or has previously been a member of these councils before running for elections. Once elected, the member must inform the president of the Assembly of the post she/he currently occupies in government, the public sector, other private firms or projects, an independent occupation, or any other agricultural, industrial or commercial activity.

Kuwait does not permit the National Assembly members during their term to join or renew membership of a firm's board of directors regardless whether such an appointment/renewal is by the government or another party. It is also prohibited to combine the Assembly's membership with that of a local council or holding of a public office, with the exception of ministers. In the event that a member is found in violation of such a ban, the member in question has to decide in the following eight days which membership to keep, but in case the member has not made the choice, the most recent membership will prevail.

⁵ Information on the Knesset is obtained from its official website: www.knesset.gov.il

Avoidance of conflict of interest in Palestinian legislation

Controls and procedures are incorporated in a number of Palestinian laws to prevent conflicts of interest for employees and other individuals between the positions they occupy and their private interest. This legislation is classified as two major types:

I. Laws related to legislative and executive authorities:

1. *The Basic Law, 2003*

Article 41 of the Basic Law states that Legislative Council members cannot, in any manner, exploit their position for private benefits. The second paragraph of the same article obliges PLC members to present certified financial disclosures for themselves, their spouses and dependent that should detail all wealth, real estate and/or cash transferred from internal Palestinian or external resources, as well as debts. This disclosure shall be kept sealed and confidential at the Supreme Court of Justice, and is forbidden to be accessed except with prior permission from the Supreme Court and to the extent allowed by the Court.

The same applies to ministers, as under Article 67/1 they are required to submit a financial disclosure for themselves, their spouses and under-aged children, which should detail by type ownership of real estate, movable assets, stocks, cash from Palestinian or external resources and their debts, to the President of the Palestinian National Authority (PNA), who undertakes the necessary arrangements to keep such information confidential. The certification is kept at the Supreme Court and is not accessible except by permission or in case of necessity.

Paragraph 2 of the same article confirms that ministers are prohibited from purchasing or renting state-owned property, or that of public institutions, or to have a financial interest in any contract awarded by governmental or administrative parties. As long as they remain in office, ministers should not sit on a board of directors of any firm, practice commercial or any other profession, or receive payments, salaries, rewards, grants or any other form of compensation

from any other source other than the only salary and allocations specified for ministers.

2. Law on Duties and Rights of PLC Members No. 10, 2004

PLC members, in accordance with Article 4, are banned from the purchase or rent of any state property, or to sell, lease, or swap any of their own properties to the state or execute a contract with the state as a supplier or contractor, unless such contracts are performed in accordance to universally applicable public procedures. In all cases, PLC members should not exploit their position to illegally obtain special advantages. Article 6 of the law bars PLC members from acting as agents in a case in which the Palestinian National Authority is an opponent. PLC members are not permitted, according to Article 10 of the law, to use their membership for any private business in any way. All of The aforementioned prohibitions are similar to the provisions of Article 99 of PLC bylaws.

3. Illicit Income Law No. 1, 2005

According to the provisions of Article 11/1 of this law, the President of the PNA Authority presents a certified financial disclosure for himself, his wife and his under-aged children, containing all details on their possessions (of real estates, movables, stocks, cash from internal or external resources and their debts). This certification is kept sealed and confidential at the Supreme Court of Justice, inaccessible except with a prior permission from the court and according to the limits determined by the court.

Also, it is forbidden for the President of PNA, in accordance with the second paragraph of the same article, to buy, rent, sell, donate or gift any state-owned property, or have any financial interest in any governmental or administrative bodies' contracts. Also, it is not permitted for him to occupy a post in board of directors of any firm for the duration of his term in office, or to pursue commercial or any other occupation, or accept salaries, rewards or donations from other sources under any pretext other than the official salary and allocations specified for the President.

II. Laws on Economic and Financial Affairs

1. Monetary Authority Law No. 2, 1997

Article 22 of this law obliges the Governor of the Monetary Authority, the deputy governor and members to present to the Council, after their appointment, regular and complete data on the commercial and financial interests, directly or indirectly related to themselves, their spouse and underage children, on an annual basis. The law requires each member that has an interest in a subject to disclose their interests before discussion in the Council. In this case, they cannot take part in the discussion and do not have the right to take decisions. Thereby, they are not counted within the quorum for Council meetings. Article 28 of the law requires the governor and deputy governor to dedicate all their time for their job in the Monetary Authority, and prohibits them, during their mandate at the Authority, to pursue another occupation or hold any other position, whether paid or not. Their employment at banks or financial institutions is not permitted until after the passage of one year after the conclusion of their employment at the Monetary Authority. Any council or staff member of the Monetary Authority is not permitted to accept gifts, aid or credit for themselves or anyone of their families, or with whom they have commercial or financial relations, if such acceptance leads to or gives the impression of decreasing loyalty to their duties. To avoid any conflict of interest, the article bans all employees of the Monetary Authority from pursuing other occupations, whether paid or not.

2. Law on the encouragement of investment in Palestine No. 1, 1998

Article 17/e of the law prohibits the Director of Investment Promotion Commission from being a part of or having any direct or indirect interest in any investment project.

3. Free Industrial cities and zones law No. 10, 1998

Article 11/e of the law bars the Director General of free industrial zones commission from being a part of or having any direct or indirect interest in any manufacturing or other project or contract licensed

or signed by the Commission. Article 14 clarifies, in the event of direct or indirect interest for any member of the board of directors, and in relation to any request proposed to the commission by a qualified person to develop a classification for an industrial city or a free zone, or the development or licensing of projects in such areas, that the director should provide a written disclosure to the Council and cannot participate in any decision or recommendation related to that request.

4. Labor Law No. 7, 2000

According to Article (109) of this law, the selection of labor inspector to carry out inspections on the ground should take into consideration that the inspector should not have direct or indirect interest in the structure subjected to inspection.

5. Water Law No. 3, 2000

According to the provisions of Article 13/1 of the law, no Council member or employee is allowed to become a party to any contract, including procurement of supplies and tenders for supplies or works awarded by the Authority. Nor have they the right to work on these projects or make any direct or indirect gains, profits or material benefits other than the official salaries and rewards granted in return for participation in any task assigned by the Water Authority on the basis of the law and its regulations. According to Paragraph (2) of the same Article, if any Council member or employee in the Authority violates the provisions of paragraph (1) of this Article, they would be penalized in accordance with the legal procedures, including the obligation to return all money obtained from these violations, in addition to compensating any harm inflicted on the Authority or other parties.

Article 16/3 of the law prohibits the recruitment of consultants with interests related to the Water Authority that the Authority hires for assistance in the implementation of its activities. This ban is applied downwards until the consultant's second degree relatives.

6. Banking Law No. 2, 2002

To avoid any conflict of interest in banking transactions performed by the bank, Article 16 of the law bans a number of commercial credit activities as follows:

- A. Award of credit to a person with direct or indirect relation to the bank before obtainment of an approval from the Monetary Authority. For the purposes of this article, persons who have a relation to the bank are:
 1. Chairman of the board of directors, members of the board of directors, the general manager and his deputies;
 2. Any person who has a commercial interest, blood relations to the second degree, is an in-law of one of the Board members or any manager or employee responsible for bank management and supervision.
- B. Award of credit to a person of direct or indirect relationship to the bank, has a commercial or material interest in the bank, or possesses 5% of the bank's capital worth, without prior approval from the Monetary Authority.
- C. Award credit to a person or group of individuals, working together, and possess directly or indirectly a percentage of more than 10% of the bank's capital or any figure whom the bank has a significant share in its capital, without a previous written approval from the Monetary Authority.
- D. Grant credit with the guarantee of stocks of the same bank.

On the other hand, Article 19 of the law bans banks from providing loans or credit facilities of any kind, by personal guarantee of bank auditors or their spouses or children, or to any structure they individually or collectively were partners to, or members of its board of directors. This ban is applied on them by their personal character or as guarantees, and in the case of giving facilities for any of them with guarantees other than a personal guarantee, the approval of the Monetary Authority is obligatory. Article 22/5 of the law does not permit combining the presidency or membership of two or more licensed banks in Palestine without the permission of the Monetary Authority. Also, Article 27/2 prohibits members or employees from working in two banks or financial firms at the same time.

7. Securities Law No. 12, 2004

The Law barred a specific group of persons related to leading positions in the Palestine Securities Exchange (PSE) to perform specific practices that

may result in conflicts of interest. Article 5/4 prevents the president of the PSE council and his deputy from being a partner, a member of the board of directors or managers, an employee or representative for a party in securities exchange. Article 55/4 of the law prohibits an investment manager⁶ in the securities exchange to engage in any financial-securities deal with his own interest, directly or indirectly, with the exchange or any other financial securities firm. It is also forbidden for the investment manager in the securities exchange, according to Article 57/5, to enter directly or indirectly into any securities deal with the exchange or any related financial securities firm. The same applies to the Secretary-General, who, according to Article 59/5, cannot be involved, directly or indirectly, in a securities deal with the company where he works or with any related financial securities firm. Finally, article (60/5) of the law forbids a treasurer to be involved, directly or indirectly, in any securities deal with the company he/she works for or any related financial securities firm.

8. Capital Market Authority Law No. 13, 2004

Article (9) of the law requires from each member of the Authority's board of directors to present a written disclosure about:

- a. Securities he possesses, or that are under his authority or that of his wife or children or relatives to the first degree;
- b. Shares or contributions of any financial firm he has, or that are under his authority or his wife or children or relatives to the first degree;
- c. Any financial interest belonging to the member, if this interest was under the Authority's control.

A member of the board of directors has to inform the Authority of any changes that may occur to what was mentioned within three days of the change. A written disclosure must be submitted to the board of directors if there was any interest for any member of the board of directors, either directly or not, resulting from a contracting or commercial

⁶ Investment Fund: the legal person licensed by the Fund to compile the capital from investors and invested on their behalf in the portfolio of securities, or other types of investment assets under the contract of incorporation and regulations of the Interior.

dealing with the authority or any commission under its control. A member cannot participate or vote in any decision or recommendation issued from the authority related to that request. In addition, the General Manager of the Capital Market Authority, when he receives his duties, has to present a written disclosure about shares or contributions of any financial firm that he owns, or are under his authority or that of his wife or children or relatives to the first degree.

Article 10/1 of the law prevents members of the board of directors and Authority employees from exploitation of any internal or confidential information obtained due to their position; neither can they exploit them to achieve material or moral benefit for their private interest or for the others, directly or indirectly.

Article 18 of the law prevents the Authority's employees from the following:

- a. Occupancy of ministerial position, membership in the Legislative Council, employment in any governmental or official public institution;
- b. Direct or indirect control over financial and investment works and decisions for an institution under the Authority's control, or to be a consultant for any of them;
- c. Being an auditor or a legal/administrative consultant for any person or legal entity;
- d. Financial participation in any commission, institution or firm under the control of, or related to, the financial market.

9. Financial Auditing Profession Law No. 9, 2004

Article 23/3 of the law prevents a practicing auditor from auditing any firm in which he is a partner.

10. Law on Charitable Associations and Civil Society Organization No. 1, 2000

Article 20 of the law prevents combining between being a member in a board of directors and work in a charity or commission with payment. Article 45/5 of the regulations act requires charities to make provisions to prevent conflict of interest between the charity and its members.

III. Laws of judicial regard

1. *Judicial Authority Law Number 15, 2005*

According to Article 29 of the law, activities forbidden to judges are: pursuing commercial work; paid work; or any other work which could contradict the independency and dignity of the judiciary. The Supreme Judiciary Council determines the banned activities.

To avoid any conflict of interest between the judge and others, Article 30/2 of the law hinders the participation of judges who have family members, in-laws or relations to a third degree with a member of the Attorney General, representative of the litigator or one of the parties to the litigation.

2. *Civil and Commercial Procedural Law No. 2, 2001*

To avoid conflict of interest, a judge must refrain from deciding on a lawsuit, even if no litigator has asked for his removal, if:

- a. He is a family relative to or has any affinity with one of the litigators, to the fourth degree;
- b. He or their spouse had proceedings with one of the litigators or if the spouse was party to the lawsuit;
- c. He is the legal representative or partner of one of the litigators, is an expected heir of—or has a family or kinship tie to the fourth degree with—one of the guardians of litigators, or with one of the board of director's members of the specialized firm, or with one of its managers;
- d. The lawsuit represents an interest for said judge, his spouse, relatives or kinship relative to the fourth degree, or to whom he is a representative;
- e. Before working in judiciary, the judge issued a fatwa against or defended one of the litigators in a lawsuit, wrote or testified in it;
- f. He considered the suit previously, as a judge, expert, arbitrator or a mediator;
- g. He had family or kinship relation to the fourth degree with one of the judges, or with the representative of the litigator's family.

Article 143 gives permission for any of the litigators to request removal of the judge for the following reasons:

- a. If the judge or his spouse has been involved in a similar lawsuit to that which he is deciding on, or if one of them had litigation with a litigator (or his spouse) after hearing the lawsuit submitted before the judge, unless this lawsuit was done in the purpose of his removal.
- b. If his divorced wife who has a child with him, or one of his relatives or brothers-in-law to fourth degree, has a litigation in court with one of the litigators in the lawsuit (or with his wife) unless this claim came after hearing the lawsuit before the judge in order to remove him.
- c. If one of the litigators has been employed by the judge, or if said judge had either close or conflicted relations with one of the litigators, and bias for one litigator is likely to happen.

Article 144 allows the judge, in cases other than those included in Articles 141 and 143 of this law, to remove himself from the lawsuit if he feels embarrassed for any reason to hear it, providing he informs the president of the court he follows.

3. *Criminal Procedures Law No. 3, 2001*

According to Article 159, the judge is prevented from participation in a legal hearing if the crime targeted him personally; if he acted as a law enforcement officer, attorney general, legislative defender in the lawsuit; testified in it or did any experts' task. He is also prevented from participating in judgment if he did any investigation or referral in the lawsuit; or from participating in the judgment of appeal, if the appealed judgment was issued by him.

4. *Evidence Law in Civil and Commercial Proceedings No. 4, 2001*

To avoid any conflict of interest in expert work performed, as experience is considered as a means of verification in civil and commercial articles, Article 167 prevents such work in the following cases:

- a. If he was a relative or brother-in-law with one of the litigators to the fourth degree, or he or his wife had current litigation with one of the litigators (or his wife) in the lawsuit, unless this

occurred after the appointment of the expert for the purpose of his removal;

- b. If he represents one of the litigators in his private business, or he is a guardian or trustee; if he is expected to inherit after his death; if he had a family or kinship relation to the fourth degree with a guardian of one of the litigators, a trustee, or with one of the members of the board of directors of the litigator's firm or , or with one of its managers who may have personal interest in the lawsuit;
- c. If he, his wife, one of his relatives or kinship relatives, or anyone to whom he is a representative, custodian, guardian, warden or heir, had an interest in the lawsuit;
- d. If he works for one of the litigators, used to eat or live with one of them, received a gift from one of them, or if there was a love or hate relationship between them that may likely lead to him being incapable of performing his mission without bias.

5. Law Organizing the Legal Profession No. 3, 1999

Article 9 of the law prohibits the lawyer from accepting lawsuits in the following cases:

- a. Any lawsuit against any public or private institution for a year from the date from which he departed said organization;
- b. Any lawsuit against any of the public or private councils, committees or bodies, including legislative, municipality or administrative councils, or against any of the authorities related to them, during his mandate and for the following year.
- c. Any original or subsidiary lawsuit which was previously presided by him, or in which he gave his opinion as a judge, referee or expert.

And according to Article 27 of the law, it is forbidden for the lawyer to be a partner in more than one law firm. And it is forbidden for a partner's lawyers or those who share one office to plead against each other, or to represent any lawsuit or dealing of two parties of different interests. Also, a lawyer cannot represent in a lawsuit:

- a. two disputed parties in a single lawsuit;
- b. Against his client according to a under accept the procuration;
- c. Against his defendant in either a current lawsuit or relating suits, even if the representation is over;
- d. Against a party that previously disclosed its identity documents and its defense destination for him, and he received payments in advance;

Finally, according to Article 28, the lawyer can not testify against his client regarding the lawsuit he was an agent for, or disclose a secret either entrusted to him or obtained through circumstance. Nor may he give an opinion or advise the opponent of his client in a lawsuit he was previously engaged in, or in a lawsuit related to it, even after the representation is over.

IV. Laws regarding career

1. Civil Service Act Law No. 4, 1998, and its executive list

The public employee must avoid the trap of conflict of interest according to Article 67/2, which prevents him from combining his job with another performed by him or that he delegates to others. The executive list of this law determines controls and provisions for the work the employee can perform outside of office hours, in a way that does not harm, conflict or contradict his official job and its requirements.

The aim of the executive list is to place controls in the public sector; it is forbidden, according to Article 83, for the employee to work or occupy himself with a work outside of his job range, temporarily or permanently, except with permission from the specialized chief of the governmental department. The employee is required to inform the bureau, and that applies to the employee even on his vacation, with salary or not.

The purchase of stocks in firms is not considered a job out of the range of his duties, as long as the employee is not active in any way in the management of the firm or partnership.

Article 84 determines permissions, where, for instance, the employee proposes a request for permission to work outside of his job range by a special request to his direct superior, who signs it according to the extent of his entitlement, and transmits it to the personnel unit where the employee belongs. This approval is conditioned with the approval of the head of the department who informs the bureau about it. This approval is valid for a year, and if the employee wants to renew that he must present a new request.

It is permitted for the bureau, after revision of the request to work outside of a job range, to ask the head of the department to suspend the approval if it is incompatible with the conditions of the list. In case that the employee proceeded in the request without the approval, he will be disciplinary punished.

Among the conditions that must be available to give a permission to work out of job range, the work must not be related, directly or indirectly, to the employee's performance of the task entrusted to him. And he must not be related to any individual, firm or institution that has financial or commercial relations with the government department he works in, or with any other government department he is related to in the range of his work in civil service. The practice of his job should also not cause harm or conflict in relation to his original job and its requirements with civil service systems or any other law.

2. State Audit and Administrative Control Bureau law No. 15, 2004

According to Article 17 of the law, it is forbidden for the chief, his deputy and the manager during their work at the State Audit and Administrative Control Bureau to:

- a. Perform any other job;
- b. Purchase or rent any of the Palestinian National Authority properties or one of public figures, even if indirectly or by auction. And not to lease, sell or barter any of his properties with them;
- c. Participate in commitments made by Palestinian National Authority or public institutions or bodies;
- d. Combine between his job and membership

of board of director of any firm, institution or governmental or nongovernmental commission.

3. General Retirement Law No. 7, 2005

According to Article 63 of the law, retirement commissions' board of directors must disclose to the president of the board, when appointed, all his financial and commercial interests that may cause a conflict between his personal interest and his legal responsibilities as a member of the board. Article 64 of the law stated that in the case of conflict of interest, or a suspicion of conflict started to appear, a written disclosure must be presented to the chief of the commission by all of board of directors members, employees, shareholders and users, and the chief in his turn informs the board of directors about that conflict in the first meeting, and if it is necessary, an urgent meeting may be held.

4. Law on Service in the Palestinian Security Forces No 8, 2005

According to the provisions of Article 91/1 of the law, it is forbidden for the officers to perform other work, whether paid or not, even during off-hours. The executive list of this law determines the permitted work the officer can perform outside of official working time providing there is no harm, confliction or contradiction toward military service duties and requirements. Also, according to Article 93 of the law, the following are forbidden:

- a. The purchase or sale of real estate that is disclosed by administrative or judicial parties as available for sale in the department he performs his job in, if relevant;
- b. Performing any type of industrial or commercial works, especially if he had any interests in functions, constructions or tenders related to his job;
- c. Lease land or buildings or any other real estate to utilize them in the department in which he functions;
- d. Participate in firms' establishment or being a member in their boards of directors or any other position, unless he was a representative of one of security forces.

And according to Article 94 of the law, each officer who violates duties mentioned in this law, or issued

through decisions by the competent minister, and/or deviates from the requirements of his job functions, or behaves or appears in a way that harms the dignity of his job may be disciplinarily punished, with the possibility of civil or criminal lawsuit.

5. General Intelligence Law No. 17, 2005

Article 25 of the law prevents employees in general intelligence services from combining their job and any other work, unless it helps in the execution of a certain task and with permission from the intelligence chief.

6. Management and Development of Orphans' Funds Institution Law No. 14, 2005

According to Article 29, management and development of Orphans' Funds Institution is not permitted for the council, workers or employees.

Recommendations:

- Palestinian legislator made sure that the public employee adheres to laws and regulations, yet, the legislator did not concentrate on avoiding conflict of interest. Attention should be paid to the following:
 - Amendment of Local Councils Law Number 1, 1997, to enforce the local Councils personnel to define the information that prevents conflict of interest, and to avoid their connection in any of these conflicts, code of conduct adopted by AMAN for heads and employees of local Councils can be used. Part of the code is as follows:
 - All council members must give notice of any economical, financial, commercial, personal or moral interest, with local commission activities or decisions. A record of those interests should be kept with the local commission.
 - Council members must avoid deciding on any bid, service or procurement for at least their first- and second-degree relatives or their business partners.
 - Members must inform the council of any conflict of interest, e.g., a member receiving services from the local commission. In case of a personal, financial or moral interest the council member must avoid taking a decision and should always inform the council.
- The member must avoid any situation that conflicts with his obligations and membership within the council. The council should be informed if any member works for another job.
- Commitment to represent the local body in external activities, or adopting such activities, their representation must be based on the core of the local body. Ensuring council members' official delegation and pointing out the aspects of this representation are essential, paying attention to the importance of identifying a non-personal interest for those activities and participation.
- Public Supplies Law No. 9, 1998, stipulates procurement procedures regarding public supplies – whether through bid invitations or other forms of tenders – and the creation of special committees to take decision. Nevertheless the law fails to mention limitations preventing conflict of interest for the members of those committees. Therefore, an amendment of this law must be considered to encourage members to identify information related to conflict of interest, and avoid any responsibility regarding this issue.
- Considering public tenders present possibilities for conflicts of interest when announced, and since the Public Works Tender Law No. 6, 1996 did not include any limitations preventing conflict of interest between the members of public tenders committees and the interests of their relatives, amendments like those applied to the Public Supplies Law mentioned earlier should be added to this law.
- Palestinian Standards and Specifications Law No. 6, 2000, must be amended by setting rules that prevent conflict of interest especially in relation to Palestinian specifications and standards functions. These functions include: adopting related regulations with the specifications and standards, providing marks and certificates of locally manufactured conformity goods and imported goods, and forming committees to decide on such issues.

- Palestinian Income Tax Law No. 17, 2004, did not mention prevention of conflict of interest while tax employees perform their functions. The interests of the state might contradict the interests of tax payers, which may lead the tax employee to advance his/her own interests over those of the state, which requires an amendment to the law by adding breaks and restraints that prevent such conflict of interest.

Preventing conflict of interest

“Ratifying countries prevent conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure.”

Paragraph 2-e/ Article 12, United Nations Convention against Corruption

This report was written in a “gender-blind” style to simplify reading.

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