



The Coalition for Accountability and Integrity (AMAN)

Executive Summary

For the

**Review of the State of Palestine in the Implementation of Chapters II
(Safeguards) And V (Recovery of Assets) of the United Nations Convention
Against Corruption. UNCAC**

2018



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Introduction

Palestine has joined the United Nations Convention Against Corruption under the deposit of its instrument of accession with the Secretary-General of the United Nations on April 2 / April 2014, it entered into force in May the same year, the signing of the Convention arranges a set of obligations that are intended to harmonize legislation, policies and procedures of the State with the provisions of the terms of the Convention, and although Palestine formally adopted the agreement, it was never published in the Palestinian Official Gazette (Alwaqe'e) in accordance with the legal framework in force, which places it below the local laws.

Later, the State of Palestine completed the first phase of the review of the implementation of the Convention in 2015. The State of Palestine was reviewed for the third and fourth chapters of the Convention by the first session of the review by the States of Oman and Micronesia. Several gaps were noted in these chapters. The full and summary report of the State of Palestine has been published through the UN Office on Drugs and Crime.

At the beginning of 2018, preparations for the review process began within the second session of chapters II and V on preventive measures and asset recovery under the supervision of the United Nations Office on Drugs and Crime, with the goal of reviewing Palestine's compliance with the provisions of the said chapters by the States of Burkina Faso and Malaysia. Afterwards a governmental committee of experts consisting of 18 government officials dealing with anti-corruption issues was formed from a number of ministries and government institutions which was published through the UN website. The team carried out the evaluation and submitted the report to the Committee of Experts mid-year. The team carried out the evaluation and submitted the report to the Committee of Experts mid-year, and the report will be published in almost four months.

This report aims to examine the implementation of the State of Palestine and its commitment to the provisions of chapters II and V of the United Nations Convention against Corruption, including the legislative and practical aspects, the preparation of the report is also an enhancement of the oversight role played by civil society in the management of public affairs and finance. It also plays a role in the preparation of shadow reports highlighting the achievements and gaps in the legislative and practical aspects of the chapters to be reviewed, The Conference of States Parties to the Convention, held in Doha, stressed the importance of involving Governments to civil society in the evaluation process of the Convention. To achieve this objective, the researcher relied on the analytical descriptive approach and the presentation of observations on each section and the gaps in implementation in the Palestinian reality. The researcher also used tools to prepare the report, including guidelines for answering the comprehensive self-assessment checklist issued by the United Nations Office on Drugs and Crime, the Palestinian legal frameworks related to the two chapters, the information published from the official Palestinian sources and what was published through the websites of the relevant authorities, the specialized relevant reports issued by AMAN Coalition, the annual reports of the relevant public institutions, in addition to conducting some interviews with specialists.

The report has been divided into two main chapters depending on the chapters from the Convention that are to be reviewed: Chapter II: Preventive Measures and Chapter V Assets Recovery.

Chapter II: In reviewing Palestine's compliance with Chapter II on preventive measures, the following observations were made:

▪ **Preventive anti-corruption policies and practices**

- The State of Palestine has not committed itself to the preparation and adoption of a national cross-sectoral national plan to combat corruption, which should be prepared, implemented and supervised by official institutions and representatives of civil society and the private sector, including the preparation of an annual implementation plan that spells out specific activities and interventions for implementation and the role of each partner, which should be conducted according to timetables with a clear system of follow-up and evaluation.

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

- Although the Anti-Corruption Law grants the Commission sufficient independence and fortifies the position of the Chairman of the Commission by appointing him for a period of seven years, nevertheless the Legislative Council is disrupted and the fact that the head of state /head of the executive branch is playing the role of the legislature had weakened the independence often. In the area of transparency of the procedures, reports are published to the Commission, Its content is dominated by administrative aspects and activities. No sufficient information or reports are published immediately after it is presented to the President. Also, the Commission does not issue reports on the reality of corruption on a regular basis.
- In addition to the Anti-Corruption Authority and under the provisions of the Basic Law and some of the laws in force in Palestine, there are some official institutions that deal with accountability and oversight, such as the State Audit and Administrative Control Bureau, the Internal Control Committees, the Internal Audit and Inspection Department, and the General Directorate of Complaints. Its work is published to the public. All these entities prepare periodic reports on the results of their work and publish the report for the public's attention.
- Financial disclosures had been collected from the majority of public and private sector employees and they were maintained by the Anti-Corruption Commission. The commission on the other hand did not take the principle of disclosure and publicity, especially among senior officials, which weakened the goals that should be achieved, especially the prevention of corruption and the prevention of impunity, particularly in the fight against illicit enrichment as evidence of proof in cases of corruption, for example, used only in six cases until the middle of 2017.

▪ **Public Sector**

- With regard to appointments in senior positions, decisions and presidential decrees that do not adopt the principle of prior declaration or fair competition or the principle of equal opportunities are still being issued, in many cases, job advertisements were

not published in newspapers, and appointments were made without official supervision, which allowed for a range of nepotism, favoritism and non-fair competition.

- The role of the Central Election Commission in monitoring campaign financing is limited to receiving financial reports from candidates and electoral lists audited by a legal auditor. The Election Law did not assign the Commission a role in investigating and examining irregularities related to funding and spending on campaigns.
- There is an absence of a system to avoid conflicts of interest in the public service, although some laws included provisions on the need for public office holders to give full time to their posts (to hold no other positions) on the one hand and imposed restrictions on their physical and commercial relations with state institutions, which included ministers, deputies and judges, as well as provisions relating to the civil servant in the civil service law as well as a number of principles contained in the public servants codes of conduct. Nevertheless, all these codes were not collected in a single comprehensive law, including regulations on the transfer from public to private employment.

▪ **Codes of conduct for public officials**

- The General Personnel Council played an essential role in the implementation of the Code of Conduct and Ethics of the Public Service. The Bureau, through the National Code of Conduct Committee, has worked to implement the Code of Ethics and Public Service Ethics through several mechanisms. However, as of the date of this report, no code of conduct for ministers has been adopted.
- The State of Palestine has taken no action and has not issued any instructions that would activate the commitment of public institutions to the Code of Conduct.
- The whistleblower protection system provided for in the Anti-Corruption Act has not been issue, thus whistleblowers are not protected from counter-claim and reprisals.

▪ **Public procurement and management of public finances**

- Despite the existence of a law on public procurement to ensure the integrity and transparency of procurement and public bids, many government procurement processes are still carried out exceptionally by a decision of the Council of Ministers and this is due to the weakness of the government in the implementation of reform policy in public procurement, this is due to the lack of full activation of the Supreme Council for Procurement Policies, which still needs to complete the systems and procedures necessary to carry out its functions, such as the adoption of standardized forms of

contracts and standard documents for tenders, and activation and management of the unified portal for public procurement.

- Despite the accession of the State of Palestine to the initiative of the open government, it did not implement the requirements of accession and the most important transparency in the management of public funds. The government's policy continued not to publish financial reports relating to the accounts of the half year and the end of the year, the audited report and the final account, which hinders its accountability to the extent of compliance with the provisions of the General Budget Law.

- **Public reporting**

- The draft law on the right to information is still pending in the Council of Ministers without any intention expressed to be implemented for almost a year and a half.

- **Measures relating to the judiciary and prosecution services**

- In recent years, the independence of the judiciary has been reduced. The President of the Supreme Judicial Council has been appointed directly by the President and without the recommendation of the Supreme Judicial Council in accordance with the law, which was overturned by the Supreme Court, the dispute was again highlighted by the appointment of a new president within the Judicial Council and the emergence of bargaining for the sharing of positions, which enabled the executive authority to place restrictions on the occupants of these positions, this was a blatant interference in the independence of the judiciary, especially in relation to its administrative control over government decisions and weakened public confidence in the judiciary.

- **Private sector**

- Palestinian legislation still does not criminalize bribery and embezzlement in the private sector, as stipulated in the United Nations Convention against Corruption. It should also be noted that there is a lack of legislation, which represents a legislative void. Its problematic nature is reflected in the environment of integrity, transparency and accountability in private work, such as the Competition Promotion and Antimonopoly Act, the Public Privileges Act.

- **Participation of Society**

- The involvement of civil society in the State of Palestine in efforts to combat corruption is weak, selective and seasonal, and does not reflect the policy of partnership and openness.

- **Measures to prevent money-laundering**
- Under the provisions of Article 23 of the AML /CFT Law No. 20 of 2015, the Financial Follow-up Unit is established as an independent unit headed by the Governor of the Palestinian Monetary Authority. This unit exercises several competences under Article 23 of the Law including: of this Article, the Director and employees of the Unit shall have the status of judicial control in the exercise of the functions of their title in accordance with the provisions of this Decree law.

Chapter V of the United Nations Convention against Corruption regulated the subject of asset recovery.

In reviewing Palestine's compliance with the provisions of this chapter, the following observations were made:

- The State of Palestine faces other challenges in addition to the legislative and practical sphere that are represented in the absence of bilateral agreements or accession to international conventions in the field of international judicial cooperation, whether in the recovery of stolen assets or in the implementation of sentences or at the level of extradition.
- In 2016, a decision was issued by the Council of Ministers to form a national team to assess the risks of money laundering and terrorist financing. The National Report on the Risk Assessment of Money Laundering and the Financing of Terrorism was published in 2018 and was not published until the date of this report.
- In 2016, a decision was issued by the Council of Ministers to form the national team to assess the risks of money laundering and terrorist financing. The national report on the risk of money laundering and terrorist financing was handed over to the government during 2018 and has not been published as of the date of this report.
- In the practical aspect, the National Committee against Money Laundering and the Financing of Terrorism is not mandated by any party to follow up certain accounts. The terms of reference of the National Committee fall within the provisions of Article 20 of the Anti-Money Laundering and Terrorism Financing Law No. 20 of 2015 and its amendments, While the Financial Follow-up Unit is the central national body to combat the crime of

money laundering and the financing of terrorism. Chapter IV of the Legislative Decree (20/2015) and its amendments defines the functions and competences of the said unit.

- The International Cooperation Unit of the Ministry of Justice was established as a specialized unit for asset recovery, with all issues relating to mutual legal assistance and international judicial cooperation, including follow-up to extradition requests, recovery of stolen assets and enforcement of court judgments, the Palestinian Public Prosecution prepares a warrant for recovery or a request for provisional seizure of the accused's funds. The warrants shall be transmitted to the International Cooperation Unit, which undertakes the task of coordination at the international level through the Ministry of Foreign Affairs.
- The amount of 70 million dollars of looted money obtained from acts of corruption during the past few years, out of the tens of millions looted from acts of corruption, and deposited the money collected in a special account called the secretariats in the Treasury, The total amount of judicial rulings recovered in 2016 amounted to about 23 million dollars, and the number of applications to international bodies for the recovery of stolen assets in accordance with the provisions of the Palestinian judiciary in 2017 were two requests in addition to 28 requests to prosecute those accused of corruption.
- The State of Palestine had joined the International Criminal Police Organization (Interpol) on 27/09/2017, when the International Criminal Police Organization (Interpol) had accepted the State of Palestine as a member. This will open the way for the State of Palestine to pursue some of those fleeing justice, provided that the State in which it is a member of Interpol.
- The Israeli side impedes the process of prosecuting corrupt Palestinian fugitives from justice.



The Coalition for Integrity and Accountability (AMAN) is the Palestinian Chapter of Transparency International Organisation since 2006. It was established in 2000 by a number of civil organisations active in the area of democracy, good governance and human rights. It aims to achieve a ‘corruption-free Palestinian Society’. AMAN endeavours to create and lead cross-sectoral community mobilisation to combat corruption and produce, transfer and localise knowledge of corruption and its fighting at national, regional and international levels.

AMAN is keen of its watchdog role to oversee the national integrity system and focus on community participation and activation of the role of civil society organisations and the media in overseeing, accountability and in the creation of an immune environment in addition to detecting the crimes of corruption and minimise their spread.

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