



# NATIONAL INTEGRITY SYSTEM ASSESSMENT PALESTINE 2013

**NATIONAL INTEGRITY SYSTEM  
ASSESSMENT PALESTINE 2013**

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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[www.transparency.org](http://www.transparency.org)

ISBN: 978-9950-356-14-6

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## THE RESEARCH TEAM

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Jehad Harb (Main Researcher)

Dr. AbdulQader Jaradah

Saeed Zeid

Saja Terawi

Supervised by Dr. Azmi Al-Shuaibi :AMANs' Commissioner for Combating Corruption

## ADVISORY GROUP MEMBERS

<b>Dr.Ghassan Al-Khateeb</b>	Professor, Birzeit University and former minister
<b>Dr. Ammar Dwaik</b>	Lawyer and professor, Birzeit University
<b>Nisfat Al-Khaffash</b>	Palestinian National Institute for NGOs
<b>Qais Abu Laila</b>	Palestinian Legislative Council, Alternative Bloc
<b>Dr. Sahar Al-Qawasmi</b>	Palestinian Legislative Council, Fateh Bloc
<b>Jafal Jafal</b>	State Audit and Administrative Bureau
<b>Randa Siniora</b>	The Independent Commission for Human Rights (ICHR), Executive Director
<b>Suha Elyan</b>	Ministry of Justice
<b>Jamal Milhem</b>	Tilal Abu Ghazala Company (Private Sector)
<b>Issa Abu-Sharar</b>	Head of the Supreme Court and former head of the Supreme Council of Justice
<b>Abdul Rahman Abu Arafa</b>	Arab Thought Forum
<b>Issam Younis</b>	Al Mezan Center for Human Rights - Gaza, Executive Director
<b>Talal Owkal</b>	Member of AMAN's General Assembly & political analyst
<b>Mueen Rajab</b>	Expert in Economic Development

## THANKS AND ACKNOWLEDGEMENTS

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The Coalition for Accountability and Integrity (AMAN) and the project team for this study presents its thanks and acknowledgements to the institutions included in the study, represented by the persons in charge of them, for their cooperation and provision of the information necessary for the performance of this work.

In particular we would like to express our thanks to the steering committee for the report, which discussed each pillar, and the representatives from the following sectors: the executive, the legislature, the judiciary, representatives of non-ministerial institutions, civil society, political parties, the private sector and senior independent academic and cultural figures.

We moreover express our thanks to Dr Azmi Al-Shuaibi, the Commissioner of the AMAN Coalition for Combating Corruption for his overall supervision of the assessment and providing the team with invaluable information and guidance throughout its preparation.

# I. INTRODUCTORY INFORMATION

The establishment of a national integrity system is among the most important requirements for good governance. A national integrity system works to overcome the risks, at all levels, of corruption occurring. It expands the horizontal base of accountability to the extent that power is not concentrated in the hands of a single authority or individual but spread so that all those who occupy a public office become responsible for their work separately and within an inter-connected chain. As such, every institution within this chain performs the role of both a guardian and one guarded against, both a monitor and one subject to oversight. A national integrity system means a move away from a system of vertical accountability under monopoly systems governed by a single party or individual, to a system of horizontal accountability based on a multiplicity of monitoring and accounting agencies, such as parliaments, public monitoring agencies, a free media, the courts, and professional associations, which prevent the misuse of authority.

The national integrity system is a comprehensive vision for the strengthening of the power of all the components of the society to counter corruption through reform of legal frameworks and the performance of institutions within the system. This vision is based on a gradual process and takes place through community participation that includes institutions within the civil society, the private sector, the media and religious institutions. This vision is also based on a programme of comprehensive reform that includes all issues and fields related to governance. These include: the institutional framework (government agencies and departments), legislation that protects the citizen from arbitrary authority and that prevents the spread of corruption, and public policies (strategies for development that take into account the interests of all segments of the public).

The implementation of a national integrity system one of the major challenges in more newly established countries. Although the Palestinian National Authority does not bear all the hallmarks of a state, but it is considered a newly growing state. The Palestinian National Authority, like other countries in similar circumstances, suffers from a shortage of appropriate institutions and a relatively low level of experience and expertise necessary to support an integrity-based regime. Furthermore the Palestinian Authority is still operating within the context of an Israeli military occupation of most of the Palestinian regions, total Israeli control of crossings and borders, and a lack of authority over much of its resources and territory.

This assessment seeks to present the national integrity system across Palestinian public, private and civil society institutions. It comes within the context of a number of NIS assessments currently being carried out by Transparency International, including in many Arab countries, with the objective of achieving a general view of the reality of integrity regimes across the Arab world.

The study has adopted a unified methodology, prepared in advance, for all regional NIS assessments, covering the principal state institutions, including the legislature, judiciary and executive, the public sector, law enforcement institutions, the election commission, the supreme institutions for monitoring and audit, the political parties, the anti-corruption commission, as well as civil institutions, including the media, CSOs and the private sector.

In all the aforementioned sectors the assessment covers: resources, governance, accountability, mechanisms for integrity and transparency, and role in the regime for integrity.

In looking at these sectors and in examining the areas covered by this assessment, it answers a number of questions that permit an examination of the sector from the legal, institutional, political and implementation perspectives, related to integrity, transparency and accountability. Every indicator is given a mark that seeks to provide a quantitative summary of the qualitative information expressing the extent of adherence to the legal indicators and practice indicators, in line with rules specified in the United Nations Anti-Corruption Convention and best practice. The marks range from zero, when there are no legal rules or an absence of implementation or violation of the rule of the law, to a mark of 100, when legal rules or practice is in line

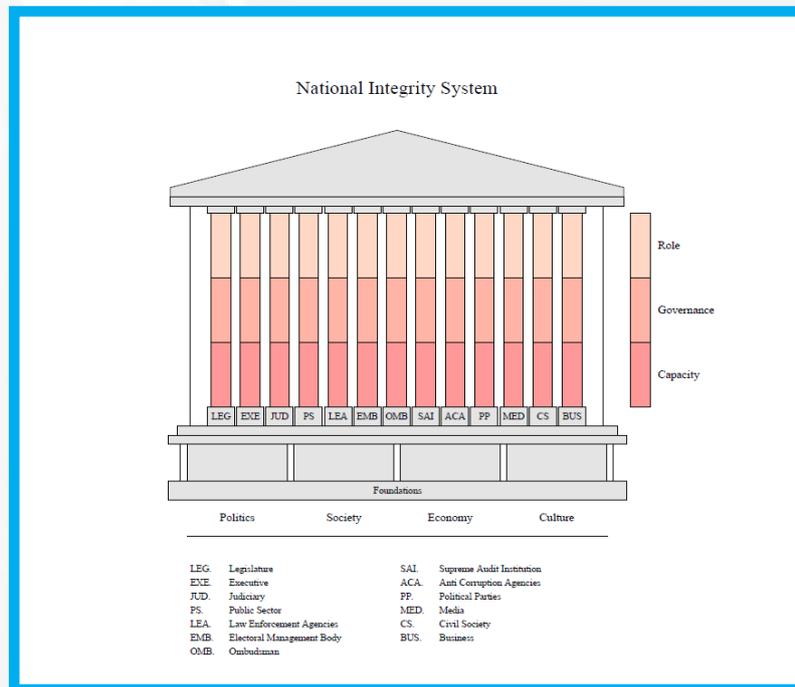
with or exceeds international standards. The mark awarded for the indicator reflects the nature of the qualitative information obtained.

To carry out the assessment, AMAN established a project team consisting of Mr Jihad Harb (principal researcher), Dr Abdul Qadir Jarrada (researcher), Mrs Jamila Abed (coordinator for the assessment) and Dr Azmi Al-Shuaibi, Commissioner of AMAN for Combating Corruption (supervisor of the assessment). The researchers relied on numerous documents and previous and updated studies available from various sources, including those prepared by AMAN, in addition to conducting documented meetings with officials in the target institutions. This was done according to an established methodology for assessing the reality of an integrity regime in the targeted institutions.

This study is the second of its type carried out by AMAN. The first study was prepared under the title “The National Integrity System in Palestine, 2009,” published the same year. These national integrity system assessments come after a number of previous studies that dealt with combating corruption and the mechanisms for this in Palestine. These include a survey study on the reconstruction of the national integrity system that took place under the supervision of the Terri Institution and in coordination with AMAN during 2007, the book “Integrity, Transparency and Accountability in Fighting corruption issued by AMAN in 2007, and numerous other studies issued by AMAN that dealt with some of the pillars of the national integrity system.

## II. ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT

The National Integrity System assessment approach used in this report provides a framework to analyse both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sector, the media, and civil society (the ‘pillars’ as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.



A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country’s institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.

## Definitions

The definition of ‘corruption’ which is used by Transparency International is as follows:

**‘The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.’<sup>1</sup>**

‘Grand corruption’ is defined as ‘Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good.’<sup>2</sup> ‘Petty corruption’ is defined as ‘Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.’<sup>3</sup> ‘Political corruption’ is defined as ‘Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.’<sup>4</sup>

## Objectives

The key objectives of the National Integrity System assessment are to generate:

an improved understanding of the strengths and weaknesses of Palestine’s National Integrity System within the anti-corruption community and beyond

momentum among key anti-corruption stakeholders in Palestine for addressing priority areas in the National Integrity System

The primary aim of the assessment is therefore to evaluate the effectiveness of Palestine’s institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Palestine to advocate for sustainable and effective reform.

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1 The Anti-Corruption Plain Language Guide, Transparency International, 2009, p.14.  
[http://www.transparency.org/whatwedo/pub/the\\_anti\\_corruption\\_plain\\_language\\_guide](http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide) [accessed 21 December 2012].

2 As above, p.23.

3 As above., p.33.

4 As above. p.35.

## Methodology

In Transparency International's methodology, the National Integrity System is formed by 13 pillars representing all key public and private institutions in a

CORE GOVERNANCE INSTITUTIONS	PUBLIC SECTOR AGENCIES	NON-GOVERNMENTAL ACTORS
Legislature	Public sector	Political parties
Executive	Law enforcement agencies	Media
Judiciary	Electoral management body	Civil society
	Ombudsman	Business
	Supreme audit institution	
	Anti-corruption agency	

Each of the 13 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfill their assigned role with regards to preventing and fighting corruption

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

DIMENSION	INDICATORS (LAW AND PRACTICE)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within governance system	Pillar-specific indicators

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritise areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the ‘foundations’ – in which the 13 pillars operate.



The National Integrity System assessment is a qualitative research tool. It is guided by a set of ‘indicator score sheets’, developed by Transparency International. These consist of a ‘scoring question’ for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

PILLAR	Judiciary
INDICATOR NUMBER	3.1.2
INDICATOR NAME	Resources (practice)
SCORING QUESTION	To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?
GUIDING QUESTIONS	Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary’s budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge’s knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?
MINIMUM SCORE (1)	The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.
MID-POINT SCORE (3)	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
MAXIMUM SCORE (5)	The judiciary has an adequate resource base to effectively carry out its duties.

The guiding questions, used by Transparency International worldwide, for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from (international) experts on the respective institutions. These indicator score sheets provide guidance for the Curaçao assessment, but when appropriate the lead researcher has added questions or left some questions unanswered, as not all aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets are available on the Transparency International website.<sup>5</sup>

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts, and written questionnaires. Secondary sources included reliable reporting by national civil society organisations, international organisations, governmental bodies, think tanks and academia.

To gain an in-depth view of the current situation, a minimum of two key informants were interviewed for each pillar – at least one representing the pillar under assessment, and one expert on the subject matter but external to it. In addition, more key informants, that is people ‘in the field’, were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view.

### The scoring system

While this is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score for each pillar, which provides a general description of the system’s overall robustness.

VERY STRONG	81-100
STRONG	61-80
MODERATE	41-60
WEAK	21-40
VERY WEAK	0-20

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores.

### Consultative approach and Validation of findings

The assessment process in Palestine had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

<sup>5</sup> [www.transparency.org/policy\\_research/nis/methodology](http://www.transparency.org/policy_research/nis/methodology).

### III. EXECUTIVE SUMMARY

During the period covered by this study “National Integrity System 2013”. Palestine has faced a number of positive and negative developments, the most significant of which during this period was the continued Israeli occupation of the West Bank and Gaza Strip and the continued political divide, which led to the rise of two authorities, one in the Gaza Strip and the other in the West Bank. This resulted in the continued disruption to the work of the Legislative Council and restricted freedoms, including through the detention of a number of journalists and bloggers who exposed cases of corruption, the blocking of a number of news websites and the failure to hold general elections.

The Israeli forces also launched actions against the Gaza Strip that lasted for eight days during November 2011 and saw the launch of rockets against Israeli towns. This caused a transformation in the “Israeli deterrent system,” following which a ceasefire was concluded between the Israeli government and the Hamas Movement. Likewise the Israeli authorities continued with measures that limit the possibility of establishing a Palestinian state, both through a restrictive embargo of the Gaza Strip and pressure on the towns and villages in the West Bank, as well as intensifying the confiscation of land, expanding settlements, and constructing and expanding the Separation Wall into land occupied from 1967 on.

The most significant of the positive indicators for the national integrity system was the progress achieved in establishing an organisation to combat corruption and the expansion in the submission of asset declarations, together with the holding of local elections in the West Bank, the continuation of political transparency, the use of tendering that was held by the Public Procurement Directorate in the Ministry of Finance, and the issuing of a code for the conduct of public employees during 2012.<sup>6</sup>

#### Background and context

The Palestinian situation is a special case in comparison with other countries that have sovereignty, because the Palestinian Authority, in spite of the signature of numerous agreements with Israel, has no sovereignty or complete authority over the territory that it administers in the West Bank and Gaza Strip. Therefore the process of institutional construction and putting in place legal frameworks within the Palestinian National Authority faces major challenges. Likewise the Palestinian-Israeli agreements have not put an end to the decades-long struggle for independence. This creates a lack of the political stability necessary for putting in place national plans, priorities and strategies. The internal Palestinian struggle that is represented in the aforementioned political division has increased the severity of the problem, especially after it led to a division between the West Bank and Gaza Strip and the establishment of two governments in reality. This reflects negatively on the total institutional structure and the legal framework within Palestine and has led to a reduction of interest in combating corruption on the national agenda, compared to the elimination of the occupation and ending the political division, which have remained prominent on the agenda.

The political will of officials in the Palestinian National Authority (PNA) and representatives of the political parties and Palestinian political forces constitute an important issue for the establishment of a national integrity system. The election of the Palestinian President, Mahmoud Abbas, in 2005 played an important role in increasing the protection of a number of officials accused of corruption, as did the success of the Hamas Movement in the elections for the legislature in 2006, which focussed its election programme on reform and combating corruption, providing a powerful opportunity for fighting corruption. However the political struggle between the Hamas and Fatah Movements and the position of the international community, that refused to deal with the government that arose out of these elections, strengthened the state of internal polarisation and led to very negative consequences to the path of reform that had begun in 2002 throughout the Palestinian political system.<sup>7</sup>

<sup>6</sup> Palestine announced that it would adhere to the provisions of the United Nations Convention against Corruption (UNCAC) even though it was not recorded as a state officially in the United Nations. It expressed this obligation in a letter from the Prime Minister in 2008.

<sup>7</sup> Interview with Dr. Azmi Al-Shuaibi, AMAN's commissioner on combating corruption, 13 July 2014.

In spite of this, a measure of improvement can be observed in the general administration of the PNA in the West Bank, since the formation of a government by the Palestinian President under the Chairmanship of Dr Salaam Fayyad, following the Hamas Movement's taking control of the Gaza Strip in the middle of 2007. Dr Fayyad's government has introduced a number of reforms, adopted a number of plans and strategies for reform, supported the judiciary and introduced reforms to the security services. The government established the Commission for Combating Corruption, operating within government and civil society institutions, including the political parties, the media and the private sector, and has prepared and issued a strategic plan for combating corruption within the context of the trends of the Palestinian Authority to combat corruption, focussing on strengthening integrity and transparency in public work.

There remains however the need for the introduction of fundamental reforms in a number of sectors and public institutions responsible for the provision of services or for the management of public funds, in order to build a national integrity system. These reforms must include reforms to the legal, institutional and political framework, in addition to the development of systems and mechanisms for governing the relationship between the governmental authorities (the legislative, executive and judiciary) and must put into operation the mechanisms for monitoring, ratified within the framework of the PNA. A rapid response is essential in organising the official non-ministerial bodies and ensuring that they are subject to the mechanisms for monitoring and accountability, together with the clarification of the concept of independence of the non-ministerial institutions.

Adherence by the government to regularly presenting the PNA's general budget and the periodic reports on its implementation, together with the final annual accounts to the Legislative Council is fundamental to the national integrity system and strengthening vertical and horizontal monitoring.

Continued transparency and integrity by the Central Elections Commission, that was vital in its previously organised elections, are of major importance in the coming months and years, especially as there is talk about the organisation of presidential and legislative elections to move away from the current political division.

Finally the strengthening of the investigative role of the media and the development of journalists to perform this role must be taken into account and a special regime for governance in the private sector must be implemented.

## **General assessment of the National Integrity System**

The NIS is characterised by the strength of two sectors; the central elections commission and civil society. The judiciary, state audit and administrative control bureau, the independent commission for human rights, and anti-corruption commission have a degree of strength due to their resources and relative independence, however, their performance is weakened as a result of the weak points in other pillars, mainly the legislative council and political parties. The critical weak points at the core of NIS are the media and the legislative council, while it is difficult to measure the influence of the private sector because of its weak interest in anti corruption efforts on the national level. .

The legal framework is still limited despite the important development that happened by issuing the anti-corruption law in 2010, as practices indicate that there is no difference in most of NIS pillars legal foundations due to a lack of rules regulating integrity and transparency mechanisms, which has noticeably affected the governance dimension. There are also weak points and big gaps between law and practice in many pillars, especially the legislative council, the judicial authority, law enforcement agencies, the state audit and administrative control bureau and civil society.

## The National Integrity System Pillars

The results of this assessment indicate that the **central elections commission** obtained the highest score with 73, followed by the **civil society** with 67, of the 13 pillars assessed, while the **media** received the lowest mark of 38. This was caused by the weakness in its role in combating corruption, both in investigation into corrupt practices and in public awareness of corruption and its effects, in addition to weaknesses in practicing integrity in the work of parliamentarians, journalists and the media.

Figure 1: Scores on NIS pillars and their relative weights

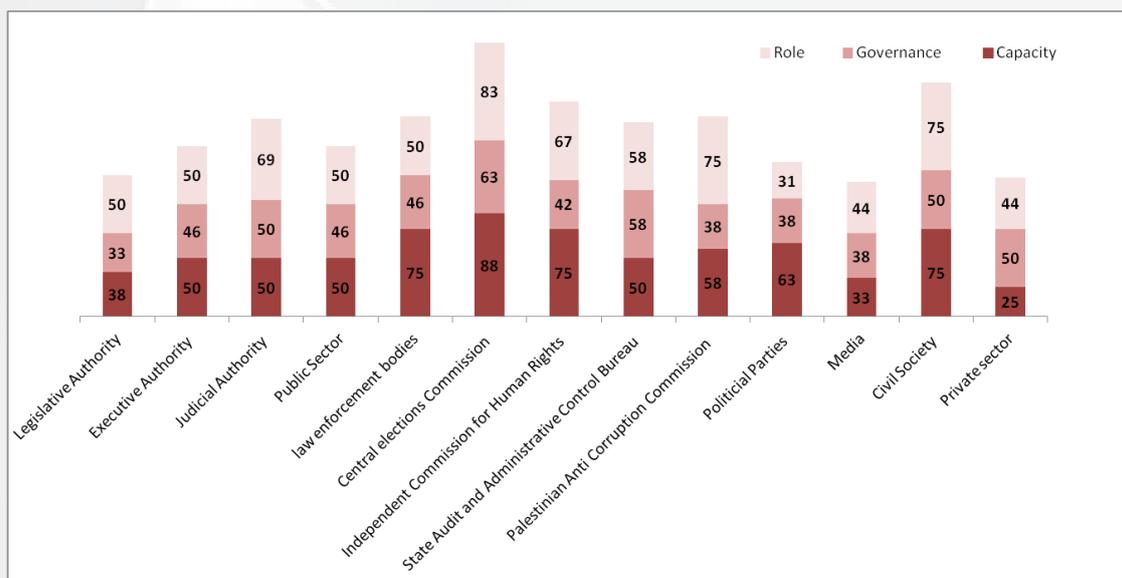


Figure 1 illustrates the scores of NIS pillars and the relative weight of each of them. The total score for each pillar is a result of the assessment of the three dimensions (capacity, governance and role) that demonstrate the base of analysis for the country, which is composed of political institutions, socio-political institutions, socio-economic institutions, and socio-cultural institutions.

The scores for the remaining pillars indicate that they are somewhere between a low rank and the beginning of a transformation to play a real role in the national integrity system. Five pillars, the **legislature**, the **executive**, the **public sector**, the **political parties** and the **private sector** obtained marks varying from 42 to 48. The further five pillars obtained marks from 50 to 56; the **judiciary** (56), **law enforcement** (50), the **Independent Commission for Human Rights** (55), the **state audit and administrative control bureau** (56) and the **Palestinian Anti Corruption Commission** (54).

### NIS dimensions: Capacity, governance and role

The dimension of governance (measuring transparency, accountability and integrity in each pillar) obtained the lowest of all scores among the three dimensions for the NIS and requires serious consideration from authorities that governance in all pillars are given protection.

The pillar's capacities obtained high marks in comparison with the marks for the other dimensions, and in particular compared to the governance dimension. However capacities are still weak and there is an inability to reform the independence of the monitoring institutions, due the absence of a clear understanding by the government and institutions of the PNA of the independence of those institutions and the requirements for it.

Of particular note, the scores weakness is clear on integrity mechanisms, whether these refer to law or practice (44% and 38% respectively), due to the absence of a code for the conduct of members or employees in a number of the pillars, such as in the council of ministers, the legislative council, the anti-corruption commission, law enforcement bodies, the independent commission for human rights, and the media. This is compounded by the absence of rules for disclosure of interests and the lack of rules for accepting gifts, and for mechanisms for the movement of politicians and public employees between the public sector and the private sector. Likewise a lack of disclosure or registration of incidents of the violation of ethical rules in the institutions of the Palestinian National Authority is a problem.

The scores related to the accountability dimension are a problem in all NIS pillars; four pillars scored 63 in this dimension; the judiciary, the public sector, law enforcement and the central elections commission. Seven pillars scored 50; political parties and the independent commission for human rights scored poorly on accountability. The low score of political parties was a result of not submitting any reports to the official agencies except the list of expenses in the electoral campaign in presidential and legislative elections, when participating in elections. The low score of the independent commission for human rights was a result of the lack of legal rules that define the mechanisms for its accountability before the legislative council or the president.

All the NIS pillars obtained marks of 50 or less in the pillar related to transparency, with the exception of the central elections commission and the state audit and administrative control bureau which both scored 63. The media's score of 25 was the lowest of the 13 NIS pillars. The scores obtained by the legislature, the executive, the public sector, the anti-corruption commission and the political parties indicate a weakness in transparently performing their work and informing the public of it.

In the competency dimension, the central elections commission, the commission for combating corruption, civil society, the judiciary and the independent commission on human rights all obtained high marks compared with other pillars. Significant among them is the central elections commission due to the availability of the necessary financial resources to fulfil its role provided by the state. It also has enough independence to prevent interference in its work, factors which also apply to civil society and the independent commission on human rights. The marks for the commission for combating corruption indicate the desire on the part of the PNA to combat corruption through the provision of a legal framework that supports the independence of the commission and clear financial support for this. At the same time political parties obtained a low mark in comparison with the remaining 12 NIS pillars.

The scores on the role of NIS pillars show a special weakness in the role of each of the private sector, media, and the legislative council in combating corruption and enhancing NIS. The weakness of the legislative council is due to the political split which led to the disabling of the legislature. The private sector is currently limited in supporting anti-corruption activities; its focus on improving investment conditions does not correspond to giving attention to its role in resisting corruption. The weakness in the role of media is due to two factors; the first is structural and relates to the ownership of media institutions, with owners not working on developing investigative report units, the second is the fear of journalists being pursued by Palestinian Authority agencies.

## RECOMMENDATIONS

The assessment includes a number of recommendations vital and as prerequisites to enhance the Palestinian National Integrity System and in making it more effective.

1. Legislature. The political split between the West Bank and Gaza Strip must be ended to enhance the NIS and limit the possibility of escaping accountability for officials, through elections. This is in addition to the importance of conducting legislative elections and reconstituting the Palestinian Legislative Council as the main institution of monitority and accountability and an essential pillar in the NIS.
1. UNCAC. Civil society, the presidency, the council of ministers and the leadership of Palestinian political parties and organisations must work to utilise what the PNA has achieved in international recognition and promote its status within the United Nations, to enable it to officially sign the United Nations Convention Against Corruption, undertake its implementation, and amend legislation to be in compliance with it. Of particular importance issuing a law on the right to access information.
1. Public sector. The council of ministers must complete the development of the administrative and financial bodies of the PNA on the basis of integrity and transparency. This includes mechanisms for appointments and promotions in the senior ranks of the civil service, especially in senior positions and special ranks such as advisors and consultants, and putting an end to appointments on the basis of political membership, the use of intermediaries, nepotism and favouritism. This also includes procedures for reform of the financial system to prevent the misuse of public funds and to address the problem of dealing with funds as a concession or as a personal possession of government officials.
1. Codes of ethics. The council of ministers and the anti-corruption commission must promote the concept of adopting codes of conduct and ethics across NIS pillars, including the code of ethics of the council of ministers and a code of ethics for MPs. It also includes the registration of interests by politicians and senior employees of the PNA and their disclosure either periodically or as required. This would include gifts, hospitality, travel and privileges obtained, in addition to highlighting real or potential conflicts of interest by virtue of their position. Rules for the movement of state employees to work in the private sector also need to be put in place.
1. Election commission. The presidency, the council of ministers and the leaders of the political parties and factions must retain the image and role of the Palestinian Central Elections Commission as an instrument of integrity in conducting the general elections. Authorities should be diligent that it is not influenced by members of the executive, considering that the commission provides the public and various political forces with confidence in its role and the integrity of the results arising from any electoral activity it supervises.
1. Central Audit Agency. The council of ministers should follow-up on the annual and special reports of the state audit & administrative control bureau, especially their observations and recommendations to address weaknesses, end mismanagement of public funds and strengthen the establishment of the national integrity system.
1. Media. The presidency and the council of ministers should provide the media with freedom to obtain information related to cases of corruption, in order to enable the it to perform its role in combating corruption. Editors in chief must encourage investigative journalism into cases of corruption.

## IV. COUNTRY PROFILE: FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

The State of Israel arose on the territory of Palestine as a result of the war that broke out in 1948 and led to the division of Palestine into three parts. The State of Israel was declared on the largest of these (about 78% of the total). The second was attached to the Hashemite Kingdom of Jordan and became known as the West Bank. The third part was placed under Egyptian military administration and became known as the Gaza Strip. In 1967 Israel occupied the West Bank and Gaza Strip and imposed Israeli military occupation on them.

Palestinian resistance was represented by the Palestine Liberation Organisation (PLO), formed in 1964, which continued to resist Israeli occupation and refused recognition of the State of Israel until the Declaration of Principles, known as the Oslo Agreement, were signed in 1993. This guaranteed recognition of the State of Israel, recognition of the PLO as the representative of the Palestinian people and set out the path of peace and negotiation for the recovery of Palestinian territories that had been occupied in 1967. It also specified a period of five years as a transitional period on the basis that during this period a final resolution of the Palestine-Israel struggle would be achieved. This was followed by numerous other agreements that governed the transfer of a number of powers and competencies related to the administration of the affairs of the occupied Palestinian areas (the West Bank and Gaza Strip) from the control of the Israeli military government, that was in control of the administration of these areas at that time, to the Palestinian National Authority. The PLO therefore entered the land of the West Bank and Gaza Strip in 1994 to establish a transitional authority.

### Foundations

Political-institutional foundations After the establishment of the Palestinian National Authority following the signature of the Oslo Agreement, the new authority began to establish and restructure the institutions. The first Palestinian government was formed in 1994 and was called at that time the Council of Authority pursuant to the Declaration of Principles Agreement and subsequent agreements.

The nascent authority showed many of the phenomena of defects that generally accompany a transitional phase from a revolution, that has revolutionary legitimacy, to a state, that has constitutional legitimacy. Furthermore it had inherited major negative effects from the Israeli occupation that was in control following 1967 of every aspect of Palestinian life. In January 1996 the first legislative elections took place from which arose the Palestinian Legislative Council, which ratified a large amount of legislation, the most important of which was the Palestinian Basic Law that was in effect a temporary constitution regulating the work of the Palestinian Authority in the West Bank and Gaza Strip.

The Palestinian President, Yasser Arafat, died in October 2004. Sixty days after his death, presidential elections were held in January 2005 in accordance with the provisions of the Basic Law and Law for Elections. In January 2006 the second legislative elections were held following the amendment of the election regulations to become a mixed system (50% of the seats represented in the constituencies and 50% of the seats proportionately from the electoral lists). The presidential elections led to a new president from the Fatah Movement, Mr Mahmoud Abbas, whereas the legislative elections led to the victory of the Hamas Movement, who gained a majority of seats in the Legislative Council. This led to an increase in complexity in the Palestinian political arrangement and the struggle between the two largest Palestinian organisations, the Fatah Movement and the Hamas Movement, led to a competition for control over the PNA and its institutions. The matter became more complicated when Israel arrested a large number of members of the Legislative Council in 2006, most of whom were from the Hamas bloc. This caused the Hamas Movement to lose its absolute Parliamentary majority and the Legislative Council became struck by a state of total paralysis, with the role of the legislature becoming dysfunctional.

The response of the international community to the Palestinian elections had a substantial negative effect

on the Palestinian political system as a whole, including the path of reform that had begun, even if slowly, in 2002. The principal international powers, represented in the quartet (the United States, Russia, the United Nations and the European Union) refused to deal with the government that had been formed by the Hamas Movement following its victory in the elections. This boycott led to a cessation of aid and the imposition of a financial embargo on the government constituted by the Hamas Movement and a fierce, armed struggle arose against the PNA in the Gaza Strip that led to the military control of the Hamas Movement over the Palestinian National Authority and its institutions in the Gaza Strip.

The state of political polarisation, and the resulting division between the West Bank and the Gaza Strip, was reflected negatively on all the national institutions and led to the rise of a duality in the institutional structure and legal framework between the West Bank and the Gaza Strip. National and local elections were obstructed, which greatly weakened the legitimacy of the governing institutions in the West Bank and Gaza Strip. The disruption of the Legislative Council's role as a comprehensive monitoring body affected the efficiency of NIS through both the absence of parliamentary supervision and accountability and allowing the executive to unilaterally approve and implement national development policies and plans without the approval of or monitoring by the legislative council.

The Israeli occupation policy of continuing the settlement activities and restrictions over the areas of the Palestinian Authority has led to permanent tension, clashes, violence and a lack of political stability. These policies culminated in the launch of an all-out war against the Gaza Strip at the end of 2008 that caused massive damage to the infrastructure and destroyed most of the buildings of the Palestinian National Authority in addition to injuries and deaths among Palestinian civilians.

## Socio foundations

Despite the political split that happened in 2007, Palestinian society is characterised by social harmony and the absence of racial, lingual or class division. Muslims constitute the majority of the country population while Christians constitute about 1% of population.<sup>8</sup>

Most of the Palestinian parties roots go back to 1960s, while Hamas and Islamic Jihad movements go back to 1980s and as such are stable parties with societal roots. According to public opinion polls,<sup>9</sup> Fateh is supported by 30% of the Palestinian public and Hamas movement by 20%, while the Popular Front, the Democratic Front, Fida Party, People's Party, the National Initiative, and the Third Way are supported by 10% of the Palestinian public. The political party system system is considered a stable one, but not a normal one as a result of the political dispute between parties especially the Fateh and Hamas movements which led, in one of its aspects, to the political split in 2007.

Palestinian NGOs have played a central role over the last decades in protecting the social fabric of the Palestinian people against the challenges and risks that threaten its entity and survival, in addition to the role of resisting Israeli occupation and resisting its policies against the land, people and Palestinian institutions.<sup>10</sup>

National elections provide a mechanism to open-up the Palestinian governing elite on the level of PNA to others, with the 2006 legislative elections representing the most prominent transformation of the Palestinian political elite after Hamas won a majority of legislative council seats and formed the 2006 government. Not conducting legislative and presidential elections within the time limits has reduced the possibility of new parties and individuals joining the political elite.

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8 <http://www.alquds.com/news/articles/view/id/404721>

9 See poll number 50, the Palestinian Center For Political and Survey Research, page 17, <http://www.pcpsr.org/arabic/survey/polls/2013/p50a.pdf>

10 Musleh, Abeer, Integrity, transparency and accountability in combating corruption, 1st ed. Ramallah: AMAN, 2013, pp 85-86.

## Socio-Economic Foundations

The social and economic situation is affected by the political situation in general. The lack of political stability, the continued struggle and confrontations with the occupying authority, as well as the internal divisions within Palestine, the accompanying international embargo on the elected Palestinian government and the strict embargo that is still imposed on the Gaza Strip, have a large impact on social and economic indices.

The failure of the peace process and the decline of the political process, the repeated closure of the crossing points that are under the exclusive control of Israel, together with the limits on the movement of trade and individuals due to the erection of hundreds of military checkpoints within the Palestinian areas, the closure of the Palestinian market to Israeli commodities, foodstuffs and other goods, the continued construction of the separation wall, the failure to obtain permits to build any productive industrial or agricultural facilities, the cessation of the transfer of funds to which the authority was entitled derived from taxes and customs duties on their due dates and the theft of some of them such as the non-transfer of entitlements, and especially set-off<sup>11</sup> invoices belonging to the Gaza Strip,<sup>12</sup> in addition to Israeli control over the subterranean and other water resources, has led to a strangling of the Palestinian economy and hindrance of its potential for growth. This became clear in Palestine's fall in rankings in economic performance indicators.

The tightening of the Israeli embargo on the West Bank has made it difficult to import most of the essential needs of the population, and has led to the closure of economic interests and a rise in the rates of poverty and unemployment to unprecedented levels, along with the reliance of more than 80% of the population of the Gaza Strip on humanitarian aid provided by international organisations.

Furthermore the failure by the Palestinian National Authority to issue a law to regulate the award of concessionary contracts has led to concession contracts being made within the context of a legal vacuum. This has led to the majority of concessions being awarded through personal negotiation and without advertisement allowing for competition. Some of these concessions were made exclusively for companies that manage the concession for a specified number of years and have led to a massive growth in the capital of a number of companies, affecting the opportunities of growth of other, competing companies. The absence of sound administration and the lack of regulation of the relationship between the parties concerned in some sectors of the concession process has led to the squandering of public funds, as is the case in the electricity sector and its relationship with the local councils.<sup>13</sup>

The economic situation indicates that the Palestinian economy has witnessed qualitative changes in the structure of its domestic products since the establishment of the PNA in 1994. New productive sectors have appeared, such as the information technology, banking and the non-banking financial sector. Likewise chemical industries, in particular pharmaceuticals, have witnessed development and their share of the local market have risen. Against this, other traditional sectors such as agriculture and a number of artisanal industries, including in leather-making, shoes, clothes, and textiles have declined, impacted by severe competition from imported products and the lack of development of production and marketing methods, in addition to Israeli restrictions on these sectors.<sup>14</sup>

Between 1996 and 2012 commercial exchange developed significantly and the volume of Palestinian imports from abroad doubled to reach approximately US\$4 billion. The volume of exports too rose, by 118% (from about \$340 million to \$740 million), and as a result the value of the commercial deficit reached approximately US\$3.5 billion by the end of 2012.<sup>15</sup>

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11 These are the monthly financial settlements that take place between the Palestinian and Israeli sides by which the Israeli side transfers Palestinian funds that it collects from taxes and customs, duties on its border crossing points, value added tax and the tax on imports from Israel into the territories of the State of Palestine. From these are deducted Israeli entitlements to these funds in accordance with the Paris Protocol of 1994 signed by the Palestinian and Israeli sides.

12 \_\_\_\_\_, Report on Corruption and Combating It, Palestine 2012, the Fifth Annual Report, the Coalition for Accountability and Integrity - AMAN, Ramallah, 2013, Pages 15-24.

13 Raida Qindeel, Concession Contracts, Guarantees of Competition and Prevention of Monopoly, Ramallah, the Coalition for Accountability and Integrity - AMAN, 2012, Pages 20-21.

14 \_\_\_\_\_, 20 years following the Oslo Agreement, "Assessment of the Economic Dimensions and Background Paper for the Round Table Conference, Number 9," Institute for Palestinian Economic Policies Research (MAS), September 2013, Page 6.

15 As above, Page 7.

Capital transfers are in surplus due to the transfers of donor countries and their support for development projects in the Palestinian territories, while data linked to direct investments, portfolio investments and other capital investments indicate that this has been affected by the political and economic circumstances in the Palestinian areas. For example 2001 and 2002 witnessed a major flight of investments from Palestine (at a rate of \$377 million and \$360 million respectively). Against this the period 2009-2012 witnessed a significant rise in the levels of foreign investment in the Palestinian areas within the context of relative calm and improvement in the investment environment.<sup>16</sup>

Market indexes are related to a great extent to political developments; work in the public sector increased substantially following the establishment of the civilian and security institutions of the PNA, while the number of workers in Israel was restricted after 2000, dropping from 130,000 workers in 1999 to less than 50,000 in 2002. A result of this was a significant rise in the rates of unemployment to more than 31% in 2002, before declining gradually in the following years to 23% in 2012.<sup>17</sup>

## **Socio-cultural foundations**

### **Public culture and combating corruption**

The social and economic environment and the cultural heritage are perhaps to a large extent common with some of the values that exist in Arab culture and the Middle East region more generally. The use of intermediaries and nepotism weaken the national integrity system, through the existence of a prevailing social norm that fails to distinguish between assistance on the one hand and the use of intermediaries and nepotism as a form of corruption on the other. Within the composition of society and politics that prevail in Palestine, the family and tribe, or the political association, are the most important issues in the life of the citizen, to the extent that this can be above loyalty to the state or society as a whole. State employees in a situation to strengthen their affiliation to their tribe or political association through a service to it, may provide this at the expense of the public interest or of laws and regulations.

From this cultural heritage there is a continuity of the culture of the use of intermediaries, nepotism and favouritism in the provision of public services and in public appointments, in addition to the misuse of resources and public property for personal purposes. This issue cuts across the public, private sector and civil society sectors and is one of the most prominent forms of corruption in Palestinian society.

In recent years, however, there has been an increase in citizen awareness of the damage caused by nepotism, not previously acknowledged. In a 2013 poll conducted by AMAN, 75% of citizens stated they had been negatively affected by nepotism, while 8% of them said they had benefited from it, while the rest had said they are not affected by nepotism in Palestine.<sup>18</sup>

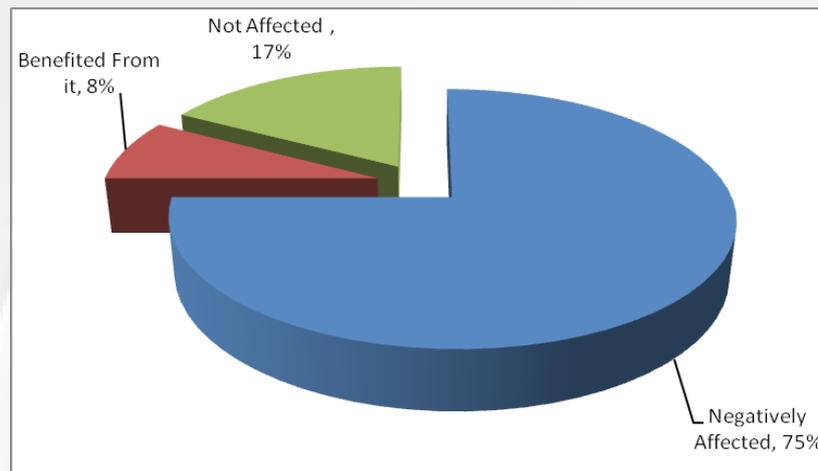
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<sup>16</sup> As above, Page 10.

<sup>17</sup> As above, Page 13.

<sup>18</sup> -----, Citizens opinions on "nepotism and favoritism: the most prevalent forms of corruption in the Palestinian lands. Ramallah: AMAN, 2013, p 19.

Figure (2): Citizen awareness of nepotism and its impact on accountability



The increase in citizen awareness of the risks of corruption has been accompanied with an increase in social and media commentary, criticising corruption and the problems arising from it.<sup>19</sup> This has been accompanied by the start of some radio and TV programmes questioning governmental officials and presenting cases of corruption to them.

### The integrity system in school and university curricula

The strengthening of the values of integrity requires coordination on all levels, from home to school to society, in order to assist youth in learning the values of integrity, accountability and combating corruption. Reviewing the school curricula accredited by the PNA and the university courses in Palestinian universities, especially the national education curricula in schools and general and legal administration and political science courses in the universities, AMAN found that they did not allocate adequate space to educate students on integrity, forms of corruption, its causes and results and the ways to combat and eliminate it. These curricula do not focus on negative practices such as the use of intermediaries and nepotism. Furthermore they do not insist adequately on the sanctity of public funds as being the property of all citizens and that they are no less important and sacred than private property. Religious institutions, that have an impact on society, play no direct role in this field.

AMAN had worked in cooperation with the Palestinian Ministry of Education to raise the level of integrity awareness in school students through the development and preparation of curricula and non-curricula cultural materials, the holding of training courses for school teachers, the preparation of student and teacher guides and the publication of cartoon booklets for children that explain the dangers of negative practices, such as the use of intermediaries and nepotism, and the squandering of public funds, as well as promoting integrity. This is in addition to a series of stories prepared for children, which explain corruption concepts at a level appropriate for children, and participation in summer camps for children.

The Anti-Corruption Commission has also conducted a number of activities for youth, including a contest for school children (Grades 7, 8 and 9) covering forms of corruption, the preparation of a training guide entitled “The Educational Role in Combating Corruption” in cooperation with the Ministry of Education, and training educational supervisors and teachers on using the guide. The Anti-Corruption Commission has also organised sessions for PNA employees on filling asset declaration forms.<sup>20</sup>

<sup>19</sup> See for example [www.maannews.net](http://www.maannews.net) and [www.wattan.tv](http://www.wattan.tv)

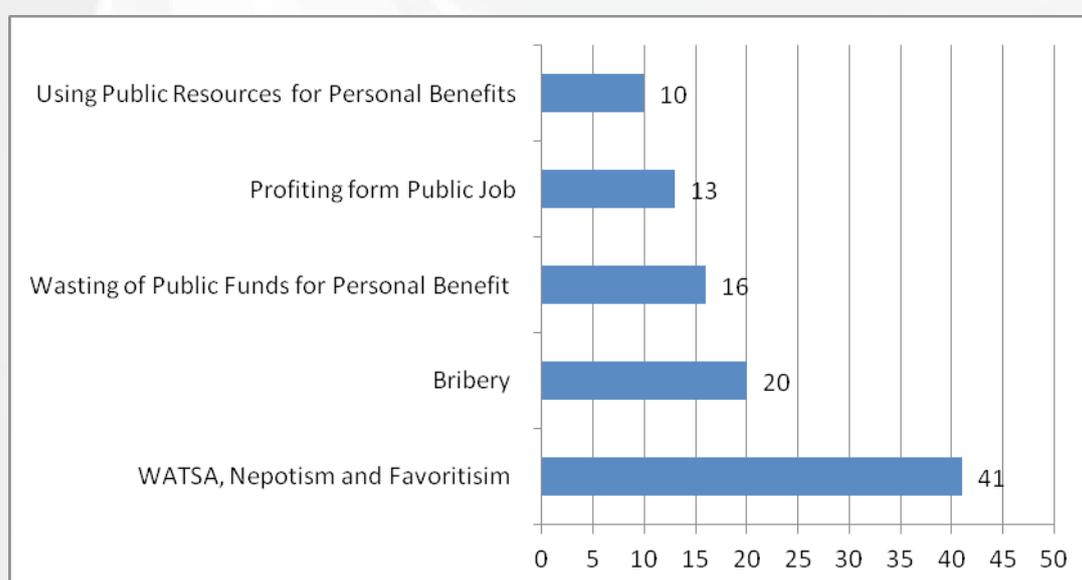
<sup>20</sup> Interview with Mr Rasha Amarina, Director General of the Legal Department in the Commission for Combating Corruption on 1/8/2013. See also: ACC 2012 Annual report, pp. 22-29

## V. CORRUPTION PROFILE

There are two common types of corruption in Palestinian society; the first relates to the spread of a set of social values, such as the use of intermediaries, nepotism and favouritism. This phenomenon is particularly found in public appointments, the provision of services and in the distribution of aid in kind and money, either in governmental or non-governmental sectors. The second relates to the misuse of public funds, bribery and gain through employment.

The public sector, according to public opinion surveys conducted by AMAN, occupies a prominent position amongst the sectors most exposed to corruption in 2011 and 2012. The results of the 2012 corruption survey<sup>21</sup> indicated that 83% of those surveyed believe that there is corruption in the various institutions of the PNA (87% in the West Bank and 73% in the Gaza Strip).

Figure (3): The most widespread forms of corruption in Palestine.<sup>22</sup>



Regarding the most widespread forms of corruption in Palestinian society, the 2013 public opinion survey revealed that 41% believe that the use of intermediaries and nepotism are the most widespread forms of corruption. These are followed by bribery with 20%, and the wasting of public funds for personal benefit with 16%.

The survey showed that the use of intermediaries and nepotism is most common in appointments to public employment (62%), followed by the provision of public services (20%), tenders and contracts with suppliers (11%), and the management of public joint stock companies with (7%). 30% of those surveyed noted that they had used intermediaries to obtain some form of service.

AMAN's 2012 report entitled "Report on Corruption and Combating It" showed that the continued Israeli occupation continued to constitute a fundamental element in the weakness of the Palestinian national integrity system through direct contribution to the disruption of the administration of the Palestinian National Authority and its institutions, for example through the continued detention of a number of members of the Legislative Council.<sup>23</sup>

<sup>21</sup> The Coalition for Accountability and Integrity - AMAN, Public Opinion Survey, May 2013, Ramallah, Pages 4 & 9.

<sup>22</sup> \_\_\_\_\_, Opinion Poll, May 2013, Ramallah, the Coalition for Accountability and Integrity - AMAN, p. 4 & 9

<sup>23</sup> \_\_\_\_\_, Report on Corruption and Combating it, Palestine 2012, Ramallah, Coalition for Accountability and Integrity - AMAN, 2013, Pages 15-24.

The same report identified structural flaws in the PNA institutions and the large growth in the numbers of public employees without an objective need for this, as problems. Ignoring these problems by the authorities has led to a state of unplanned over-staffing and expansion in recent years that constitutes an obstacle to the best use of resources and has led to making a casual approach to public expenditure a prominent feature in the process of handling problems that confront the Palestinian Authority. This casual approach has led to misuse of public funds due to the existence of a number of non-ministerial public institutions, beyond those required, causing a haemorrhaging of public funds for scant justification. This is alongside an increase in senior positions promotions, and purchasing a number of vehicles that are not needed or inappropriate in price and quality for the ministries, the payment of electricity and water invoices for large numbers of people unofficially, weakness in the procedures for collecting public funds, evasion of taxes, and failure of the Hamas Authority in Gaza to deliver set off invoices to collect monies from the Israeli side.<sup>24</sup>

Foreign organisations operating in Palestine engage in numerous fields, including humanitarian aid and education and human rights awareness and culture, with some focussing on development and reconstruction, such as the institutions and branches of the United States International Development Agency (USAID), which executes construction projects from American institutions and companies. Other bodies have a role in assisting PNA institutions to strengthen its institutions and training its staff. However many of these organisations are not legally registered, for example, more than half the American organisations operating within the territories of the Palestinian Authority are not registered and as such, do not have to provide reports or budgets to the Palestinian authorities.<sup>25</sup>

All these issues have weakened public resolve limit the current levels of expenditure and has led to the significant haemorrhaging of funds from the public treasury, which has increased to dangerous levels with time, along with a total lack of seriousness in collecting all the financial rights from direct and indirect revenues in favour of the public treasury.<sup>26</sup>

41 cases of corruption were brought before the Court for the Crimes of Corruption from the time it started work until 24 September 2012, covering embezzlement of public funds, money-laundering, forgery, breach of trust and the utilisation of a position of employment for personal purposes. The Commission for Combating Corruption considers that some of those involved were senior employees, such as heads of government departments, in collaboration with other employees of middle and low levels of employment. Information indicates that the Court issued judgments in 12 cases of corruption during 2012.<sup>27</sup>

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24 See: the report on Corruption and its Combating, As above pp. 15-24

25 Nasir Al-Rayyis, The Reality of Charitable Associations and Foreign CSO's Operating in Palestine, Ramallah, the Coalition for Accountability and Integrity - AMAN, 2010, Pages 14-15.

26 The same reference, Page 15.

27 See: Report on Corruption and Combating It, Palestine 2012, As above, Page 15.

## VI. ANTI-CORRUPTION ACTIVITIES

National concern for combating corruption in Palestine began in 1997 following the publication of the report of the Monitoring Authority of 1996, which drew attention to a number of areas where public funds were being wasted. The Palestinian Legislative Council called for referral of the report to a special committee of the Legislative Council and the report of that committee noted the existence of cases of corruption at senior levels within the PNA at that time, leading to the government submitting its resignation in mid-1998 and the formation of a new government. After 2002 official attention towards reform and combating corruption increased and became a demand of the Palestinian people.

Successive Palestinian governments have taken a number of steps towards reform to provide protection from corruption and to work towards its elimination. The government passed a Palestinian reform programme for 2004-2005, considered the first with respect to its comprehensive nature, in Session 43 on 27 September 2004. The programme dealt with financial reform (where most of its successes were concentrated), the economic sphere, the judiciary and the supremacy of law, public administration and the civil service, local government, security, general and local elections, and education. A law for an Unlawful Gains Commission was issued and this commission was charged with recording the financial assets of senior officials within the PNA.

The government moved forward in 2007 with a set of activities related to organisational and financial reform, the most important of which was the medium-term plan for reform and development of 2008-2010. This plan was based on national policies ratified by the Council of Ministers that related to the principal and medium objectives of the PNA. In this plan the programmes, activities and budget were merged in a single document and the president issued a decree issuing the 2007 Law against Money Laundering, that complied to a large extent with the United Nations Convention Against Corruption. It also established the Supreme National Committee to Combat Money Laundering, in accordance with the law specifying its tasks, powers and relationships within the context of its fundamental task of combating money laundering.

The most significant activity of the Palestinian Authority in combating corruption is the formation of the Commission for Combating Corruption during the second half of 2010, following the amendment of the Unlawful Gains Law via a decree issuing *Law 7/2010 on the Unlawful Gains Law (n.1/2005)* to become the Law Combating Corruption (1/2010). This granted it extensive powers in protection from corruption, awareness-raising and anti-corruption promotion.

During 2012 the Commission issued the 2012-2014 National Strategy for Combating Corruption<sup>28</sup> on its website. The Commission oversaw national efforts to prepare the strategy, with a draft prepared by experts and specialists, alongside a working party and the Consultative Board of the Commission. Finally, it was presented in an expanded workshop attended by more than 300 persons from the various institutions, commissions and sectors. Consultations were also conducted with a large number of government and civil society institutions.

The strategy includes six areas of focus namely: preventing the occurrence of corruption and protection from it; enforcement of the law and judicial prosecution; awareness raising, education and training and collaboration with members of society; coordination of efforts to combat corruption; international cooperation; and strengthening the ability of the Commission for Combating Corruption. A start was also made to implementing the area of attention related to awareness and training during the first quarter of 2012.<sup>29</sup>

<sup>28</sup> See the website of the Coalition for Accountability and Integrity - AMAN, AMAN, regarding the celebration for the launch of the National Strategy for Combating Corruption, <http://www.aman-palestine.org/arabic/News/2012/13062012.htm>

<sup>29</sup> See the website of the Commission for Combating Corruption, [http://www.pacc.pna.ps/ar/index.php?p=media\\_1](http://www.pacc.pna.ps/ar/index.php?p=media_1).

The 2012 Annual Report of the Commission for Combating Corruption notes that the Public Prosecution referred 26 cases to the special court in 2012, which determined 14 cases of which 11 resulted in a conviction and in three found it lacked jurisdiction.<sup>30</sup> During 2012 the Commission received 245 complaints. It rejected 105 of them on the grounds that the Commission lacked jurisdiction, it reserved 35 complaints because the investigations and evidence did not provide enough suspicion that the crime of corruption had been committed, and 32 cases were referred to the public prosecutor assigned to the Commission. The remaining 73 complaints were on-going. Between 18 July 2010 to the end of 2011, the Public Prosecution for Combating Corruption referred 24 cases to the court and the court ruled in six of these issuing convictions in all of them.<sup>31</sup> Likewise the Department for Monitoring Declarations of Financial Assets was activated and declarations of financial assets were distributed among the majority of those subject to the provisions of the Law for Combating Corruption (the special category, the senior category and the first category for civil service employees and security services officers).<sup>32</sup> Similarly the declarations of financial assets were distributed to all commanders and officers in the security services with the rank of lieutenant and above.

The most important awareness activities conducted by the Commission for Combating Corruption during 2012 were the competition for school pupils related to the forms of corruption and the workshop that was held on the role of charitable associations in combating corruption. A training day was held for educational supervisors in the Ministry of Education and five training seminars were held for teachers in addition to 10 explanatory seminars related to filling in the declarations of financial assets for employees of the PNA. The Commission further issued a training manual entitled “The Role of Education in Combating Corruption” in cooperation with the Ministry of Education and it published two briefs, the first introducing the Commission, and the second regarding the forms of corruption and means of reporting them.<sup>33</sup>

During 2011 and 2012, the government introduced numerous initiatives and measures to strengthen transparency and combat corruption including: holding local elections in the West Bank, the cessation of the use of the security clearance certificate for public positions and the ratification of the code for conduct for public employees. It culminated in a Code for Conduct and Ethics in Public Employment, issued by the Council of Ministers and led by the General Office of Employees in October 2012.<sup>34</sup> The Code for Conduct for Employees in the Intelligence Agency was completed in 2011, and in 2012 a Code for the Conduct of the Judiciary for Judges and Members of the Military Prosecution was issued.<sup>35</sup> At the same time work began on the preparation of a code of conduct for employees in the security services.

In July 2012 the Minister of Higher Education formed a Committee for Grants and Study Scholarships within the Ministry of Higher Education consisting of representatives of government institutions in collaboration with the people’s and private sector. It held its first meeting on 1 August 2012, resulting in the Ministry of Higher Education issuing a procedural guide for the award of grants and positions of study to clarify the procedures and conditions for university grants at home and abroad.

A decree was issued for the Law for Public Procurement (15/2011) and the Council of Ministers formed a Board for Public Procurement on 25 September 2012. It consisted of representatives of a number of ministries (Public Works, Finance, Planning and the National Economy) in addition to three representatives of the private sector and a university professor.<sup>36</sup> Additionally, the Directorate of Public Procurement in the Ministry of Finance uses its website to directly broadcast its meetings to open bids to enable participants in the tender process not able to attend the hearing in the offices of the General Department for Public

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30 See the Annual Report of 2012 of the Commission for Combating Corruption, Page 15. Mr Rash Amarina referred in the interview conducted by the researcher with her for the purposes of this research to the fact that the special court had determined 18 cases by the end of July 2013, including 14 cases resulting in conviction and three in which it ruled that it lacked jurisdiction and in one case it acquitted the accused.

31 \_\_\_\_\_, the Annual Report of the Commission for Combating Corruption for 2011, Ramallah, The Commission for Combating Corruption, 2012, Pages 30-31.

32 \_\_\_\_\_, The Annual Report of the Commission for Combating Corruption for 2012, Ramallah, The Commission for Combating Corruption, 2013, Page 21.

33 As above, Pages 22-29.

34 Decision of the Council of Ministers number 04/23/14/M.W./S.F. of 2012 issued on 23/10/2012.

35 Decision of the Chairman of the Military Judicial Panel number 1 of 2012, regarding the Code of conduct of the Judiciary and Members of the Military Prosecution, issued on 19/6/2012. See Palestinian Records, number 97, Pages 93-95.

36 Decision of the Council of Ministers number 03/19/M.W./S.F. of 2012 ratifying the names of the members of the Supreme Council for Public Procurement Policies, issued on 25/9/2012.

Procurement to watch the opening via over the Internet. Furthermore it is possible to record attendance through the archive service of meetings of the Central Tender Board.<sup>37</sup> The Ministry of Finance also publicises the general budget and monthly financial reports through the Ministry's website.

Civil society institutions, in particular AMAN, engages in many activities in the area of awareness and training in combating corruption, especially through training programmes for government employees in the civilian and security sectors, and presents annual integrity prize, which is a set of prizes in the areas of the public and private sectors, local government, the media and the best research piece, all in relation to the field of combating corruption and strengthening integrity. AMAN has furthermore launched an Advocacy and Legal Advice Centre to provide support and advice to victims and witnesses of corruption and those reporting it. It promotes the accountability of officials through receiving complaints both over a free telephone line and through those visiting the centre, listening to their complaints, documenting them and taking action to provide support for them.

In order to create change in the university and school curricula and allocate space and materials towards a change of the prevailing culture among students, as well as to strengthen the concepts of safeguarding public funds and rejecting a culture of the use of intermediaries, nepotism and favouritism, the AMAN in 2007 prepared a reference book entitled "Integrity, Transparency and Accountability in Combating Corruption" for a university course in six Palestinian universities. This reference book and the teacher's guide attached to it were subject to assessment on two occasions in 2010 and 2013 to measure its impact on students who had studied the book before and after study. A significant development was observed in the understanding students have of the concepts and applications of the values of integrity and the principles of transparency, the systems of accountability types of corruption and their causes and the means of combating them.<sup>38</sup>

AMAN has also prepared a number of codes of conduct that were adopted in part or in full by official government institutions, in addition to the annual conference in which the results of its annual report on corruption and combating it in Palestine are announced. This monitors the efforts to combat corruption deficiencies related to the misuse of public funds.

Finally, a non-governmental team has been formed to support transparency in the budget. During 2011 and 2012 it held two meetings with the Minister of Finance, Dr Salaam Fayyad, regarding the general budget and agreed with the Ministry of Finance to develop the first citizen budget within the General Department for the Budget in the Ministry of Finance.

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<sup>37</sup> The website of the Directorate of Public Procurement is: <http://www.gs.pmf.ps/index.php?p=go>.

<sup>38</sup> AMAN, Evaluation form of the university curriculum "Integrity, transparency and accountability in combating corruption", Unpublished document, Ramallah: AMAN, 2013.

## VII. NATIONAL INTEGRITY SYSTEM



## SUMMARY

The Legislative Council is still unable to perform its monitoring role due to the on-going division within Palestine between the West Bank and the Gaza Strip, which has existed since the middle of 2007. This has adversely affected the ability of the Legislative Council to monitor other institutions and has hindered the holding of combined meetings. Added to this, the constitutional term for the Legislative Council ended over four years ago.

Due to the absence of the Legislative Council, a number of decrees to issue laws have been dispensed by the president of the Palestinian National Authority, while the executive in both the West Bank and the Gaza Strip have been permitted to control the general budget; ratifying it and applying it without any oversight.<sup>39</sup>

The political division has prevented the existence of any effectiveness on the part of the Legislative Council. In the Gaza Strip it only includes members of the Hamas bloc, whereas in the West Bank it meets without the presence of the Hamas bloc. In both cases there is no legitimacy for the meeting, under the Basic Law. Despite decisions and recommendations issued by parliamentary working groups, formed in the West Bank in 2008 as an alternative to sittings of the Legislative Council, not having obligatory force, they held a number of sittings to hear and discuss general issues during 2011 and 2012. This included discussing the strategic plan for combating corruption with the Chairman of the Commission for Combating Corruption and sessions to listen to a number of officials in public institutions.

Likewise the rules and mechanisms for guaranteeing the integrity of the work of members of the Legislative Council are limited. Rules to prevent a conflict of interest are well organised, but significantly absent are a code of conduct, rules regarding gifts and hospitality, specific mechanisms for the work of deputies after their term of office has ended, and rules on disclosure of members' communications with pressure groups and other bodies.

In the Gaza Strip, members of the Reform and Change Bloc (Hamas) have, from the middle of 2007 to the middle of 2013, held 106 sittings in ordinary and extraordinary sessions, of which 90 were ordinary, 8 special and 8 emergency sittings. During these sessions, they issued 41 laws and 334 resolutions.<sup>40</sup> The Council in Gaza presented 10 parliamentary questions, the last of which was to the minister of the interior in Gaza, and formed three committees to conduct investigations.

### Structure and organisation

The current Legislative Council consists of 132 deputies distributed among various electoral blocs and lists. These are Hamas (Change and Reform) Bloc, the Fatah Bloc, the Martyr Abu Ali Mustafa List, the Third Way List, the Alternative List, the Independent Palestine List, and a number of independent members.

The council has a presidency consisting of the President of the Council, two deputies and a secretary. It engages in its work through plenary sessions and 14 permanent specialist committees that include members of the council who are neither from the office nor ministers. The council has the right to form committees to investigate facts.

39 See: \_\_\_\_\_, Report on Corruption and Combating It, Palestine 2012, Coalition for Accountability and Integrity - AMAN, Ramallah, 2013, Page 45.

40 See: \_\_\_\_\_, Four Years of Giving in Spite of the Embargo, Publications of the Legislative Council in Gaza, 2011.

OVERALL PILLAR SCORE: 42 / 100			
Category	Index	Law	Practice
<i>Capacity</i> 50 / 100	Resources	25	25
	Independence	100	50
<i>Governance</i> 38 / 100	Transparency	50	25
	Accountability	50	50
	Integrity	25	25
<i>Role</i> 38 / 100	Hold government accountable	50	
	Policy reform	25	

## CAPACITY: RESOURCES

### LAW

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

**Score: 25 / 100**

There are no specific legal rules that grant the Legislative Authority the financial resources it requires, especially in the context of the absence of a law for the Legislative Authority.<sup>41</sup> The Law Regulating the Budget, (7/1998), considers the Legislative Council to be one of the public institutions that must adhere fully to the objective instructions of the Department for the Budget in the Ministry of Finance. However it grants priority to the government in setting the budget, where it establishes the general budget based on the priorities the government had already set.

Legislative Council Decision 110/1996 guarantees the independence of the budget of the Legislative Council, stating, 'The annual budget for the Legislative Council is a totally independent budget within the general budget of the PNA as a single item within it. It is monitored, audited and applied in accordance with a special regulation prescribed by the Palestinian Legislative Council.'

The priority in usage stayed for the Law on Regulating the Budget issued during 1998, and the budget for the Legislative Council continued to be affected by the estimations and priorities of the Executive Authority.

### Practice

**To what extent does the legislature have adequate resources to carry out its duties in practice?**

**Score: 25 / 100**

An adequate budget (covering the requirements of parliamentary work) is set by the Secretariat General of the Legislative Council. However, the executive fails to ensure monthly financial transfers in accordance with the Law Regulating the Budget that fully disburses the allocated budget. In most cases this arises from the unstable financial situation of the Palestinian National Authority. During 2012, 50% of the operational budget was paid to the Legislative Council, while a quarter of the budget allocated to offices for the members of parliament was disbursed.<sup>42</sup>

In the Gaza Strip, the budget for the Legislative Council is subject to evaluation by the ousted Ministry of Finance and the Council of Ministers. The ministry of finance prepares the draft budget, the Council of Ministers expresses its opinion on the draft and is able to make objections, before discussing it with the ministry of finance. The budget is deemed inadequate for the Legislative Council to perform its work.<sup>43</sup>

There are 354 employees in the Legislative Council's secretariat according to the statistics for 2013, 200 of whom are in the Gaza Strip. The majority have been refusing to work since 2007 because of the political division. The number of employees is considered sufficient, but due to political appointments quality is a question. This had led to a shortcoming in a number of essential skills, with a number of vacant positions of employment that require particular specifications and skills that have not been filled because of lack of allocation of positions of employment by the Ministry of Finance in the annual budget for approximately six years. Even though the Legislative Council has an adequate number of employees, it is not able to employ more in response to the shortage of qualified employees, in part due to nepotism and favouritism in the employment process in the early years of its formation.

41 Interview with Mr Sami Jabareen, Coordinator in the Complaints Department in the Independent Commission for Human Rights, on 16/5/2013

42 Interview with Mr Nabeel Awda, Director General for Financial Affairs in the Legislative Council, on 13/5/2013.

43 Interview with Dr Nafidh Al Madhoun, Secretary General of the Legislative Council, on 10/6/2013.

Mr Sami Jabareen<sup>44</sup> considers that the staff in the Legislative Council during their work in former years were inadequate to perform the tasks entrusted to them, either in relation to the legislative work, such as committees, or the research and legal affairs, in addition to which the space available for conducting their activities was inadequate. Mr Abdul Raheem Taha<sup>45</sup> considers that the administrative team currently in existence is adequate and enables the Legislative Authority to perform its functions. He notes that the financial resources have been affected by the financial crisis to which the Palestinian National Authority has been subject. The deputies have not received allocations for their offices, which should be an estimated 8,000 shekels (approx. USD 2,000) per month. He believes that the salaries (emoluments) of the deputies are adequate and are estimated at USD3,000 per month.

Members of the Legislative Council consider that the extent of human resources available for Parliamentary research does not accord with the volume of demands placed upon members of the Legislative Council. If the Legislative Council, consisting of 132 members and 14 Parliamentary committees, is active, there are only six Parliamentary researchers engaged in Parliamentary research.<sup>46</sup> Based on this, it can be concluded that the resources available for legislators are not enough to enable them to present laws or play an active role in oversight.

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<sup>44</sup> Interview with Mr Sami Jabareen, previous source.

<sup>45</sup> Interview with Mr Abdul Raheem Taha, Director General of the Office for Complaints in the Legislative Council, on 16/5/2013.

<sup>46</sup> Naseem Shaheen, Information Technology Requirements for the Palestinian Legislature: The Role of the Parliamentary General Department for Research and Studies in its response "Reality and Ambition", Ramallah, Al-Badeel Publications, 2013.

## CAPACITY: INDEPENDENCE

### LAW

To what extent is the legislature independent and free from subordination to external actors by law?

**Score: 100 / 100**

The Legislative Council enjoys legal control and independence in the management of its affairs, determination of its agenda and accountability of its members.

The removal of any deputy from the Legislative Council requires a final judgment by a civilian court with the jurisdiction convict a deputy for a crime or misdemeanour in breach of honour or trust, or a decision by a two-thirds majority of the Legislative Council. The lifting of parliamentary immunity also requires a two-thirds majority decision of members of the Legislative Council. In the event that the deputy has committed a crime (where not caught on the scene) or a misdemeanour, the public prosecutor provides a request form to the chairman of the court attached to which is a memorandum stating the type of crime, its place, time and the evidence that requires legal procedures to be taken.

Article 53 of the Basic Law states that members of the Legislative Council are not accountable either in criminal or civil law due to the opinions they express, the facts they record or the way they vote in sittings of the Legislative Council, in committee work, or in any work they perform outside of the Legislative Council that enables them to perform their functions as deputies.

The president of the Legislative Council is elected in accordance with Article 5 of the Internal Regulation of the Council during the opening sitting of each ordinary annual session. The election takes place via a secret ballot, with the deputy obtaining an absolute majority of the number of members of the Council in the first round of voting elected. The process of selecting members of committees takes place in the first session the Council holds. Each member nominates himself for the committee in which he wishes to participate, the Council Office receives these applications and coordinates them in consultation and agreement with those who submit them. The council president refers the final allocations to the Council for approval. The Internal Regulation of the Council specifies the mechanism for selecting the chairman of each committee, with each committee electing a permanent chairman and permanent rapporteur from among its members.

The Internal Regulation grants the Legislative Council the ability to hold a sitting outside the prescribed appointed times in accordance with the provisions of Article 17, by a decision of the Council. The President of the Council prepares a draft agenda for its sittings, which is ratified by the Council at the beginning of the sitting. The maintenance of good order and security within the precincts of the Council is the responsibility of the Council. This prevents the entry of the security forces and police to the precincts of the Council, other than by a decision of the Council President. The Internal Regulation of the Legislative Council prescribes the formation of a special police force in the Council that is under the supervision of the President of the Council.

The Council controls its own support work; directly appointing the Secretary General, who is the head of the General Secretariat, which supports the work of the Legislative Council.

## PRACTICE

To what extent is the legislature free from subordination to external actors in practice?

**Score: 50 / 100**

The Legislative Council exercises the rights prescribed for it in the previous indicator in full. However the head of complaints unit at the Independent Commission for Human Rights considers that during the last two years interference has occurred because of the state of political division. The Council enjoys the ability to appoint, promote and spend its budget without interference from the executive.<sup>47</sup>

Because of the state of political division, the executive has become the body that issues laws in accordance with Article 43 of the Basic Law, which allows the president of the Palestinian Authority to issue decrees creating laws in an extreme necessity that does not allow for delay when the Legislative Council is not in session. Over the last six years and up to the 2 May 2013, president had issued 75 decrees creating laws.<sup>48</sup>

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47 Interview with Mr Azmi Al Shuaibi, Commissioner for the Coalition for Accountability and Integrity - AMAN AMAN, for Combating Corruption. He is a former member of the Legislative Council, on 5/6/2013.

48 [http://www.wattan.tv/new\\_index\\_video\\_desc.cfm?id=a2684313a3943440&CFID=116652220&CFTOKEN=7db6d1fd8612318a-9121F767-1C23-B961-5A5E465719147D95#.UZfWLPxRLIU](http://www.wattan.tv/new_index_video_desc.cfm?id=a2684313a3943440&CFID=116652220&CFTOKEN=7db6d1fd8612318a-9121F767-1C23-B961-5A5E465719147D95#.UZfWLPxRLIU)

## GOVERNANCE: TRANSPARENCY

### LAW

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

**Score: 50 / 100**

In general there are no laws allowing the right to observe sessions of the Legislative Council. Rather the matter relies upon practice and is subject a decision of an individual employee.

Obtaining verbatim minutes of the plenary sittings requires the approval of the Secretary General. There are no laws or regulations clarifying the criteria for deciding to release – or not release - minutes.<sup>49</sup> Article 24 of the Internal Regulation states, 'Following ratification of the minutes, they will be signed by the President and Secretary General and held in the Council's registers. The Council may publish a summary of them in a special publication of the Council.'

No legal provisions permit publication of deliberations and procedures of the Legislative Authority and its committees to the media and the public. Nor are there legal provisions requiring the Council to provide voting records, agendas of legislative sittings and sittings of committees before they are held, to the public. No laws require the production and circulation of reports on the activities of these bodies. Draft laws deliberated by the Legislative Authority are not made available to the public nor are the asset declarations belonging to the legislators revealed to the public.

Nevertheless the Internal Regulation does require that plenary sittings should be open to the public and media but don't have conditions or regulations towards radio broadcasting. Private committee's sessions could be held publicly according to the provisions of Article 54 of the Internal Regulation.

With regard to a request to the Legislative Authority to receive citizens and reply to their queries and requests, Article 104 of the Internal Regulation says, 'The President will inform the petitioner in writing of the action that has been taken with respect to it.'

### PRACTICE

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

**Score: 25 / 100**

As the work of the Legislative Council has ceased, it is not possible to measure this indicator. However Parliamentary traditions in practice indicate that citizens attend sessions of the Council and sessions of the Parliamentary Blocs. The Legislative Council also invited the media to attend and cover ordinary sittings and permitted television companies to transmit free of charge. Primarily, the media department in the Legislative Council sends news of the meetings of committees to the local media for potential publication.<sup>50</sup> Likewise the Council replies to the queries and complaints of citizens and civil society organisations.<sup>51</sup>

However the agendas of plenary sittings and committees are not published before the meetings are held. Furthermore there are no voting records in a form that allows people to know how individual members voted and, as electronic voting is not used, this prevents the monitoring of votes.<sup>52</sup> The Council furthermore does not publish its budget in detail and limits itself to what is published in the General Budget Law on the website of the Palestinian Ministry of Finance. Reports on balance sheets and reports on expenditure of members of the Council are not published and asset declarations of the legislators are not disclosed.

<sup>49</sup> Interview with Mr Abdul Raheem Taha, previous source.

<sup>50</sup> Interview with Mr Abdul Raheem Taha, previous source.

<sup>51</sup> Previous source.

<sup>52</sup> Interview with Mr Sami Jabareen, previous source.

# GOVERNANCE: ACCOUNTABILITY

## LAW

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

**Score: 50 / 100**

The Constitutional Court reviews legislation and decisions issued by the Legislative Council against the Basic Law (constitution) under its Article 103. Along with the Basic Law, the Constitutional Court Law 3/2006 also provides the court with this jurisdiction.

The Constitutional Court ruling in Case 1/2006, issued on 17 December 2006, explicitly confirms this – stating that the Constitutional Court has competence to review decisions issued by the Legislative Council under Article 103 of the Basic Law.<sup>53</sup>

There are no provisions in the Internal Regulation of the Legislative Council or in other laws that guarantee citizens the right to submit complaints against deputies for their parliamentary actions.

The Legislative Council in its administrative and financial work is subject to monitoring by the State Audit and Administrative Control Bureau, in accordance with the provisions of the Office for Financial Monitoring Law 17/2004.

## PRACTICE

To what extent do the legislature and its members report on and answer for their actions in practice?

**Score: 50 / 100**

The Legislative Council co-operates with the employees in the State Audit and Administrative Control Bureau during their monitoring of the management of the Legislative Council. The annual report includes a section on the review and audit conducted by the Legislative Council Support Office.<sup>54</sup> The Council also provides information and documents required by the auditors and replies to queries and observations recorded in the preliminary report of the office.<sup>55</sup>

During 2011 one complaint was recorded against the Legislative Council for its failure to pay the rent of the house allocated to the President of the Legislative Council.

Deputies have at times pled immunity when it does not apply, due to the absence of clear understanding of the nature of immunity and the limitation to actions and statements they perform or make within the Legislative Council or due to Legislative Council work, for example for traffic violations or specific crimes not subject to immunity.<sup>56</sup> One deputy argued when arrested by the police for driving an illegal car on

22 January 2010 in the Al-Khaleel District that he had parliamentary immunity.<sup>57</sup> At the beginning of 2012, immunity was lifted from the deputy Muhammad Dahlan by a decree creating Law 4/2012 of the president of the Palestinian Authority on 3 January 2012.<sup>58</sup>

53 [http://muqtafi.birzeit.edu/PDFPre.aspx?PDFPath=Uploads/court\\_judgment/hicourt07.pdf](http://muqtafi.birzeit.edu/PDFPre.aspx?PDFPath=Uploads/court_judgment/hicourt07.pdf)

54 \_\_\_\_\_, The Annual Report for 2011, Ramallah, Office for Financial and Administrative Monitoring, 2012, Pages 72-75.

55 Interview with Mr Nabeel Awda, Director General for Financial Affairs in the Legislative Council, on 13/5/2013

56 Interview with Mr Abdul Raheem Taha, previous source.

57 See: <http://www.ekhbaryat.net/internal.asp?page=articles&articles=details&newsid=17126&cat=2> and also <http://www.maannews.net/arb/ViewDetails.aspx?ID=256773>.

58 Since the middle of 2007, which saw the state of division, the Palestinian President has used the provisions of Article 43 of the Basic Law to issue decrees issuing laws because the Legislative Council was not functioning. Article 43 of it states, "In cases of necessity that will not allow delay while the Legislative Council is not sitting the President of the National Authority may issue decrees that have the force of law. They must be referred to the Legislative Council at the first sitting it holds following the issue of these decrees, otherwise the force of law that they had will terminate. If they are referred to the Legislative Council in the aforementioned manner and it does not confirm them the force of law that they had will terminate."

# GOVERNANCE: INTEGRITY

## LAW

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

**Score: 25 / 100**

The Legislative Council does not have:

- A code of conduct for members
- Rules regarding gifts and hospitality
- Post-employment restrictions for council members
- Legal provisions requiring the members to register and/or disclose their communications with pressure groups.

The Law of Duties and Rights of Members of the Legislative Council provides rules that govern conflict of interests through:

- Preventing the combination of Legislative Council membership with an executive membership position, except for the position of minister
- Preventing the combination of Legislative Council membership with any position of employment in the executive, including consultancies or similar
- Preventing the combination of Legislative Council membership with any consultative, supervisory or administrative council for any institutions belonging to the state;
- Preventing the use of any secret information by Legislative Council members using information obtained while fulfilling her/his positions as a member for purposes other than parliamentary work
- Preventing legislative Council members from purchasing or renting any state property, or letting or selling any of her/his property, bartering it or entering into a contract with it, due to her/ his capacity. The same applies to having an undertaking or being a supplier or contractor, unless the contract has been entered into in accordance with general rules that apply to everyone.
- In all cases preventing the use of her/his position to obtain special benefits without a right to do so; representing the government or negotiating on its behalf for a fee; and performing any work of employment for a fee.

The rules for a conflict of interests recorded in the Law of Duties and Rights of Members of the Legislative Council do not indicate any penalties in the event that a member violates the rules.<sup>59</sup>

Members, their wives and minor children are required to submit asset declarations (Article 54 of the Amended Basic Law and Article 12 of the Law of Duties and Rights of Members of the Legislative Council, 10/2004). However this declaration is held by the Supreme Court and its contents are not disclosed.

From a criminal point of view, deputies are subject to the normal law. The Criminal Law number 16 of 1960 states, 'Every public employee and every person appointed to public service, whether by election or appointment, and any person entrusted with an official task, such as an arbitrator, expert, and agent, who requests or accepts for himself or for another a gift or promise or any other benefit to perform an action by virtue of his position of employment will be punished by detention of from six months to two years and a fine of from 10 dinars to 200 dinars.'

<sup>59</sup> \_\_\_\_\_, A Presentation of the Legislative Provisions Related to Political Ethics: Deputies and Ministers in the Arab World, Beirut, Arab Parliamentarians against Corruption, Westminster Foundation for Democracy (D.T.), Pages 4-5.

## PRACTICE

To what extent is the integrity of legislators ensured in practice?

**Score: 0 / 100**

Due to the lack of many mechanisms for integrity, as recorded above, Legislative Council members do not publish their financial assets, do not record gifts and hospitality and do not reveal their communications with pressure groups, despite their commitment to present a sealed asset declaration, as stated by the basic law.

Furthermore some deputies, in violation of the rules of a conflict of interests related to work for a fee, teach in universities and some receive a fee for appearing on the media in their capacity as members of the Legislative Council.<sup>60</sup>

There is no serious follow-up to investigate the extent of compliance of members of the Council to the provisions in the Law of Duties and Rights of Members of the Legislative Council and cases of members being held accountable have not been recorded by the Legislative Council.

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<sup>60</sup> Interview with Azmi Al-Shuaibi, As above.

## ROLE: EXECUTIVE OVERSIGHT

To what extent does the legislature provide effective oversight of the executive?

**Score: 50 / 100**

Even though there are rules and mechanisms to monitor the government and ministers, the political division between Hamas and Fatah has prevented the existence of any effective oversight by the Legislative Council.

Article 73, para. 3 of the Basic Law states, 'The Prime Minister and members of his government are individually and jointly responsible to the Legislative Council.' The Basic Law grants ten deputies the right to demand the withdrawal of confidence from the government or any of the ministers in two circumstances. Firstly following questioning in accordance with the provisions of Article 57, and the secondly when made for a special sitting to be held to exercise this right. It should be noted that the government that was formed from the middle of 2007 and which continues to govern to the current day, (that is from the 12th government to the current 16th government) has not referred to the Legislative Council to obtain a vote of confidence.

In accordance with the provisions of Article 3 of the Law Governing the General Budget of 1998 the Legislative Council ratifies the general budget for the executive. No reallocation is permitted between the chapters of the budget without the approval of the Legislative Council. Furthermore the Ministry of Finance must present a report every three months on progress in the budget to the Legislative Council in accordance with Article 52 of the same law. The government must also submit the final accounts to the Legislative Council in accordance with the provisions of Article 66.

Article 58 of the Basic Law allows for the possibility of a special committee or one of the permanent committees of the Council to be charged with examining the facts in any public issue or in the public administration. However the Internal Regulation does not prescribe specific mechanisms for the work of these committees.

The Legislative Council ratifies the appointment of a number of senior officials in the state, such as the Governor of the Palestinian Monetary Authority (Article 93 of the Basic Law reads, 'The Governor of the Monetary Authority will be appointed by a decision of the President of the National Authority and his appointment will be ratified by the Palestinian Legislative Council'). It also ratifies the appointment of the head of the State Audit and Administrative Control Bureau (Article 96 of the Basic Law, 'The Head of The State Audit & Administrative Control Bureau will be appointed by a decision of the President of the Palestinian National Authority and his appointment will be ratified by the Palestinian Legislative Council.'). The Council furthermore ratifies the appointment of the head of the General Office for Employees in accordance with the provisions of Article 6 of the Law for the Civil Service 4/ 1998 (as amended). Finally, it ratifies the appointment of the chairperson of the General Retirement Board, in accordance with the provisions of Article 56 of the General Retirement Law 7/ 2005. In practice however, the appointment of the head of the State Audit and Administrative Control Bureau in 2011 and the head of the General Office for Employees in 2012 were carried out without the ratification of the Legislative Council, due to state of political division and its state of non-operation. The Legislative Authority plays no role in the process of appointing the Central Elections Commission and the Commissioner of the Independent Commission for Human Rights (the Ombudsman).

The State Audit and Administrative Control Bureau monitors contracts entered into by the Palestinian Authority, by virtue of its powers in Article 21 of the Law for the State Audit and Administrative Control Bureau, 15/2004. It is accountable to the Legislative Council.

The Legislative Council has the right while exercising its monitoring powers granted to it under the Basic Law to demand information from ministries and government establishments. Ministers or particular officials may be requested to appear before committees of the Council. Even though the decisions and recommendations issued by parliamentary working groups constituted in the West Bank are not binding, they have held a number of sessions to hear and discuss general issues, such as the strategic plan for combating corruption with the Chairman of the Commission for Combating Corruption, proposed guidance with the Minister of Education and with experts and academics, and the decree issuing the Income Tax Law and financial policy of the government with the Prime Minister. They have also held discussions with the private sector and trade unions and a hearing with representatives of the Electricity Corporation in the province of Al-Quds, regarding the corporation's financial crisis. It has held sessions for investigation and holding to account a number of heads of public boards and establishments, such as the Monetary Authority, the Fatwas Board, the Ministry of Health, the Palestinian Medical Council and Palestinian Airways. It referred some of these files to the Commission for Combating Corruption for further steps and has met representatives of the Contractors Federation regarding the relationship with the Rawabi Company and role of the Public Prosecutor. It has also discussed the report of the Monitoring Office of the Council to follow-up on investigations conducted by the Council in 2011<sup>61</sup>.

In 2011 the Legislative Council in the Gaza Strip held four sessions to question senior employees of the government on suspicions related to misuse of public position. The percentage of complaints that were received by the Legislative Council related to issues of corruption do not exceed 7%, and most of them relate to issues of appointment, positions of employment and promotions within the PLC. In the area of monitoring public property, the Legislative Council has reviewed the quarterly reports of the general budget, but these discussions were limited due to the unified political stance between members of the Legislative Council and the government in Gaza.<sup>62</sup> Within the context of addressing legal violations in the disposal of state property, the budget committee demanded the dissolution of the Land Authority and restoration of the Land Registrations Department (TABO) to the Ministry of Justice, as was the previous situation, and the return of the Survey Department to the Ministry of Public Works and Housing. This in itself increases transparency in the transfer of ownership of state land and reduces violations that might occur in this regard.<sup>63</sup>

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61 See: The Annual Report "Corruption in Palestine and Combating It" for the years 2011 & 2012 issued by the Coalition for Accountability and Integrity, AMAN. <http://www.aman-palestine.org>.

62 The Annual Report, Corruption in Palestine and Combating It, issued by the Coalition for Accountability and Integrity, AMAN, for 2011, Page 34.

63 Mazin Nour Al-Deen, The Role of the Committees of the Palestinian Legislative Council in Combating Corruption, unpublished working paper, 2013, Page 9.

## ROLE: LEGAL REFORMS

To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

**Score: 25 / 100**

As a result of the non-operation of the Legislative Council during the last six years - since 2007 - because of the political division, the Legislative Council has passed no laws. The Unlawful Gains Law was issued in 2005 and amended by the Palestinian President in accordance with the provisions of Article 43 of the Basic Law and in 2010 it became the Law for Combating Corruption.<sup>64</sup> In the Gaza Strip the Legislative Council in Gaza has issued no laws to combat corruption during the period of the division (2007-2013). However the Unlawful Gains Law is still in force in the Gaza Strip.<sup>65</sup>

The legal situation of the Palestinian Authority before 29 November 2012 did not permit it to sign international agreements. However the authority took the initiative to declare its readiness to adhere to the provisions of the agreements on its part through an official declaration in the name of the Prime Minister delivered to the Secretary General of the United Nations in 2005. The government again confirmed its undertaking in August 2007.<sup>66</sup>

The promotion of Palestine's status from an observer entity at the UN to an observer state enables it to sign and ratify the UNCAC, but requires the State of Palestine to start procedures to sign and ratify this convention.

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<sup>64</sup> Interview with Mr Abdul Raheem Taha, previous source.

<sup>65</sup> Meeting with Dr Tariq Al-Dirawi, Director of the Legal Department in the Legislative Council (a withdrawing employee), on 11/6/2013.

<sup>66</sup> <http://www.aman-palestine.org/UNCAC/palestine.htm>.



## SUMMARY

The Basic Law clearly specifies the functions of the President and Prime Minister of the Palestinian Authority, however the practice of these functions indicates an interweaving, and on some occasions, conflictual relationship between the two branches of the executive (the President and the Council of Ministers).

The Council of Ministers has broad authority in preparing the public budget and control over allocations and implementation, as well as reallocations among items. Financial, human and technical resources are available for the Council of Ministers to carry out its work, but it lacks a system for defining and classifying government files and lacks laws to create access to information mechanisms. Although the members of the government submit asset declarations in accordance with Basic Law, these declarations are not disclosed and there is a lack of legal rules regulating the disclosure of gifts and employment in the private sector after leaving a political position in government.

The executive addresses the combating of corruption, which is a popular demand. The executive appointed a head of the Anti-Corruption Commission and the President of the PNA has issued a presidential decree amending the Illicit Gains Law, which introduces the formation of a court for corruption crimes. Parliamentary questioning of the government is absent due to the suspension of the Legislative Council.

### Structure and organisation

The executive consists of two institutions; the presidency and the Council of Ministers. This is in line with 2003 constitutional amendments, by which the position of the Prime Minister was created and is made accountable to the Legislative Council and powers were divided between the President of the PNA and the Prime Minister.

The presidency consists of the president of the PNA, a support team including the office of the president, the secretary-general of the presidency, the head of the office and a number of consultants and departments such as protocol, public relations, and the Provincial Affairs Unit.

The composition of the structure of the executive in the Gaza Strip is limited to the government without a PNA presidency, as the Palestinian President issued a decision in 2007, following the political division, to dismiss the government of Mr Ismail Haniya, which rejected the decision and has continued operating until the present day. Its authority only includes the Gaza Strip.

The President is the head of executive and supreme commander of the Palestinian forces. He is responsible for choosing the prime minister, to instruct him to form a government and may dismiss her/him or accept her/his resignation. The President can convene the Council of Ministers and appoints representatives of the Palestinian Authority to other states and international bodies. He issues laws or returns them after they have been ratified by the Legislative Council within 30 days of the date from which they are referred to him. The President may also issue decrees creating laws in cases of necessity that cannot be postponed, in a situation when the Legislative Council is unable to meet, and he may declare a state of emergency and the right of a personal amnesty.<sup>67</sup>

The Council of Ministers is made up of the Prime Minister, the Secretary General of the Council of Ministers and a maximum of 24 ministers who manage most of the affairs of the executive. In addition to this there are a number of bodies and institutions that have been attached to ministries or the Council of Ministers by numerous decisions of the Council of Ministers, such as the Investment Authority.

The Council of Ministers is responsible for the implementation of the ministerial programme ratified by the Legislative Council and the preparation and implementation of the general policy, the preparation of the general budget for referral to the Legislative Council, monitoring the enforcement of laws, setting-up administrative bodies and supervision of ministries, the maintenance of security and public order, the

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<sup>67</sup> See: Articles 38-45 of the amended Basic Law of the Palestinian National Authority.

establishment and removal of various bodies and institutions and specifying their powers.<sup>68</sup>

The Prime Minister is also accountable to the Legislative Council and the President for his performance and the performance of his government. Ministers are accountable to the Prime Minister.

OVERALL PILLAR SCORE: 48 / 100			
Category	Index	Law	Practice
<i>Capacity</i> 50 / 100	Resources	--	50
	Independence	50	50
<i>Governance</i> 46 / 100	Transparency	25	50
	Accountability	50	50
	Integrity	50	50
<i>Role</i> 50 / 100	Public Sector Management	50	
	Legal system	50	

<sup>68</sup> See: Article 69 of the Basic Law.

## CAPACITY: RESOURCES

### PRACTICE

To what extent does the executive have adequate resources to effectively carry out its duties?

**Score: 75 / 100**

The government prepares the general budget, sets the allocations, implements the budget, makes transfers between items and appoints staff through the Civil Service Office - the General Office of Employees - which is subordinate to the Council of Ministers. Likewise the Ministry of Finance purchases and leases property for the benefit of the government and makes contracts on behalf of the government.

The budget for the Presidency and the Council of Ministers amounted to 279 million shekels (approx. USD 80 million) in 2013, of which the presidency took 246 million shekels (approx. USD 70 million or 2% of the Palestinian Authority budget for that year. The Council of Ministers' budget amounted to 33 million shekels in 2013 (approx. USD 9.5 million) or 0.3% of the PNA budget.

The Palestinian Presidency consists of the president, his office and 39 consultants.<sup>69</sup> The General Secretariat of the Presidency includes a number of departments, with employees selected from existing ministry and government employees, rather than in accordance with the Civil Service Law, which requires advertisement and competition.<sup>70</sup>

The 2013 Council of Ministers consists of 22 ministers, in addition to the Prime Minister and Secretary General of the Council of Ministers, alongside the General Secretariat, a number of support departments and the Office of the Prime Minister.

The Council of Ministers has the necessary financial, human and technological resources to perform its work.<sup>71</sup> Persons have claimed that the Council of Ministers suffers from an excessive number of employees and a shortage in competent human resources,<sup>72</sup> due to the system of political appointments. The Council of Ministers needs to develop specialist human resources whom are trained in politically and administratively. Moreover, the council of ministers should adopt a financial and administrative system that differs from the current one that is used by the National Authority in order to attract specialists and experts who will work and perform the system's functions properly.<sup>73</sup>

69 Annual Report for 2012, The Commission for Combating Corruption, Page 19.

70 Annual Report for 2012, The Financial and Administrative Monitoring Office, Page 48.

71 Interview with Mr Muhammad Abu Ata, Assistant Undersecretary for Financial and Administrative Affairs in the Council of Ministers on 28/8/2013.

72 Interview with a source in the Secretariat of the Council of Ministers who refused reporting of his name, 9/8/2013.

73 Interview with Dr Naeem Abu Al-Hims, the Former Secretary General of the Council of Ministers, on 26/8/2013.

## CAPACITY: INDEPENDENCE

### Law

To what extent is the executive independent by law?

**Score: 50 / 100**

The Basic Law sets down the powers of the executive and includes the principle of separation of powers between the legislature, executive and judiciary.<sup>74</sup> The President of the National Authority is directly elected by the people; the government is responsible to the President and the Legislative Council.<sup>75</sup>

The separation between the three authorities in the Palestinian political system is in law a flexible and relative separation, rather than an absolute one. The legislature and executive both have roles in passing legislation through the various stages and it is possible to be both a minister and a member of the Legislative Council. The Legislative Council holds a vote of confidence in the government and approves its composition, with the Council of Ministers responsible to the Legislative Council. The Council of Ministers drafts the budget and the Legislative Council ratifies it.<sup>76</sup>

The Basic Law states that the judiciary is independent, that judges are independent and not subject to authority in their judgments to anything other than the law, and that the judiciary monitors the work of the executive.<sup>77</sup> The legislature ratifies laws and budgets related to the work of both the executive and the judiciary, and monitors their activities.<sup>78</sup>

The President of the PNA is head of the executive and responsible for a large part of its business. He has the right to object to draft laws ratified by the Legislative Council, has the power to select the Prime Minister and declare a state of emergency.<sup>79</sup> There are no constitutional or legal provisions that clarify the mechanism for holding the President of the PNA or the institutions subordinate to him to account, despite the extensive executive powers, placing the President outside the framework of monitoring.

With the exception of the restrictions specified for ministers in the Basic Law, and the accountability before the Legislative Council within the scope of obtaining confidence or withholding it, the government enjoys wide independence in the preparation of its plans, budgets, policies and the issue of regulations, instructions and decisions, in accordance with the law.

### PRACTICE

To what extent is the executive independent in practice?

**Score: 50 / 100**

In general, the executive performs its activities and takes its decisions in complete independence.<sup>80</sup> In relation to the security forces, there are no clear indicators of its interference and impact on decisions issued by the President or the Council of Ministers.

In spite of the provision for the separation of powers between the three authorities, practice indicates executive control over both the judiciary and legislature, especially following the political division and paralysis of the Legislative Council.

External parties, particularly donor countries providing grants and assistance, have a relative influence on the decisions and policies of the executive, especially on financial policies.

<sup>74</sup> See: Article 2 of the Basic Law.

<sup>75</sup> See: Article 5 of the Basic Law.

<sup>76</sup> Ahmad Abu Diya and Jihad Harb, The Problem of the Separation between Powers in the Palestinian Political System, The State of the Legislative Authority, Ramallah, the Coalition for Accountability and Integrity - AMAN, 2007, Page 3.

<sup>77</sup> See: Article 97 of the Basic Law.

<sup>78</sup> See: Article 74 of the Internal Regulation of the Palestinian Legislative Council.

<sup>79</sup> See: Articles 39-43, 45, 110 of the Basic Law.

<sup>80</sup> Interview with Dr Naeem Al-Hiems and Muhammad Ata Al-Hilu, the previous source.

# GOVERNANCE: TRANSPARENCY

## LAW

To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

**Score: 25 / 100**

The Basic Law requires that meetings of the Council of Ministers are documented. The Secretary General of the Council of Ministers prepares the minutes of the meetings, which are signed by the Prime Minister and Secretary General after they have been ratified by the Council of Ministers. A copy of them is sent to the President of the PNA and the decisions are circulated to the parties concerned.<sup>81</sup> However the law does not state that the minutes and deliberations or parts of them must be published and made available for public circulation. No one may circulate the items of the Council of Ministers without the approval of the Prime Minister,<sup>82</sup> with the minutes of the meetings of the committees subordinate to the Council of Ministers restricted to the deliberations and recommendations and only available to ministers,<sup>83</sup> i.e. they are not available to the general public.<sup>84</sup> There is no unified government arrangement for information and a law of the right to obtain information has not been issued.

The Law Governing the Budget states that the Budget Law, following its ratification by the Legislative Council, must be published to the media and the public.<sup>85</sup> The law contains a categorised list of the estimated income and the proposed expenditure for every ministry or institution, including the Council of Ministers and the Presidency. The list also records the actual annual income and expenditure for the previous financial year and the financial estimates amended for the current financial year.<sup>86</sup>

The law requires the president of the PNA, the prime minister and ministers to submit asset declarations for themselves, their wives and minor children, including all real estate, movable property, shares, bonds and cash funds whether within Palestine or abroad, together with their debts. The president's asset declaration is held by the Supreme Court of Justice and the asset declarations of the prime minister and other ministers are submitted to the President of the PNA. The declarations are confidential and sealed and may only be studied with the permission of the Supreme Court.<sup>87</sup>

## PRACTICE

To what extent is there transparency in relevant activities of the executive in practice?

**Score: 50 / 100**

There is no official body within the executive responsible for receiving information requests and for documenting applications accepted or rejected. Interviewees note that the Council of Ministers always deals with all applications positively,<sup>88</sup> but no regulation has been issued specifying the concept and nature of files classified as public, and there has been no ratification of legislation setting out the mechanism for obtaining information, despite of the formation of an official body for documentation. The draft law for obtaining information was presented to the Legislative Council in 2005 and has still not been issued. The President of the PNA has not exercised the powers granted to him in accordance with Article 43 of the Basic Law for the issue of a decree creating an access to information law, despite of the extension by the

81 See: Article 24 of the Implementing Regulations of the Council of Ministers.

82 See: Article 22 of the Implementing Regulations of the Council of Ministers.

83 See: Article 10 of the Regulation for Committees of the Council of Ministers.

84 Interview with Mr Shadha Qarshouli, Director General for Quality of Government Performance in the Council of Ministers and Mr Nafeen Salama Ghayyadha, Director of the Department for the Implementation of Government Decisions in the Council of Ministers, 13/8/2013.

85 See: Article 38 of the Law Regulating the Budget.

86 See: Article 32 of the Law Regulating the Budget.

87 See: Article 70 of the Basic Law, and Article 11 of the Law of Unlawful Gain.

88 Interview with Mr Shadhi Qarshouli and Mr Nafeen Ghayyadha, a previous reference.

President of the powers granted to him and the issuing of a number of laws not considered essential by many people.

While meetings of the Palestinian government are documented in sound, image and paper minutes, none are published. The minutes are confidential<sup>89</sup> and the deliberations are not published.<sup>90</sup> Likewise minutes of meetings of the President of the PNA with the Council of Ministers and other bodies are not published. The executive, including the Presidency and the Council of Ministers, does have an electronic and paper archive.

The Council of Ministers prepares and publishes quarterly reports on the work and plans of the government, publishes its decisions and issues press statements regarding the most important matters dealt with in its deliberations. It also publishes the general budget, after it has been ratified, on the website of the Ministry of Finance, which also issues monthly reports on income and expenditure. The government circulated the Palestinian Reform and Development Plan and the government's thirteenth national programme to wide sectors of Palestinian society, subjected them to extensive public discussion and is obliged to guarantee that citizens are able to study them.<sup>91</sup>

The government ensures that decisions and regulations are published in a means and language that is easily understood by everyone, particularly important as regulations are only issued following long and broad deliberation and preparation.<sup>92</sup>

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89 Interview with Mr Shadha Qarshouli and Mr Nafeen Ghayyata, the previous source.

90 Interview with Mr Muhammad Ata Al-Hilu, the previous source.

91 The Palestinian National Authority, National Development Plan, 2011-2013, Establishment of the State and Building the Future, April 2011, Page 15.

92 Interview with Mr Muhammad Ata, Mr Shadha Qarshouli and Mr Nafeen Ghayyadha, the previous source.

# GOVERNANCE: ACCOUNTABILITY

## Law

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

**Score: 50 / 100**

The legislation regulating the monitoring of executive includes the Basic Law, the State Audit and Administrative Control Bureau Law, the Budget Law, the Law for Combating Corruption, and the Internal Regulation of the Legislative Council. However these laws, with the exception of the Budget Law, contain no clear provisions that bind the executive to provide periodic and orderly reports to any party whatsoever.

The Budget Law requires the Minister of Finance to provide a report to the Legislative Council regarding the Annual Draft General Budget Law, including the financial policy and essential foundations for the draft budget<sup>93</sup>. The law states that the Ministry of Finance must submit quarterly reports to the Council of Ministers and Legislative Council recording financial developments and trends in the movement of income and expenditure, with an interpretation of obligations and appropriate corrective proposals to address imbalances.<sup>94</sup> Furthermore the Ministry of Finance is required to prepare a draft final account at the end of the financial year and refer it to the Council of Ministers and Legislative Council for ratification within a year following the end of the financial year.<sup>95</sup>

The Council of Ministers is required to submit reports and information to the Legislative Council on demand, making the Prime Minister and members of the government responsible to the Legislative Council individually and jointly.<sup>96</sup> The Legislative Council may summon ministers to appear before it or one of its committees for questioning and ask them to reply to questions related to their work and responsibilities. In addition the Legislative Council may withdraw confidence in the government or one of its ministers.<sup>97</sup> The President of the PNA is not however accountable to the Legislative Council, as s/he is directly elected by the people. Laws do not provide for the possibility of the president being held accountable for executive actions he takes in accordance with the Basic Law, with the exception of provisions in the Law for Combating Corruption.

The Basic Law enables the executive to be held to account and sets out the procedures for referring the president for investigation and trial in the event of suspicion or conviction of corruption. If it is apparent to the Chairman of the Commission for Combating Corruption or the Prosecutor General that there are suspicions of corruption against the President of the PNA, an application can be submitted to the Legislative Council and Constitutional Court for investigation of the legal competence of the president. The president is prevented from acting as soon as a charge is brought, with the chairperson of the Legislative Council temporarily assuming the presidential power while the prosecutor general conducts the investigation. The president can be tried before a special court constituted for this purpose and, in the event of a conviction, will be removed from office without prejudice to further penalties.<sup>98</sup> Referral of the prime minister and members of his government for investigation for any crime while performing the work of their positions of employment will take place by a decision of president in the case of the prime minister and by a decision of the prime minister in relation to ministers. The ministers will be suspended as soon as the decision to charge them is taken.<sup>99</sup>

<sup>93</sup> See: Article 31 of the Law Governing the Budget.

<sup>94</sup> See: Article 52 of the Law Governing the Budget.

<sup>95</sup> See: Article 66 of the Law Governing the Budget.

<sup>96</sup> See: Article 74 of the Basic Law.

<sup>97</sup> See: Articles 56 & 57 of the Basic Law.

<sup>98</sup> See: Article 12 of the Law for Combating Corruption.

<sup>99</sup> See: Articles 75 & 76 of the Basic Law.

The Basic Law also establishes that administrative decisions taken by the government must be justified or based on legal authority granted to the person who takes the decision, and individuals and parties harmed by the decision are able to challenge it before the courts. However the executive is not bound legally to consult with the public or interest groups regarding the decisions it takes.<sup>100</sup>

## PRACTICE

### To what extent is there effective oversight of executive activities in practice?

**Score: 50 / 100**

Since the election of the first Legislative Council in 1996, the Council of Ministers has been subject to monitoring by the Legislative Council while in session, and generally ministers respond to requests from the Legislative Council and attend hearings. In specific cases the Council of Ministers has been compelled to present its resignation as a result of pressure from the Legislative Council over its performance and corruption.<sup>101</sup> Since 2007, following the political divide, the Legislative Council has been inoperative and unable exercise its monitoring role over the executive.

The State Audit and Administrative Control Bureau (SAACB) reviews and audits the final accounts and prepares reports on the work of the executive. It refers its reports to the Legislative Council; it has continued to do so despite the suspension of the Legislative Council, delivering its reports to Parliamentary Blocs office. The Commission for Combating Corruption has acted similarly in presenting its annual report.

The State Audit and Administrative Control Bureau (SAACB) suffers from a lack of cooperation from some official bodies in following up on its recommendations and instructions, in addition to a lack of response of these institutions to the office in providing information and reporting violations to the office. This has a negative effect upon its role.<sup>102</sup>

The Prime Minister submits asset declarations to the President of the PNA, and following the formation of the government the prime minister issues a declaration requiring ministers to submit asset declarations, in accordance with the law. In practice ministers deliver their asset declarations to the Secretary General of the Council of Ministers, who in his turn delivers them to the Chairman of the Palestinian Authority.<sup>103</sup> However this does not apply to the government in the Gaza Strip; since the political split its members have not submitted asset declarations to the president.

The Council of Ministers and the Presidency consult with various institutions of society on a number of issues, in particular when a decree is being prepared for the issue of a law and its implementing rules and regulations.<sup>104</sup> A number of civil society organisations have been successful in holding meetings and sessions with officials in the PNA for consultation and explanation of official policies and directions.<sup>105</sup> Likewise the Press Office in the Palestinian Ministry of Information holds regular meetings for ministers and officials in the PNA with journalists that deal with cases related to the work of their institutions.

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100 Interview with Dr Naeem Abu Al-Hims and Muhammad Ata, a previous source.

101 The Coalition for Accountability and Integrity, AMAN, The Regime for Integrity, previous source, Page 40.

102 The Coalition for Accountability and Integrity, AMAN, Report on Corruption, 2010, Ramallah, Pages 37-38.

103 Interview with Mr Shadha Qarshouli and Mr Nafeen Ghayyadha, a previous source.

104 The same source.

105 See: [www.aman-palestine.org](http://www.aman-palestine.org).

## GOVERNANCE: INTEGRITY

### LAW

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

**Score: 50 / 100**

There are no codes for the conduct of members of the Council of Ministers and senior officials in the Palestinian Presidency, even though a draft code of conduct was prepared for ministers in 2009 and was referred to the Council of Ministers, it has still not been issued.

The Basic Law however contains legal provisions regarding conflict of interests. Neither the President of the PNA nor the prime minister or other ministers may buy or lease any of the properties of the state or any properties of any public legal person, nor may they have an interest in a contract made by government bodies or departments, and throughout the period when they remain in their position, they may not be a member of a board of directors of any company or engage in trade or any profession or receive any other salary or any remuneration or grants from any other person of whatever nature, other than the salary and allowances specified in the law.<sup>106</sup> Laws place no restrictions on the appointments of ministers after they have ended their functions in the government.

The law guarantees the provision of personal and legal protection to those who report corruption and has laid down the procedures for protection and special arrangements for this in accordance with a regulation prepared by the Commission for Combating Corruption and issued by the Council of Ministers<sup>107</sup>. However the regulation has not yet been issued.<sup>108</sup>

### PRACTICE

To what extent is the integrity of members of the executive ensured in practice?

**Score: 50 / 100**

Codes for conduct and special rules for ethical behaviour for members of the executive have not yet been ratified. Despite provisions in the Basic Law to prevent conflict of interests, there is still no special regulation or detailed instructions on how to apply this or specify a supervising and monitoring body, nor are there rules imposing penalties in the event of a violation. During 2009 the Council of Ministers addressed the ministers regarding the application of the second paragraph of Article 80 of the Basic Law, which discusses the matter of conflict of interests, as they were required to resign from the institutions and various bodies and provide the Secretariat General with a copy of the resignation so that it can be documented.<sup>109</sup> There is no relevant body within the Council of Ministers to check adherence by the ministers to the conflict of interest laws, although the Secretariat General distributes a file to new ministers containing the rights and duties of ministers and rules to which they must adhere.<sup>110</sup> Legal provisions related to the protection of those who report corruption are ineffective, with the absence of a mechanism to protect and reward those who report corruption and encourage reporting.<sup>111</sup>

<sup>106</sup> See Article 11 of the Law for Combating Corruption in relation to the President of the Authority, and Article 80 of the Basic Law in relation to the Prime Minister and members of his government.

<sup>107</sup> For the implementation of this . See Article 11 of the Law for Combating Corruption.

<sup>108</sup> Report on Corruption and Combating It, 2012, Ramallah, Coalition for Accountability and Integrity - AMAN, Page 51

<sup>109</sup> Letter of Dr Hasan Abu Labda, the Secretary General of the Council of Ministers to their Excellencies the ministers number 2009/A.A.M.W./2527, dated 28/05/2009.

<sup>110</sup> Interview with Dr Naeem Abu Al-Hims, a previous source.

<sup>111</sup> Report on Corruption and Combating It, 2012, a previous source, Page 51.

Throughout 2013 there were no statistics or reports on the number of cases of conflict of interests in which members of the executive have been involved.<sup>112</sup> Even though there are reports in the Gaza Strip of this existing, for example ministers who have private companies, ministers who teach in the universities and ministers who manage private projects.<sup>113</sup>

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112 Interview with Mr Usama Saad, Director General for Legal Affairs in the Council of Ministers in Gaza, 18/7/2013.

113 Interview with Dr Adnan Al Hajjar, Deputy Director of the Mizan Centre for Human Rights in the Gaza Strip, 15/7/2013.

## ROLE: PUBLIC SECTOR MANAGEMENT

To what extent is the executive committed to and engaged in developing a well-governed public sector?

**Score: 50 / 100**

According to the law, the Council of Ministers is responsible for establishing public institutions, putting in place their structures, providing them with resources and monitoring and supervising the performance of the ministries and other units within the administration. It is also responsible for establishing or closing public authorities and institutions, as well as similar units of the administration, and appointing of the heads of these authorities and institutions.<sup>114</sup> The Council of Ministers may also supervise the affairs of the civil service, review the tables of salaries and allowances and make proposals to the Legislative Council, determine the amount of allowances for specialisation, and specify working days.<sup>115</sup> It may also form committees of investigation related to the special and senior categories and ratify their recommendations.

The prime minister forms the Council of Ministers, supervises the work of ministers and public institutions subordinate to the government, issues decisions and ratifies the rules and regulations issued by the Council of Ministers.<sup>116</sup> The ministries and public institutions determine the methods by which they will achieve their objectives and are responsible for adopting means to ensure that citizens and employees are made aware of them. They are responsible for drawing-up an organisational structure and table of positions of employment, providing the resources for the work of employees to improve the performance of their duties and for training new employees.<sup>117</sup>

Ministers are responsible for proposing the general policy of their ministries, supervising their implementation after they have been ratified, for the progress of the work in their ministries and for issuing the instructions necessary for this purpose, and for implementing the budget.<sup>118</sup> Ministers must present periodic detailed reports to the Council of Ministers on the activities of their ministries, policies, plans and achievements.<sup>119</sup> The Public Office of Employees is responsible for presenting an annual report to the Council of Ministers on its work and activities four months before the end of the financial year and whenever requested to do so.<sup>120</sup>

The executive does not provide any incentives to encourage the public sector to conduct its activities in a transparent manner, although the Civil Service Law states that an employee who obtains the class of excellent in reports on the level of performance will be given a certificate of recognition from the government department to which he belongs.<sup>121</sup> The government uses an annual evaluation of employees carried out by the civil service bureau, with directors evaluating the performance of employees in their departments. These evaluations play an important role in the promotion of the public service employees.

114 See Article 69 of the Basic Law.

115 See Article 3 of the Law for the Civil Service.

116 See Article 68 of the Basic Law.

117 See Articles 3 & 4 of the Law for the Civil Service and its amendments.

118 See Article 71 of the Basic Law.

119 See Article 72 of the Basic Law.

120 See Article 7 of the Law for the Civil Service.

121 See Article 37 of the Law for the Civil Service.

## ROLE: LEGAL SYSTEM

To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?

**Score: 50 / 100**

The executive understands the importance of combating corruption, as it is a demand of the people, and has appointed a Chairman for the Commission for Combating Corruption. The President of the PNA has issued a decree amending the Law on Unlawful Gain, which includes provisions forming a Court for Crimes of Corruption and a Consultative Council for the Commission for Combating Corruption, and has seconded a number of employees in the public prosecution to work on investigating cases of corruption. During the 2011 and 2012 two ministers were referred to the Court for Crimes of Corruption by the Commission for Combating Corruption on charges related to the exploitation of a public position, before they became ministers.

The government has ratified reform programmes in the field of public management and the civil service and has indicated the need for the introduction of strategic changes in the constitution, in the form and volume of work of the government, and to restrict promotions related to senior job titles to be in compliance with the structures set out in current laws and regulations.<sup>122</sup>

The national development plan, 2011 to 2013, includes national policies that will be adopted by the Palestinian government, an undertaking to develop the performance of the government, a commitment to monitor and reform the financial systems and hold those responsible for them to account, and to increase openness towards civil society.<sup>123</sup> The government is determined according to the plan for the development to deal with corruption in all institutions.<sup>124</sup> The most important achievement in the field of combating corruption is the establishment of the Commission for Combating Corruption, formed in 2010.<sup>125</sup>

122 Raida Qindeel, Integrity and transparency in processes for the appointment to the senior positions in the Palestinian National Authority, - Part one: Appointments of employees in the senior category, Ramallah, the Coalition for Accountability and Integrity - AMAN, 2011, Page 12.

123 The National Development Plan for 2011 to 2013, the Establishment of the State and Building for the Future, the Palestinian National Authority, April 2011, Page 10.

124 The same source, Page 16.

125 For further information, see the section on the Commission for Combating Corruption in this report.



## SUMMARY

The conservative culture prevailing in the Supreme Judicial Council prevents the publication and availability of information related to the work of the Supreme Judicial Council, including disciplinary procedures taken against judges, withdrawal of judges from hearing cases in which there is a conflict of interest, the publication of the annual report on its website, and asset declarations of judges. Both of the Judicial Authority Law and the Code of Conduct for Judges provide integrity rules for members of the judiciary, but they are incomplete; lacking rules regulating receiving gifts, on asset declarations and on moving to private sector employment after leaving the judiciary. Security and civil bodies prevent or postpone the enforcement of court decisions.

The executive has excessive power over the judiciary, with the president of the PNA having the power to appoint and promoting judges after nomination by the Supreme Judicial Council without criteria for selection or refusal or timeframes. This is combined with a lack of clarity over the mechanisms to about the Supreme Court chairperson (also the chair of the Supreme Judicial Council), compounded by the current appointment of a consultant to the president of the PNA to this position. Both these factors reduce the independence of the judiciary.

### Structure and organisation

The division of the judiciary has followed the division of other institutions in Palestine, since Hamas took control of the Gaza Strip in the middle of 2007. Hamas established a Supreme Council of Justice (which was amended in 5 January 2010 to the Supreme Judicial Council, in line with the Supreme Judicial Council of the Palestinian Authority in the West Bank). This has created two authorities for the judiciary. As many Palestinian judges in Gaza refused to deal with the Supreme Council of Justice at that time, the Hamas government appointed a large number of judges and promoted a large number of others to fill the vacuum arising from a lack of judges attending court, following its military takeover of Gaza.

The Supreme Judicial Council is the institutional framework for the work of the judiciary and the supervision of it.<sup>126</sup> It has power to review policies related to the structure and performance of the judiciary, appointments and promotions, and secondment and hiring of judges.

In addition to the ordinary civil courts there are military and Islamic law courts. Both have rules and authority distinct from the ordinary courts. The judiciary exercises its functions in determining cases of dispute over rights and judgments in crimes through the regular courts at various levels: the Supreme Court – the Court of Cassation and Supreme Court of Justice, the appeal courts, courts of first instance and courts of conciliation. This is in accordance with the provisions of Article 14 of the Judicial Authority Law 1/2002, and Article 2 of the 2001 Constituting the Regular Courts Law.

OVERALL PILLAR SCORE: 56 / 100			
Category	Index	Law	Practice
Capacity 69 / 100	Resources	100	50
	Independence	75	50
Governance 50 / 100	Transparency	50	50
	Accountability	75	50
	Integrity	50	25
Role 50 / 100	Executive oversight	50	
	Corruption prosecution	50	

<sup>126</sup> See: Article 92 of the Law for the Judicial Authority, number 1 of 2002.

## CAPACITY: RESOURCES

### LAW

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

**Score: 100 / 100**

The Judicial Authority Law sets out in Article 3 that the judiciary should have a special budget appearing as a separate section within the annual general budget of the Palestinian National Authority and provides that the Supreme Judicial Council prepares a draft budget. This budget is sent, according to the law, to the minister of justice to take the necessary legal action in accordance with the provisions of the Budget and Public Finance Laws, with the Supreme Judicial Council will have the responsibility for supervising the implementation of the budget for the judiciary.<sup>127</sup>

The salaries and allowances for the judges at all grades are specified in the Judicial Authority Law. Allowances must include allowances for administration, social issues, travel and the cost of living allowance prescribed for other state employees under the Civil Service Law.<sup>128</sup>

The salaries of judges are specified in accordance with the level of the court in which the judge works. There are no legal provisions against deduction from the judges' incomes and there is no mechanism to guarantee the adjustment of judges' salaries for inflation without amending legislation.<sup>129</sup> The Judicial Authority Law does not allocate a minimum proportion of the general budget. However the Law Regulating the General Budget deals with the judiciary as it does with other public institutions within the Palestinian Authority by assessing the budget it requires.<sup>130</sup>

### PRACTICE

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

**Score: 50 / 100**

The judiciary through the Supreme Judicial Council prepares and drafts the budget it considers it necessary.<sup>131</sup> The salaries of judges and employees in the public prosecutions are considered appropriate salaries, as they incrementally rise annually and include benefits granted to them by virtue of the work they perform.<sup>132</sup>

An appropriate number of employees and resources for libraries, computer equipment and modern accounting is available to the judiciary,<sup>133</sup> and in recent years the a large part of the request resources have been allocated for the establishment and development of courts, their working rules and their accounting of financing projects from various international bodies.<sup>134</sup>

There is no stability in human resources however as employees move from place to place. Opportunities for training are provided, to improve the legal knowledge of judges and their judicial skills, including

127 The Second Legal Observatory for Reporting Changes in the Situation of Justice in Palestine, Ramallah, The Palestinian Centre for the Independence of Attorneys and Judges "Equality" 2012, Page 131.

128 See: Article 32 of the Law for the Judicial Authority, number 1 of 2002.

129 Interview with Judge Dr Rasha Hammad, previous source.

130 Interview with Judge Dr Rasha Hammad, previous source.

131 Nasir Al-Rayyis, Analytical Review of the Justice Sector, the Legislative, Institutional and Political System, Ramallah, Publications of the the Coalition for Accountability and Integrity - AMAN, 2011, Pages 11-12.

132 Interview with Mr Nasir Al Rayyis, Consultant to the Centre for Applied Justice for International Law, on 13/7/2013.

133 Interview with Judge Dr Rasha Hammad, previous source.

134 The Second Legal Observatory for Reporting Changes in the Situation of Justice in Palestine, Page 134, previous source.

administration of the court building, the management of cases, the writing of judgments and conflict of interest.<sup>135</sup>

In the Gaza Strip human, technological and financial resources are available to the judiciary to some extent.<sup>136</sup> However the budget is inadequate to meet the needs of the judiciary and there are continual, numerous complaints from the judges regarding the inadequacy of the budget allocated to the judiciary.<sup>137</sup> Judges in the Gaza Strip receive salaries of less than 60% of those in the West Bank.<sup>138</sup>

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135 Interview with Judge Dr Rasha Hammad, previous source.

136 Interview with Mr Jumail Sirhan, Director of the Independent Commission for Human Rights in Gaza, on 18/6/2013.

137 Interview with Mr Salama Baseesu, Deputy President of the Association of Lawyers, on 9/6/2013.

138 Interview with Judge Ashraf Nasrallah, Judge in the Court of First Instance, on 16/6/2013.

# CAPACITY: INDEPENDENCE

## LAW

To what extent is the judiciary independent by law?

**Score: 75 / 100**

The Basic Law guarantees the independence of the judiciary.<sup>139</sup> It provides for the independence of judges and states that they are not subject in their ruling to anything other than the law. The Basic Law prohibits interference by any authority in the judiciary or in judicial affairs.<sup>140</sup> Amendment of the provisions of the Basic Law requires a majority of two thirds of the members of the Legislative Council.<sup>141</sup>

The Basic Law established the Supreme Judicial Council.<sup>142</sup> Nine members of the Supreme Judicial Council are appointed according to the law,<sup>143</sup> all of whom should be from the judiciary, except for the Under-secretary of the Ministry of Justice, who is from the executive. The aforementioned law granted the Supreme Judicial Council with the power to manage the judiciary, including the appointment of judges. Article 18 of the Judicial Authority Law states the general conditions for the appointment of judges, including that the President of the Palestinian Authority appoints judges, after nomination by the Supreme Judicial Council. This requires a definition of the term 'appoint', to define the existence of a formal procedure along with the decision of the Supreme Judicial Council to check that the legal terms are met and the judge is suitable for the position. If there is a legal violation or it appears that the nominated judge does not possess the legal requirements and criteria for the position, the president can reject the appointment. It is therefore essential that the role of the president in the appointment process is one of monitoring and is a ceremonial role, which means that the president monitors and observes the appointments and the Supreme Judicial Council respects the provisions of the law regarding the appointment of judges.<sup>144</sup> Likewise the Judicial Authority Law does not grant civil society organisations the right to participate in the process of the appointment of judges, other than in monitoring the correctness of the procedures or the process for supervising them.

Judges are appointed to the judiciary until retirement, which is at 70.<sup>145</sup> They may not be dismissed<sup>146</sup> except in accordance with the terms specified in the Judicial Authority Law. The Supreme Judicial Council enforces disciplinary decisions issued by the disciplinary board after they have become final and a ruling is issued for dismissal.<sup>147</sup> The decision to dismiss a judge, when it has become final, will be by issue of a decree of the President of the PNA.<sup>148</sup> A decision issued to dismiss the judge will not affect his rights to a pension or gratuity unless the decision states otherwise.<sup>149</sup>

Granting the President of the PNA power to issue a decision to appoint and promote judges following nomination by the Supreme Judicial Council in the absence of specific controls or a specified time period for the issue of a decision making the appointment, gives the executive power to intervene in the judiciary and enables the president to ratify or reject appointments and veto or nullify them without providing reasons. This is despite the legislature's purpose that the President of the PNA should follow the decision of the Supreme Judicial Council, which has original jurisdiction over the appointments to judicial positions.<sup>150</sup>

139 See: The text of Article 97 of the Basic Law "The Judicial Authority is independent, and the courts of all types and levels undertake ..."

140 See: Article 97 of the Amended Basic Law of 2003.

141 See Article 120 of the Amended Basic Law for the Palestinian National Authority.

142 See: Article 100 of the Amended Basic Law for the Palestinian National Authority.

143 See: Article 37 of the Law for the Judicial Authority, number 1 of 2002.

144 Mr Nasir Al-Rayyis, previous source, Page 8.

145 See: Article 34 of the Law for the Judicial Authority, number 1 of 2002: [http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?Ink=2&LegPath=2002&MID=14053#A14053\\_19](http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?Ink=2&LegPath=2002&MID=14053#A14053_19)

146 See: Article 99 of the Amended Basic Law of the Palestinian National Authority.

147 See Article 55/2 of the Law for the Judicial Authority, number 1 of 2002.

148 See Article 55/3 of the Law for the Judicial Authority, number 1 of 2002.

149 See Article 55/4 of the Law for the Judicial Authority, number 1 of 2002

150 Raida Qindeel, Integrity and transparency in processes for the appointment to the senior positions in the Palestinian National Authority, - Part one: Appointments of employees in the senior category, Ramallah, the Coalition for Accountability and Integrity - AMAN, 2011, Page 9.

## PRACTICE

To what extent does the judiciary operate without interference from the government or other actors?

**Score: 50 / 100**

Judicial appointments are made by a committee of senior judges. The candidates undergo a written examination with names hidden when the papers are corrected. Following a successful examination, an interview is conducted. After this potential judges are subject to training in one of the judicial institutions.<sup>151</sup> The judicial system regulating the appointment and promotion of judges leaves scope, although narrow, to the executive to intervene in the affairs, independence and neutrality of judges, in that judges are appointed and promoted by the President of the PNA, in particular the appointment of the Chairman of the Judicial Council, the Chairman of the Supreme Court. By a decision issued by the President of the PNA, 138/2009, on the 30 November 2009, an adviser to the President of the PNA was appointed Chairman of the Supreme Judicial Council.<sup>152</sup>

Some judges in the Supreme Court are subject to influence from the executive, and some judgments have been affected by trends within the executive. The Al-Haq Institute<sup>153</sup> has received a number of complaints from judges regarding interference and the replacement of judges with judges who are more in tune with the executive.<sup>154</sup> The Secretary General of the Supreme Judicial Council however considers that the judiciary is independent, has no connection with politics, and that the Supreme Court is changing with respect to the retirement of judges, as they have reached the legal age for retirement.<sup>155</sup> The legal system does not allow for the possibility of reducing a judge's grade.<sup>156</sup> There is no information related to the removal of judges on the basis of the content of the judgments they have issued.<sup>157</sup>

In the Gaza Strip the removal of judges before they have completed their service has been observed clearly.<sup>158</sup> The Chairman of the Supreme Judicial Council in Gaza was transferred to work as Chairman of the Fatwa and Legislation Office. Likewise one of the regular judges was transferred to work in the military judiciary without there being any genuine justification for this in fact or in law.<sup>159</sup> This is unacceptable and adversely impacts the independence of the judiciary.<sup>160</sup>

The results of a 2010 public opinion survey revealed that 41% of the judges believe that pressures are exerted upon them by members of the Supreme Judicial Council, and 86% of the judges stated that they respond to these pressures.<sup>161</sup>

The Judicial Inspectorate is charged with assessing judges for the purpose of promotion. If complaints are received, they are assessed by the Complaints Unit to evaluate whether they deserve to be referred to the Inspection Department or not. The complainant must be clear in the complaint and must provide a name, to enable follow-up with to resolve the complaint.<sup>162</sup> At the beginning of January 2011 the Judicial Inspectorate Department was instructed by the Judicial Council to assess the performance of 27 conciliation judges and on 9 May 2011 the Judicial Council was provided with the names and grades of the judges who had been assessed. This was followed by the promotion of seven conciliation judges to the court of first instance.<sup>163</sup>

151 Interview with Judge Mahmoud Jamous, Secretary General of the Supreme Judicial Council, on 18/7/2013.

152 The Second Legal Observer for Revealing the Change in the State of the Judiciary in Palestine, previous source, Page 132.

153 The Al-Haq Institute – Law for Mankind. It is a Palestinian human rights association, non-government, independent, whose headquarters is in Ramallah, on the West Bank. It was founded in 1979. The work of Al-Haq concentrates on monitoring and documenting breaches of human rights, both individual and group, within Palestinian occupied territory in 1967 and following it up. Its objective is to end the violations and crimes through awareness of their dangers and impact and action to bring those who perpetrated international crimes to the judiciary, whether national or international. Al-Haq has a consultative role to the Economic & Social Council in the United Nations and is a member of the Euro Mediterranean Human Rights Network and the International Organisation against Torture, and the Habitat International Coalition, which is a branch of the International Commission of Jurists in Geneva: <http://www.alhaq.org>.

154 Interview with Mr Nasir Al-Rayyis, previous source.

155 Interview with Judge Mahmoud Jamous, previous source.

156 See: The Law for the Judicial Authority, number 1 of 2002.

157 Interview with Judge Dr Rasha Hammad, previous source.

158 Interview with Mr Jumail Sirhan, previous source.

159 Interview with Mr Salama Baseesu, previous source.

160 Interview with Judge Ashraf Nasrallah, previous source.

161 The Second Legal Observer for Revealing the Change in the State of Justice, Pages 134-135, previous source.

162 Interview with Judge Mahmoud Jamous, previous source.

163 The Seventh Annual Report of the Supreme Judicial Council, 2011, Centre for Judicial Research and Studies in the Supreme Judicial Council, 2012, Page 47.

# GOVERNANCE: TRANSPARENCY

## LAW

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

**Score: 50 / 100**

The Judicial Authority Law requires that on appointment judges submit an asset declaration in sealed documents that retained by the chairperson of the Supreme Court without being revealed.<sup>164</sup> These declarations are not subject to periodic examination.<sup>165</sup> Legal provisions indicate that court hearings should be open,<sup>166</sup> but this openness does not include deliberation, which is confidential by its very nature, and the judiciary may not disclose the what takes place during the deliberation.<sup>167</sup> However it is possible to study in part the results of the deliberations through published judgments, which show the names of the judges who objected to or supported the judicial ruling arising from the deliberations.<sup>168</sup>

The records of hearings are not announced because they are private for the parties, who have the right only to study the records of the hearings that relate to them.<sup>169</sup> Trials of judges are secret and cannot be review. The public are not able to obtain disciplinary decisions issued against judges and no person other than the judge concerned is able to study the file of investigations and the disciplinary decision issued with respect to her/him.<sup>170</sup> The Judicial Inspectorate Regulation notes that the work of the inspectorate is confidential and disclosure of any information about this work is a violation of the duties of the position of employment. Within the Judicial Inspectorate Department there is a confidential file in which pages are allocated for every judge in which a summary of his situation is recorded.<sup>171</sup> The law does not require the publication of statistics and figures on the work of the judiciary.

## Practice

To what extent does the public have access to judicial information and activities in practice?

**Score: 50 / 100**

In practice hearings of the courts are open and citizens and journalists have the right to attend them. Publication by the judiciary is still restricted, despite periodically producing a media publication entitled “Our Judiciary” and issuing final judgments on the website of the judiciary.<sup>172</sup> Only the initials of the names are published; the names of the accused are not published until after a judgment has been issued. The only annual report was published in 2008 and contains statistics, including the number of cases carried forward and received by the courts, the proportion of judgments determined and other issues relating to the work of the regular courts.<sup>173</sup> The technical office is responsible for publishing judgments and supervising the legal libraries.<sup>174</sup> Information regarding the dismissal of judges is not published; there is a prevalent belief among judges that that publicising disciplinary measures against judges will affect the dignity of the judge, despite the fact that not publicising limits the transparency of the judiciary.

164 See: Article 28 of the Law for the Judicial Authority, number 1 of 2002.

165 Report on Corruption and Combating It of 2012, Ramallah, the Coalition for Accountability and Integrity - AMAN, 2012, Page 53.

166 See: Article 105 of the Amended Palestinian Basic Law of 2005, Article 237 of the Law for Criminal Procedures number 3 of 2001, Article 14 of the Law for the Judicial Authority, Article 3 of the Law Constituting the Regular Courts, number 5 of 2001, Article 115 of the Law for Civil and Commercial Trials Principles, number 2 of 2001.

167 See: Article 272 of the Law for Criminal Procedures.

168 Zakariya Sarhad, The Right of Access to Information in the Judicial Authority, Ramallah, Publications of the Coalition for Accountability and Integrity - AMAN, 2012, Page 4.

169 Interview with Judge Dr Rasha Hammad, previous source.

170 Zakariya Sarhad, previous source, Page 4.

171 Ruling of the Supreme Judicial Council number 4 of 2006, Regulation for the Judicial Inspectorate, published on “Al-Muqtafi”: [http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?lnk=2&LegPath=2006&MID=15333#A15333\\_17](http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?lnk=2&LegPath=2006&MID=15333#A15333_17)

172 Interview with Judge Dr Rasha Hammad, previous source. See: [www.courts.gov.ps](http://www.courts.gov.ps).

173 The website was studied on 30/7/2013: [www.courts.gov.ps](http://www.courts.gov.ps).

174 <http://www.courts.gov.ps/userfiles/20111212205554.pdf>

It is possible to study information related to the transfers of judges in the annual judicial constitutions and appointments, published on the website. This reveals information related to the judges and their positions in all the courts, in addition to information related to the constitution of the Supreme Judicial Council.<sup>175</sup>

In the Gaza Strip the Supreme Judicial Council has issued no annual report since 2007.<sup>176</sup> In general there is no ratified, reliable mechanism for access to information related to the processes and deliberations of the courts, judgments, statistics, codes and records related to the courts.<sup>177</sup> Likewise citizen access to information related to the number of cases that have been concluded annually is difficult, due to the time it takes to access the information.<sup>178</sup> Citizens are not able to obtain information related to the appointment, transfer and dismissal of judges,<sup>179</sup> considered confidential.<sup>180</sup>

While a website for the judiciary exists, it requires development as an important means of openness towards the public and for communicating and publishing both public and private information on the work of the judiciary. This should be done on the basis of transparency, as openness makes judges aware that they are being monitored by the community. This should exclude the deliberations, which take place confidentially to ensure that the public do not influence the position of the judge, who is responsible for determining the position s/he takes.<sup>181</sup>

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175 Zakariya Sarhad, *The Right of Access to Information in the Judicial Authority*, Ramallah, Publications of the Coalition for Accountability and Integrity - AMAN, 2012, Page 2, previous source.

176 Interview with Judge Ashraf Nasrallah, previous source.

177 Interview with Mr Salama Baseesu, Deputy President of the Lawyers Association, on 9/6/2013.

178 Interview with Mr Jumail Sirhan, previous source.

179 Interview with Mr Jumail Sirhan, previous source.

180 Interview with Judge Ashraf Nasrallah, previous source.

181 Interview with Mr Nasir Al-Rayyis, previous source.

## GOVERNANCE: ACCOUNTABILITY

### LAW

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

**Score: 75 / 100**

The law requires that judicial rulings include the reasons on which they are based.<sup>182</sup> In the event that a judgment is issued without stating the grounds, it is null and void according to the law.<sup>183</sup>

The Judicial Inspectorate Department is responsible for receiving complaints against judges, whether sent from members of the judiciary or from the public.<sup>184</sup> Complaints against a judge are submitted by a person with an interest to the chairperson of the Supreme Judicial Council, who refers them to the Head of the Inspectorate Department. All complaints are recorded in a special, confidential register held in the Judicial Inspectorate Department.<sup>185</sup> There is no system for the protection of informants, to protect those who present complaints, and there is no clear mechanism for following up on the complaint and the procedures related to it. The numbers of complaints are announced without publication of the content of the complaint or stating how it was followed up, reducing accountability.<sup>186</sup>

Disciplinary action, in accordance with legal provisions, takes place through a procedure in accordance with the act committed by the judge and is not of necessity the result of a complaint.<sup>187</sup> A disciplinary action is brought against judges by the prosecutor-general at the request of the minister of justice, the chairperson of the Supreme Court or the chairperson of the court to which the judge belongs. A disciplinary action is only brought pursuant to a criminal investigation or pursuant to an investigation conducted by a judge of the Supreme Court appointed for this purpose by its chairperson. The judge appointed to conduct the investigation has the powers of a court in relation to hearing witnesses. The public prosecution is represented by the public prosecutor or one of his assistants in the disciplinary hearing.<sup>188</sup>

Disciplinary penalties include warning, rebuke and dismissal. The Supreme Judicial Council undertakes enforcement of the disciplinary decisions issued by the disciplinary panel after they have become final. If the decision issued is for dismissal, the decision to implement requires a decree of the President of the PNA to come into force<sup>189</sup>.

A judge may not be arrested or detained in normal circumstances until permission has been obtained from the Supreme Judicial Council. If he is caught while committing the crime, the prosecutor-general, on arrest or detention of the judge, must refer the matter to the Supreme Judicial Council within the twenty four hours following his arrest. The Supreme Judicial Council may decide after hearing the statements of the judge arrested either to release him with a bond or without a bond or that his detention should continue for the period it prescribes. It may extend this period. The detention of the judge and enforcement of a penalty restricting liberty will take place in a location separate from the places allocated for other prisoners.<sup>190</sup>

182 See: Article 5 of the Law for the Judicial Authority, Number 1 of 2002, and Article 5/2 of the Law Constituting a Palestinian Regular Courts number 5 of 2001.

183 Interview with Judge Dr Rasha Hammad, previous source.

184 See: Article 4 of the Decision of the Supreme Judicial Council, Number 3 of 2004, regarding the Regulation for the Judicial Inspectorate Department revoking its operation.

185 See: Article 13/1 of the Decision of the Supreme Judicial Council, number 4 of 2006, regarding the Regulation for the Judicial Inspectorate.

186 Interview with Mr Nasir Al-Rayyis, previous source.

187 Interview with Judge Dr Rasha Hammad, previous source.

188 Article 49 of the Law for the Judicial Authority, number 1 of 2002. [http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?Ink=2&LegPath=2002&MID=14053#A14053\\_50](http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?Ink=2&LegPath=2002&MID=14053#A14053_50)

189 See: Article 55 of the Law for the Judicial Authority, number 1 of 2002.

190 See: Article 56/3 of the Law for the Judicial Authority, number 1 of 2002.

The Supreme Judicial Council may consider the detention or renewal of the detention unless the matter is being heard before the criminal court with jurisdiction to hear the case.<sup>191</sup> However a criminal case may not be brought without the permission of the Supreme Judicial Council following the conclusion of the investigation and the Council will then specify the court that will hear the criminal action, regardless of the rules for jurisdiction of location prescribed in the law.<sup>192</sup> A judge is not immune from facing corruption charges; the immunity granted is in accordance with the work performed.<sup>193</sup>

## PRACTICE

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

**Score: 50 / 100**

Judges must provide grounds for their decisions and judgments that can be understood by those who attend the courts, otherwise their judgments will be defective in the reasoning, because the reasoning provides the legal dimensions in accord with the facts that have been used for the issue of the judgment. A judge may not issue rulings whose reasons are not given, because this is an obligatory formal procedure.<sup>194</sup> The system of appeal guaranteed by the law against the judgment of a judge is the practical mechanism for objection to the rulings of a judge and this takes place extensively in fact.

During 2011 the Judicial Inspectorate Department received 192 complaints. 180 complaints were determined and 12 complaints remained. 147 complaints were filed for lack of jurisdiction and in 33 complaints observations were made to the judges regarding formal matters or administrative actions or the length of the process of litigation<sup>195</sup>. From a practical point of view none of the disciplinary procedures taken against judges are published and this limits knowledge of their effectiveness<sup>196</sup>.

The number of complaints is about 3-5 per month in every court. The complaints presented focus on the use of complaints boxes in the courts on two matters: Firstly the accumulation of cases in the courts and the long time that passes before determination of them and their postponement and the second is complaints regarding the actions of a number of employees in the courts<sup>197</sup>.

In the Gaza Strip about 90% of the judgments and rulings issued by the judges provide an adequate basis of reasoning in accordance with legal criteria<sup>198</sup>. However there are no penalties imposed on judges who do not provide adequate reasons for their rulings and judgments<sup>199</sup>. The body charged with investigating complaints and imposing penalties is not effective<sup>200</sup>. However those making complaints are protected effectively to some degree in practice, however they do not obtain acceptable compensation and justice<sup>201</sup>.

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191 See: Article 57 of the Law for the Judicial Authority, number 1 of 2002.

192 See: Article 56 of the Law for the Judicial Authority, number 1 of 2002.

193 Interview with Mr Nasir Al-Rayyis, previous source.

194 Interview with Mr Nasir Al-Rayyis, previous source.

195 The Seventh Annual Report of the Supreme Judicial Council, 2011, Centre for Judicial Research and Studies in the Supreme Judicial Council, 2012, Page 47.

196 Interview with Mr Nasir Al-Rayyis, previous source.

197 Khalid Talahima, The Environment of Integrity, Accountability and Transparency in the Management of the Courts, Ramallah, Coalition for Accountability and Integrity - AMAN, 2012, Page 8.

198 Interview with Judge Ashraf Nasrallah, previous source.

199 Interview with Mr Salama Basees, previous source, and with Judge Ashraf Nasrallah, previous source.

200 Interview with Mr Jumail Sirhan, previous source.

201 Interview with Mr Jumail Sirhan, previous source.

## GOVERNANCE: INTEGRITY

### LAW

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

Score: 50 / 100

Both the Judicial Authority Law and the Judicial Code of Conduct provide rules on judicial integrity. However, both are incompetent and do not include rules on receiving gifts, asset declarations and on moving to the private sector after leaving the judiciary.

The Judicial Authority Law prohibits judges from engaging in any commercial work or any other work for an income, or any other work that is not in accord with the independence and dignity of the judiciary. It also prohibits judges from breaching confidentiality of deliberations or releasing other confidential information obtained in the performance of their work and in engaging in politics. This law bans judges with a relationship of blood or marriage to the second degree from sitting in the same division, and judges with a relationship by blood or marriage to the third degree to a member of the public prosecution, representative of the litigants or one of the parties to the litigation, from sitting in judgment.

The Judicial Code of Conduct<sup>202</sup> includes a conflict of interest rule and guarantees competence and ability for litigation and judicial conduct. However it does not include specific rules to govern gifts. The Judicial Authority Law requires on appointment that judges provide an asset declaration in sealed documents,<sup>203</sup> which are not subject to periodic examination.<sup>204</sup>

A citizen may challenge the independence of a judge if the judge does not withdraw from a case for a reason that requires this, if the crime has been committed against the judge personally, or if the judge has participated in the case work of the judicial officer, performed the function of the public prosecution, is a defendant or one of the litigants, or has given testimony or provided expertise in the case.<sup>205</sup>

There are no restrictions on judges entering the field of the private sector after they have left the judiciary. The law does not specify a particular period that a judge must spend following leaving his position before entering into another position of employment.<sup>206</sup>

### PRACTICE

To what extent is the integrity of members of the judiciary ensured in practice?

Score: 25 / 100

The existing code for conduct is considered strong, but problems in guaranteeing compliance with these provisions, including in monitoring and follow-up, exist. The code of conduct does not specify the monitoring body and, as such, there is no information related to the extent to which its provisions are respected.<sup>207</sup>

The court administration considers that the code of conduct of employees in the judicial establishments is temporary and facing on-going revision, as such it has not been circulated in the required manner. While the Supreme Judicial Council in cooperation with AMAN trained administrative employees of the council, including employees of the courts administration on the code, there are still no clear procedures for adherence to them, on the pretext that they require amendment and development and that work is currently in progress to make amendments to them.<sup>208</sup>

202 See: Decision of the Supreme Judicial Council, number 3 of 2006: <http://www.courts.gov.ps/userfiles/20111212140939.pdf>.

203 See: Article 28 of the Law for the Judicial Authority, number 1 of 2002.

204 --, Report on Corruption and Combating It of 2012, Ramallah, Coalition for Accountability and Integrity - AMAN, 2012, Page 53.

205 See: Articles 159 & 160 of the Law of Criminal Procedures, number 3 of 2001.

206 Interview with Mr Nasir Al-Rayyis, previous source.

207 Interview with Mr Nasir Al-Rayyis, previous source.

208 Dr Khalid Talahima, Page 4, previous source.

A number of judges who have left the judiciary have moved immediately to work as attorneys within the last three years.<sup>209</sup> There are no detailed statistics on the withdrawal of judges on the grounds that there is a conflict of interest, on the provisions recorded in the Judicial Authority Law having been applied, or on the number of applications for withdrawal presented by citizens.<sup>210</sup>

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209 Interview with Mr Nasir Al-Rayyis, previous source.

210 Interview with Judge Mahmoud Jamous, previous source.

## ROLE: EXECUTIVE OVERSIGHT

To what extent does the judiciary provide effective oversight of the executive?

**Score: 50 / 100**

The Palestinian Basic Law prohibits any provision in laws preventing any decision or administrative action from monitoring by the judiciary.<sup>211</sup> The Supreme Court of Justice “the Administrative Court”, has jurisdiction to hear<sup>212</sup> applications submitted by interested parties for; the revocation of final administrative regulations; rules or decisions that impact persons or funds issued by public law (persons including professional associations); applications comparable to detention; disputes related to public positions of employment; and a refusal by the administrative authority or its refraining from taking a decision.

245 cases were brought in 2012 to the Supreme Court of Justice.<sup>213</sup> However security and civil bodies procrastinate, delay or refrain from implementing rulings of the courts. The Independent Commission on Human Rights has received complaints related to the failure to implement the rulings of the courts over last three years; 181 complaints in 2010, 131 in 2011 and 102 in 2012 of.<sup>214</sup> The failure to implement decisions of the courts has a clear adverse impact on the dignity of the Palestinian judiciary and reduces citizen confidence in it.

Some government administrative centres have sometimes refused to implement decisions of the courts, such as the refusal of some ministers to restore those dismissed from the civil service following the political division, in spite of court rulings stating that they should be reinstated.

211 See: Article 30 of the Amended Basic Law of 2003 as amended.

212 For Further Information See: Article 33 of the Law Constituting the Regular Courts, number 5 of 2001, amended by Law number 5 of 2005.

213 The Supreme Judicial Council, the Supreme Court of Justice, Register of the Court Office.

214 The 18th Annual Report of the Independent Commission for Human Rights, Ramallah, the Independent Commission on Human Rights, 2012, Page 173.

## ROLE: CORRUPTION PREVENTION

**To what extent is the judiciary committed to fighting corruption through prosecution and other activities?**

**Score: 50 / 100**

The judicial prosecution of corruption cases showed notable progress during 2011 and 2012 compared to previous years, but decisions in submitted cases are still limited. The efficiency of this prosecution is also limited due to the insufficiency of penalties in the penal law, which has not been updated in recent times.

A Court for Crimes of Corruption was established by the Law for Combating Corruption in 2010. This is a special court within the judiciary. The designated prosecution to the Commission for Combating Corruption has prosecuted 26 cases of corruption, of which 14 have been decided. Of the 14 judgements, the Court for Crimes of Corruption has given 11 convictions and has ruled in three cases that it lacked jurisdiction.<sup>215</sup> The number of cases recorded in the register of the Court for Crimes of Corruption was 46 in 2013, of which 35 cases were carried forward from 2012.<sup>216</sup>

The Commission for Combating of Corruption provides statistics intermittently related to judgments. However it does not provide detail on judicial prosecutions related to corruption.<sup>217</sup> The effectiveness of punishments for corruption is limited due to difficulties faced by judges and the public prosecution in applying the old Jordanian Criminal Law, 16/1960, when applying the penalty, while applying the new Law for Combating Corruption, 1/2005, when dealing with cases of corruption. This variation in the timing of the laws causes ineffectiveness;<sup>218</sup> applying this law is obligatory even though it is considered old, while penalties in the penal law do not consider the concept of corruption and the Law for Combating Corruption does not state penalties other than those stated in the current penal law.

The Ministry of Justice undertakes coordination and exchange of judicial assistance with foreign judicial authorities relating to crimes of corruption that have a transnational element. This is in accordance with the Riyadh Convention on Judicial Cooperation.<sup>219</sup> The Palestinian Ministry of Justice has submitted five judicial applications for recovery to the competent authorities in Jordan against five persons accused of corruption, deception and fraud.<sup>220</sup> The Commission for the Combating of Corruption has submitted a number of applications for recovery for the same convicted persons, who fled from justice, and also for the recovery of the proceeds of their crimes that are located abroad. These applications are still being heard before the judiciaries in the countries where they are located.<sup>221</sup>

In the Gaza Strip there are no detailed statistics on judicial prosecutions related to corruption.<sup>222</sup>

215 See: The Annual Report 2012, Ramallah, Commission for Combating Corruption, 2013, Page 15.

216 The Supreme Judicial Council, the Court for Crimes of Corruption, Register of the Court Office.

217 Interview with Mr Nasir Al-Rayyis, previous source.

218 Interview with Mr Nasir Al-Rayyis, previous source.

219 Interview with Mr Nasir Al-Rayyis, previous source.

220 Letter of Counsellor Khaleel Karraja, Undersecretary of the Ministry of Justice, dated 3/11/2012 by email.

221 The Maan News Agency on 21/10/2012: <http://maannews.net/arb/ViewDetails.aspx?ID=530131>.

222 Interview with Mr Jumail Sirhan, previous source.



## SUMMARY

The legal provisions that regulate the civil service provide stability for the employees in the public office, protect their rights and provide for the possibility to appeal against any administrative or governmental decision. However, ministers have control over high ranking administrative positions, including removal from their positions and replacement with other employees, reducing the authority granted to them, and transferring high ranking officials to the civil service bureau, all limit the independence of the public officials and their neutrality. The role of the trade unions in protecting employees and the public sector more generally from political interference is still limited.

The code of conduct for civil service employees was approved very recently and was published on the civil service bureau website, but was not circulated to the employees and no awareness or training on this has happened. The code will continue to be incomplete without rules regulating receipt of gifts, asset declarations and specifying rules for private sector employment after leaving public office.

The legal system of the PNA lacks a special law on the management of public information. The majority of governmental institutions and ministries have websites and databases, and publicise certain issues like tenders and vacant positions, however there are discrepancies in the extent of adherence to citizen access information.

Public sector institutions are subject to many bodies that monitor and audit the public sector; the most prominent of which is the State Audit and Administrative Control Bureau, which is responsible of monitoring all aspects of the public sector, in addition to government purchasing through its participation as an observer in tender committees.

### Structure and organisation

Public bodies provide goods and services on behalf of the government and public sector employees assist the government in the formulation of policies, implementation of decisions and the management of public services. The public sector includes all the public establishments, with the exception of those included in the national integrity system in separate pillars, and the bodies in the civil service (government departments).

The Palestinian National Authority is the largest operator within the Palestinian territories. Government employees are distributed among 59 government facilities that have various names, such as: ministry, agency, council, commission, diwan, authority, office, and province. The Ministries of Education and Health contain 56,785 employees out of a total of 86,599.<sup>223</sup> The PNA has taken action to organise the civil service and has established an Office for Employees through Presidency Decision 3/1994, under the mixture of Jordanian and Egyptian laws inherited and in operation before 1967, until in 1998 the Palestinian Legislative Council issued the Civil Service Law, amended in 2005. This Office is subordinate to the Council of Ministers and its administration and supervision is undertaken by the Head of the Office, who holds the rank of Minister.<sup>224</sup> 19,500 employees belonging to the government in the Gaza Strip were dismissed following the political split.

The Office for Employees supervises the application of the Civil Service Law and checks the application by government departments of other legislation relating to the civil service is being applied in a correct manner, as well as participating in the preparation and implementation of plans related to employees. It coordinates training and scholarships within Palestine and abroad for public sector employees and lays down rules for the conduct of competitive examinations between candidates applying for appointments to vacant posts, in coordination with the government departments and other bodies concerned. The Office reviews administrative decisions issued by government departments for appointments and promotions, and may object to any of those it considers to be in violation of the provisions of this law and the regulations in force regarding the civil service. The grounds for its objection are notified to the government department

<sup>223</sup> \_\_\_\_\_, The Strategic Plan for the Years 2013-2014, Public Office for Employees, Ramallah, 2013, Page 16.

<sup>224</sup> The Previous Source, Page 17.

within 30 days of the date from which it is informed of them, and in the event of failure to agree between the office and the government department concerned, the office refers the matter to the Council of Ministers for it to take the decision it deems appropriate in accordance with the provisions of the law.<sup>225</sup>

The Office undertakes the process of preparing a central code for all employees in the civil service in Palestine. It also prepares statistics regarding employees and any other statistics required relating to the functions of the Office. It follows up on these statistics, updates them and prepares a guide to civil service in Palestine, setting out the duties and rights of employees included in this law and other legislation in operation within Palestine that employees should be aware of.<sup>226</sup>

OVERALL PILLAR SCORE: 48 / 100			
Category	Index	Law	Practice
<i>Capacity</i> 50 / 100	Resources	--	50
	Independence	50	50
<i>Governance</i> 46 / 100	Transparency	25	50
	Accountability	75	50
	Integrity	50	25
<i>Role</i> 50 / 100	Public Education	25	
	Cooperate with public institutions, CSOs and private agencies in preventing/ addressing corruption	50	
	Reduce Corruption Risks by Safeguarding Integrity in Public Procurement	75	

225 \_\_\_\_\_, The Annual Report for 2011-2012, Public Office for Employees, Ramallah, 2013, Page 15.

226 The previous source, Page 16.

## CAPACITY: RESOURCES

### PRACTICE

To what extent does the public sector have adequate resources to effectively carry out its duties?

**Score: 50 / 100**

By the end of 2011 the number of employees in the public sector, including both civilians and military, amounted to about 152,098. These included 86,599 employees in the civil service. The cost of salaries at the end of 2011 was about USD 1.7 billion per year. The cost of salaries constituted 22% of the gross domestic product, which is among the highest percentages internationally according to the estimates of the World Bank.<sup>227</sup> The Palestinian Authority was able to fund its current expenditure from its income, and relied upon international assistance in the funding of development costs during the period between 1994 and 1999. After the outbreak of the insurrection at Al-Aqsa in 2000 when Israel renewed its occupation of the Palestinian sovereign territories and destroyed the infrastructure, income declined and expenditure increased to meet the needs of citizens, with the unemployment rate rising. This led to an increasing reliance upon international assistance to provide current expenditure and salaries. International assistance became a basic source of financing the budget, and the PNA became subject to a tenuous situation. For example the cutting off of external assistance during 2006 to 2007 led to the PNA to face great difficulties in meeting the needs of citizens and to provide salaries for its employees.<sup>228</sup>

The ability of the PNA to provide salaries has been impacted by the extent to which Israel has transferred Palestinian tax entitlements that it collects on behalf of the PNA, as it has on occasion unilaterally withheld Palestinian funds to exert pressure on the PNA and to deduct amounts due to it for health services, water and electricity, as well as compensation sometimes not acknowledged by the PNA.. This leads to the inability of the PNA to continue to provide salaries for its employees.

Employees' salaries are not commensurate with the cost of living. Salaries have been eroded and there is no harmony between the cost of living and wages. The level of wages, the ability of the PNA to persist in providing salaries and the absence of a system of incentives has an adverse impact on attracting talented personnel and creates corruption opportunities that are generated by the employee's need to fulfil their basic needs.<sup>229</sup>

227 The Strategic Plan for the Years 2013-2015, previous source, Page 15.

228 the Palestinian National Authority, Construction of the Palestinian State through Peace and Prosperity. This document was prepared as part of a plan for reform and development, 2008-2010 submitted to the Donors Conference held in Paris in December 2007, Page 7.

229 Written reply of the Public Office for Employees to questions sent to it by the researcher, 10/9/2013.

# CAPACITY: INDEPENDENCE

## LAW

To what extent is the independence of the public sector safeguarded by law?

**Score: 50 / 100**

The Basic Law states that Palestinians are equal before the law and that there is no distinction between them on the basis of ethnicity, religion, political opinion or disability.<sup>230</sup> It also states that the appointment and conditions of employment of public employees and all civilian employees in the state must be in accordance with the law.<sup>231</sup> The Civil Service Law prohibits the appointment of any person to a position of employment in the civil service that does not meet the conditions for filling that position. The law specifies the conditions for promotion: when there is a vacancy in the budgeted positions; after the minimum period prescribed for remaining in the grade has been completed; and when the employee has obtained the required performance assessment for promotion. The law makes the use of intermediaries, nepotism consisting of an employee taking a decision or interfering for the benefit of a person or party that lacks entitlement, and preferential treatment for non-professional considerations, such as political party, family, religious or regional membership, to obtain a material or intangible benefit<sup>232</sup>, to be a crime punished by law.

The Civil Service Law sets out the penalties that can be taken against an employee and the body that has the authority to inflict the penalty. With exception of warning and drawing attention, an employee cannot be punished without being referred to investigation committee that holds hearing, records her/his statement in a special report of the minutes, and provides a reasoned decision. For high ranking officials and those in a special category, the referral to investigation should be a decision by the Council of Ministers, upon the request of the head of the governmental department. The investigation committee should report its recommendations to the Council of Ministers to decide on the proper penalty.<sup>233</sup>

Likewise the right to participate in the political life as individuals or groups, including the right to form political parties and join them, is a right guaranteed to citizens and employees in the public sector,<sup>234</sup> with the exception of employees in the Palestinian security forces.<sup>235</sup> However the law does not include explicit provisions that require an employee to adhere to neutrality and avoid political interaction.<sup>236</sup>

The Basic Law grants Palestinians the right to form trade unions, and in this context a number of trade unions have been formed, for example the Union of Public Employees, the Teachers Union, the Doctors Union and other trade unions that act to protect employees and defend their rights.<sup>237</sup> The Office for Employees performs a supervisory monitoring role over the application of the Civil Service Law and this role prevents any arbitrary measure being taken against an employee<sup>238</sup>. If this occurs, an employee can submit a complaint to the Office for Employees and it will be followed up with the government body, which can form investigation committees of the membership and chairmanship of the Office for Employees.

The Legislative Council is responsible for the ratification of the draft general budget presented by the Council of Ministers, and the Legislative Council is able to amend or revoke any financial allocations to items or programmes it does not consider to be appropriate for any government body, including the General Personnel Council.

230 See: Article 9 of the Basic Law.

231 See: Article 86 of the Basic Law.

232 See: Article 4 of the Decree Issuing Law Number 7 of 2010 Amending the Law on Unlawful Gain, Number 1 of 2005.

233 See: article 70 of civil service law, and article 88 of the regulations of the civil service law No. 45 of 2005

234 See: Article 26 of the Basic Law.

235 See: Article 90 of the Law for Service in the Palestinian Security Forces.

236 Interview with Mr Shaawan Jabareen on 20/8/2013.

237 Interview with Dr Muhammad Abu Zaid, lecturer in the University of Birzeit on 21/8/2013.

238 Reply of the Employees' Office, previous source.

## PRACTICE

To what extent is the public sector free from external interference in its activities?

**Score: 50 / 100**

When the PNA was established, appointments and promotions were commonly made without an advertisement and competition, against a political background. However in 2005 the Office for Employees declared that advertisement and competition are essential for all categories other than the fourth and fifth categories employees. On 5 June 2009 the Office issued a circular ruling that it was necessary to advertise and hold competitions for all positions of employment other than the senior and special categories. The Office prepares the advertisements, forms committees for the interviews and conducts the examinations, with the ministries and establishments participating in them.<sup>239</sup> Despite the role heads of the authorities and establishments play in appointments, procedures for appointment are not valid without monitoring and inspection by the General Personnel Council.<sup>240</sup> In spite of this improvement, appointments and promotions are still subject to political mood and influence in some cases<sup>241</sup>.

There is no official policy regulating or dealing with replacement of positions by internal transfers. Replacement relies on the minister and her/his vision, particularly in situations where when a minister transfers of an official or consultant to remove him from decision-making position in favour of an employee related to the minister. It should be noted that the Office for Employees has created schedules of administrative formation in cooperation with various departments and bodies, akin to a plan for employee mobility for the coming three years.<sup>242</sup>

In all cases, public employees may go to court to challenge an administrative or government decision. Trade unions are ineffective and in some cases used as an instrument of political interference in their role in protecting employees and the public sector from political interference.<sup>243</sup>

A number of civil society organisations receive complaints from public employees regarding their employment, and follow-up on them with the civil service bureau, as well as checking the legality of the measures taken against the employee.<sup>244</sup>

There is also the special case of the transfer of a number of senior employees with whom the ministers do not wish to work to the General Personnel Council. Three senior employees in the Ministry of Finance were transferred when the new minister took over, and the Undersecretary of the Ministry of Labour was transferred because of his dispute with the Minister.<sup>245</sup> Employees feel instability in their workplaces on one hand through this practice, and their independence towards the minister and their neutrality are limited on the other.

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<sup>239</sup> The Strategic Plan of the Public Office for Employees, previous source.

<sup>240</sup> Reply of the Office for Employees, previous source.

<sup>241</sup> Interview with Mr Shaawan Jabareen, previous source. There are examples of continuation of appointments contrary to the legal procedures recorded in the reports of the Financial and Administrative Monitoring Office of 2012, such as the appointment of an employee in the position of assistant administrator in the Province of Ramallah without prior advertisement, Page 68, the granting of permanent positions to contract employees on an exceptional basis without advertisement and interview in the Ministry of the Interior, Page 50, and the appointment of employees for projects regarding coordinates in 2011 in the Ministry of Justice pursuant to an exception from the Prime Minister, Page 46.

<sup>242</sup> Reply of the Office for Employees, previous source.

<sup>243</sup> Interview with Mr Shaawan Jabareen, previous source.

<sup>244</sup> Reply of the Office for Employees, previous source.

<sup>245</sup> See in this regard the Official Gazette, Palestinian Events, number 102 issued on 10/9/2013.

## GOVERNANCE: TRANSPARENCY

### LAW

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

**Score: 25 / 100**

The Law for Combating Corruption requires employees in the public sector to submit asset declarations to the Commission for Combating Corruption, which retains the declarations and can request additional information and clarifications. It examines the financial assets of those subject to the provisions of the law.<sup>246</sup> When applying this in 2012 the Commission for Combating Corruption distributed asset declarations to those in the civil service required to fill them in, and has received a large number of them within the appointed deadline.<sup>247</sup> However the law does not stipulate that the contents of these assets must be made public.

Furthermore the legal arrangement within the PNA lacks a law for the management of public information even though there are laws, such as the Banks Law, the Civil Affairs Law, and laws for a number of security organisations that specify that information that must remain secret. This is personal information, banking information and security information. However none of the laws indicates the period for which this information must remain secret. The Financial Regulation of the PNA specifies how financial records are to be retained and the various establishments of the PNA are to be managed, the period for which they must be retained, their destruction and other matters<sup>248</sup>.

The Civil Service Law governs the rules for appointments and stipulates that vacant posts are advertised within two weeks of the date on which they become vacant in at least two daily newspapers. The advertisement must state the particulars related to the position of employment and the terms for occupying it. The Office for Employees must record this<sup>249</sup> and advertise the names of the successful candidates in the oral examinations in the final order of the results of the competitions.<sup>250</sup> The law stipulates that selection boards must advertise the names of those accepted to progress to the appointment competitions in at least two daily newspapers on two consecutive days and the advertisement must include the time and place of the competition.<sup>251</sup>

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246 See: Article 16 of the Law for Combating Corruption.

247 \_\_\_\_\_, The Annual Report, 2012, Ramallah, Commission for Combating Corruption, 2013, Page 18.

248 See: Article 11 of the Financial Regulation.

249 See Article 19 of the Law for the Civil Service.

250 See Article 20 of the Law for the Civil Service.

251 See Article 21 of the Law for the Civil Service.

## PRACTICE

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

**Score: 50 / 100**

Most public bodies and ministries have websites, a database and advertise certain issues, such as calls for tenders and vacant positions of employment. Public bodies differ in the extent to which they ensure that citizens are able to obtain information.<sup>252</sup>

In general, citizens face considerable difficulties in accessing information from the public sector; accessing information depends on the person responsible, the extent of their cooperation and their opinion on this right.<sup>253</sup> This derives from a lack of the rules in the various bodies, related to access to information.

Nevertheless, there are some issues that are advertised, such as calls for tenders and procurement; for example on the website of the Ministry of Finance there is extensive information on tenders and procurements.<sup>254</sup> Annual reports, documents and statistics are published regarding the public sector, and vacant positions of employment are advertised on the website of the Office for Employees<sup>255</sup> and in daily newspapers to ensure competition. The 2011 report of the Independent Commission for Human Rights notes that the commission received 37 complaints related to the right to competition and discrimination among Palestinians applying for government positions of employment. The complaints with respect to discrimination in appointments were the result of disability or political membership (against a background of security clearance).<sup>256</sup> During 2012, violation by official bodies of rights related to positions of public employment was the second highest number of complaints received by the commission. These included complaints regarding the administrative, financial and retirement rights of employees and arbitrary dismissal due to political background (security clearance). These dismissals were overturned by a ruling of the Supreme Court of Justice in 2012 that stated that all those who had been dismissed should return to their previous positions of employment.<sup>257</sup> The General Personnel Council acted in cooperation with the various establishments to absorb them back into the public sector in implementation of the court's ruling.<sup>258</sup>

In 2012 the Commission for Combating Corruption distributed 7,692 asset declarations to employees in the civil service in 71 ministries and public establishments. It targeted employees of the grade of director and above, employees who have financial authority, members of procurement, tender and quota boards and advisers. The Commission received 5,698 declarations within the specified deadlines in 2012.<sup>259</sup> However the financial assets, income and interests of the employees in the public sector are not made public.

In the Gaza Strip, citizens are unable to access information related to activities in the public sector and records that are kept by public sector bodies.<sup>260</sup> Likewise the financial assets, income and interests of employees in the public sector are not revealed and information on public procurement in practice is not available in a comprehensive manner. Vacant positions of employment are advertised openly to ensure impartial and open competition for posts, but this is not done adequately.<sup>261</sup>

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252 Interview with Dr Muhammad Abu Zaid on 21/8/2013.

253 Previous source, interview with Mr Shaawan Jabareen, previous source.

254 Interview with Mr Nasir Al Khateeb, Director of the Tender Board in the Public Supplies Department in the Ministry of Finance on 28/8/2013.

255 Reply of the Office for Employees, previous source.

256 \_\_\_\_\_, The Status of Human Rights in the Territories of the Palestinian National Council, 17th Annual Report, Ramallah, The Independent Commission on Human Rights (Grievances Office), 2012, Page 93.

257 \_\_\_\_\_, The Status of Human Rights in the Territories of the Palestinian National Council, 18th Annual Report, Ramallah, The Independent Commission on Human Rights (Grievances Office), 2013, Page 171.

258 Reply of the Office for Employees, previous source.

259 See the Annual Report of 2012 of the Commission for Combating Corruption, previous source, Page 18.

260 Interview with Dr Adnan Al Hajjar, Deputy Director of the Mizan Centre for Human Rights on 15/7/2013.

261 Interview with Dr Adnan Al Hajjar, previous source.

# GOVERNANCE: ACCOUNTABILITY

## LAW

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

**Score: 75 / 100**

Legal guarantees exist to ensure the accountability of employees in the public sector for their actions. The Civil Service Law prohibits employees from combining positions of employment with any other work performed alone or through an intermediary, using positions of employment and powers for personal benefit or profit, and accepting, either directly or through an intermediary, any gift, remuneration, donation or commission in relation to performing duties of employment.

The law prohibits an employee from retaining for the employee's personal use, the original of any official paper or a photocopy or copy of it or disclosing any matter discovered by virtue of the position, other than that within the scope permitted by law. This applies even after leaving the position of employment,<sup>262</sup> in addition to what is stated in the Law for the Combating of Corruption (below).

An employee is legally entitled to challenge and object to administrative decisions that are characterised by a lack of legality, through submitting an application to the head of the public body where s/he works with the grievance within 20 days of the date on which s/he learns of it. The grievance should be determined within 60 days of the date of submission of the application. If the period passes without a written reply to the person presenting the grievance, the grievance will be deemed to have been rejected, after which the employee may present the grievance to the Office for Employees. The law grants the employee and citizen the right of recourse to the judiciary within 60 days of the date on which they are notified of the rejection of the grievance or the end of the period specified in the law.<sup>263</sup>

A public employee is compelled to report corruption as stated in the Law for the Combating Corruption. The Law for Supplies provides the legal provisions related to objections to decisions of the tender board in relation to the award of tenders.<sup>264</sup>

The Office for Administrative and Financial Monitoring undertakes an administrative and financial inspection to ensure the effectiveness of performance and correct use of authority. It may monitor and review decisions related to appointments, salaries, wages, allowances and holidays, any other rewards and anything of that nature.<sup>265</sup>

The General Personnel Council undertakes supervision of the implementation of the Civil Service Law, checking that departments are applying it correctly. The Office for Employees may also review administrative decisions issued by government establishments with respect to appointments or promotions, and this Office may object to anything that it deems to be in violation of the provisions of the law.<sup>266</sup>

A citizen may submit complaints to a number of establishments, such as the Office for Financial and Administrative Monitoring,<sup>267</sup> the Independent Commission for Human Rights, the Commission for Combating Corruption and the Office of Employees, in addition to the various establishments and ministries. The Council of Ministers has issued a guide to complaints and has enabled citizens to submit complaints against public authorities to the General Department for Complaints in the Headquarters of the Council of Ministers, as well as in complaints units in public bodies and ministries, related to failure to implement final

262 See: Article 67 of the Law for the Civil Service.

263 See: Article 105 of the Law for the Civil Service and Article 160 of its Implementing Regulation and the Senior Category.

264 Interview with Mr Nasir Al-Khateeb, previous source.

265 See: Article 23 of the Law of the Office for Financial and Administrative Monitoring.

266 See: Article 7 of the Law for the Civil Service number 4 of ... as amended.

267 See: Article 23 of the Law for the Office for Financial and Administrative Monitoring stipulates that the Office must study "complaints submitted to it by citizens regarding violations or negligence in the performance of duties of employment ..."

judicial judgments issued against government bodies and persons working within them. It has also granted the General Department for Complaints the power to investigate complaints in which a decision has been taken or that have been rejected by complaints units, while retaining the rights of the complainant of recourse to the judiciary.<sup>268</sup> The guide to procedures for complaints specifies that the party responsible for receiving complaints against heads of establishments is the General Department for Complaints and the Council of Ministers, and that a complaint may be submitted through a number of means: in person, by email, or by ordinary mail.<sup>269</sup>

The Head of the Office of Employees is appointed pursuant to a nomination from the Council of Ministers and ratified by the Legislative Council.<sup>270</sup> Even though the Office for Employees submits its annual report to the Council of Ministers, the Office is responsible to the Legislative Council like any other establishment within the Palestinian Authority, especially as the Council has the power to ratify the budget, including the budget of the Office for Employees. The Council may hold the Head of the Office to account like any other official within the PNA in accordance with the Internal Regulations for the Council and the Basic Law.

## PRACTICE

To what extent do public sector employees have to report and be answerable for their actions in practice?

**Score: 50 / 100**

A number of bodies monitor and audit the public sector. The most significant of them is the Financial and Administrative Monitoring Office, which has responsibility for monitoring all areas within the public sector, in addition to government procurement through participation as an observer in tender committees. The 2012 report of the Office included a list of tenders for 2012.<sup>271</sup> The General Personnel Council through the General Department for External Monitoring checks the correctness of administrative procedures and transactions, and monitors attendance registers.<sup>272</sup>

There are no comprehensive statistics on legal violations related to the public sector. However the Commission for Combating Corruption has investigated a number of cases, 44 of which related to a misuse of power and benefiting from a position of employment, 17 other cases related to a squandering of public funds, 11 cases related to forgery and embezzlement and 10 cases related to the use of intermediaries and nepotism. Five cases related to bribery and two to laxity in the performance of the duties of a position of employment.<sup>273</sup>

The judiciary has ruled on 23 cases of corruption since the law was passed, in 10 of which there was a charge of benefiting from a position of employment and fraud in the management of public funds and in nine cases heard a charge of bribery arose. In eight of them a charge of a breach of trust appeared and in four of them there was a charge of negligence and laxity in the performance of the functions of a position of employment. Other charges arose such as forgery, embezzlement, benefiting from a position of employment, crimes of unlawful gain and obstructing the enforcement of a judicial order.<sup>274</sup>

Civil society organisations assisted in exposing corruption, and in particular the efforts of the Coalition for Accountability and Integrity - AMAN, its partner and supporting institutions, through urging official establishments to focus on combating corruption and on activating the various monitoring instruments and mechanisms.<sup>275</sup>

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268 See: Articles 6 & 11 of the Regulation for Complaints, number 6 of 2009.

269 See: Articles 3 & 4 of the Guide to Procedures for the System of Complaints issued by Decision of the Secretary General of the Council of Ministers number 01/13/H.A.L. of 2009.

270 See: Article 69 of the Basic Law and Article 6 of the Law for the Civil Service.

271 See: The Report of the Office for Financial and Administrative Monitoring of 2012.

272 Reply of the Office, previous source.

273 See: Report on Corruption and Combating It, 2012, previous source, Page 49.

274 Previous source, Page 50.

275 Interview with Dr Muhammad Abu Zaid, previous source.

The law stipulates that court hearings should be open unless the court decides of its own accord, or pursuant to an application from one of the litigants, to hear the case secret to protect morality or preserve public order. However the announcement of the judgment in all cases must be in an open sitting.<sup>276</sup> The on-going non-publication by the Court for Corruption of the names of persons convicted of corruption however, does not in general assist in raising awareness of the work of the Commission for Combating Corruption and the court related to it.<sup>277</sup>

Public sector institutions cooperate with complaints presented by civil society organisations and take action to resolve them.<sup>278</sup>

However in the Gaza Strip there has been no development of the policies of dealing with exposure of corruption internally and the mechanisms for complaints in government procurement. Despite the existence of numerous complaints related to employees in the public sector committing criminal and administrative violations, there is no specific listing of the accusations and the departments in which they work,<sup>279</sup> and no cases have been publicised of holding employees in the public sector accountable for the misuse of power and of disciplinary measures taken.<sup>280</sup>

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276 See: Article 15 of the Law of the Judicial Authority, number 1 of 2002.

277 See: Report on Corruption and Combating It, 2012, previous source, Page 50.

278 Interview with Mr Shaawan Jabareen, previous source.

279 Interview with Dr Adnan Al-Hajjar, previous source.

280 Interview with Dr Adnan Al-Hajjar, previous source.

## GOVERNANCE: INTEGRITY

### LAW

To what extent are there provisions in place to ensure the integrity of public sector employees?

**Score: 50 / 100**

The Law for the Civil Service prohibits employees in the public sector from using public sector property for personal purposes, and prohibits work in any position of employment or any work without obtaining prior permission, unless it does not conflict with their position of employment. However there are no post-employment restrictions.<sup>281</sup>

The Palestinian Procurement Law<sup>282</sup> contains a number of provisions related to integrity, the conduct of employees and combating corruption, in addition to provisions related to the protection of informants. However the documents for competitive tendering and contracts contain no clauses related to combating corruption, the need to report it or avoiding conflicts of interest.

The Council of Ministers ratified a code for conduct and ethics in public employment in Decision number 04/23/M.W/S.F (2012). This dealt with conflicts of interest and specified that employees should refrain from engaging in any activity that would lead to a conflict of interest arising, whether real, apparent or probable, from her/his personal interests and responsibilities and tasks of employment. It also states that employees should declare any work or activities that might lead to a conflict of interest. The code prohibits employees from accepting gifts, either directly or through an intermediary, and in the event that gifts are accepted, requires that the line manager is informed of the circumstances in which they were given and the justifications for not refusing them. Furthermore the government department is required to open a register to record gifts received and must dispose of the gifts presented to employees in accordance with instructions that issued by the Ministry of Finance.

The code requires employees to safeguard the property of the PNA, to ensure the correct use of public funds and guarantee the interests and properties of the PNA effectively and efficiently. The code prohibits employees from using public property to obtain a personal benefit or gain. It did not refer clearly to the employment of relatives.

The code also makes reference bribery, requiring employees to inform their line managers as soon as a bribe is offered, who must take the necessary action and notify the relevant authorities after preparing a report on the incident.<sup>283</sup> Pursuant to criminal law in force in the West Bank, bribery is deemed a crime punishable by detention and a fine both imposed on the person offering the bribe and the person receiving the bribe.<sup>284</sup> The legal system however also lacks post-employment restrictions for public sector works or instructions prohibiting this. Up to the time of publication, there has been no development of employment contracts that include the basic values of the public sector, as recorded in the code.

In the Gaza Strip no code of conduct or rules regarding gifts and hospitality, have been issued. Nor have restrictions been placed on post-employment restrictions. However the Civil Service Law, which is also in force in the West Bank, puts in place a number of rules regarding conflict of interest and prohibits the non-authorised use of official properties, facilities and work outside the public sector, as well as the use of official information.

<sup>281</sup> See: Article 67 of the Law for the Civil Service.

<sup>282</sup> The Decree Issuing the Law for Procurements has not yet come into force until the necessary rules and regulations are put in place for its implementation.

<sup>283</sup> The Code of conduct of Public Employees.

<sup>284</sup> See: Articles 170-173 of the Jordanian Criminal Law, number 16 of 1960.

## PRACTICE

To what extent is the integrity of public sector employees ensured in practice?

**Score: 25 / 100**

The code of conduct for employees in the civil service has recently been ratified and published on the website of the General Personnel Council. However it has not been circulated to employees and there has been no process of spreading awareness or training on it. The General Personnel Council has however included a project to circulate the code of conduct and provide training on it in its plan of work for 2013-2015. The Office has developed a training and guidance manual for new employees that is planned to be adopted and published in cooperation with the various government departments.<sup>285</sup>

The reports of the Coalition for Accountability and Integrity - AMAN, on the effectiveness of the integrity regime in a number of establishments of the PNA have revealed that most of them lack a system or code for accepting gifts.

On appointment, any employee in the public sector is asked to adhere to the tasks and duties of the position of employment, including studying the regulations and laws governing their work. On the website of the public code for employees there is a set of the laws that govern public employment (the Basic Law, the Civil Service Law, the regulations issued by the Council of Ministers) in addition to general information about the Office and its departments.<sup>286</sup>

According to public opinion surveys conducted by the AMAN coalition, the public sector was the sector most exposed to corruption in 2011 and 2012, with the results of the survey in 2012 indicating that 83% of the people surveyed believe that there is corruption in the various bodies of the PNA (87% in the West Bank and 73% in the Gaza Strip). The survey also revealed that the use of intermediaries and nepotism are among the most widespread forms of corruption, and that public services provide the greatest scope for corruption.<sup>287</sup>

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<sup>285</sup> The Public Office for Employees, the Strategic Plan for 2013-2015, Pages 75 to 76.

<sup>286</sup> Reply of the Office, previous source.

<sup>287</sup> The Coalition for Accountability and Integrity - AMAN, Public Opinion Survey, May 2013, Ramallah, Pages 4 & 9.

## ROLE: PUBLIC EDUCATION

To what extent does the public sector inform and educate the public on its role in fighting corruption?

**Score: 25 / 100**

There are no specific projects managed by the public sector to spread awareness among the public of corruption or on how it can be prevented and prosecuted. The public opinion survey of citizens conducted by the Coalition for Accountability and Integrity - AMAN, on the phenomenon of corruption in 2012 revealed that 12% reported that failure to report corruption is due a lack of knowledge about the mechanisms of receiving complaints of corruption, with 9% reporting that it was not possible to prove corruption.<sup>288</sup>

The Commission for Combating Corruption noted in its annual report that it had received 368 complaints and reports during 2012, compared to the 78 complaints and reports it received in 2011, which gives a 478% increase in the proportion of complaints and reports. This is caused by an increase in the confidence the public have in the Commission, increased knowledge of the Commission and its responsibilities by the public, and the effectiveness of its informational campaigns.<sup>289</sup> Further informational programmes and advertising is however still required.

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<sup>288</sup> The Coalition for Accountability and Integrity, AMAN, Public Opinion Survey, May 2013, Page 14.  
<sup>289</sup> See the Annual Report, 2012, of the Commission for Combating Corruption, Page 9.

## ROLE: COOPERATE WITH PUBLIC INSTITUTIONS, CSOS AND PRIVATE AGENCIES IN PREVENTING/ ADDRESSING CORRUPTION

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

**Score: 50 / 100**

The code for conduct and ethics in public employment was completed in collaboration and cooperation between the General Personnel Council and civil society organisation, in particular AMAN, that was a partner in the process of spreading awareness and adoption of the code. This was concluded by Ministers' Council approval in October 2012.<sup>290</sup> The Office invited the employees' trade union to contribute in developing the Civil Service Law.<sup>291</sup> Many conferences were held in collaboration with civil society organisations and representatives of government departments. The Office for Employees works openly with civil society organisations, and deals positively with complaints by citizens that are submitted to them, either independently or via other government bodies, with the objective of monitoring and correcting the situations for employees and in public employment, and providing the best service.<sup>292</sup> For example the Independent Commission for Human Rights noted in its annual report for 2012 that it had received satisfactory replies from the Office for Employees to the 78 complaints it had received.<sup>293</sup>

However in the Gaza Strip, there are no specific examples of cooperation between public sector bodies and other bodies and/or organisations and civil society or business associations in taking initiatives to combat corruption.

290 See: The Annual Report of the Public Office for Employees, 2011-2012, Page 11.

291 The Annual Report of the Public Office for Employees, 2011-2012, Page 15.

292 Reply of the Office, previous source.

293 \_\_\_\_\_, The State of Human Rights in the Territories of the Palestinian Authority, 18th Annual Report, 2012, Ramallah, the Independent Commission on Human Rights, 2013, Page 180.

## ROLE: REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

**Score: 75 / 100**

The President of the PNA has issued a Unified Law for Procurement. However because the regulations for its operation have not yet been approved, the former Public Supplies Law and Tenders Law regulate the purchase of supplies and services for the PNA, and will do so until the necessary regulation is prepared and issued that will bring the Unified Law into force.

The Tenders Law requires the publication of procurement advertisements in newspapers<sup>294</sup> and adopts opening of tenders as a general principle, although it allows specific exceptions permitting the requesting of offers and direct purchase, including in emergencies, in the purchase of spare parts or accessories not available from more than one supplier, and in academic material such as films and manuscripts.<sup>295</sup> The law also stipulates that the value of the supplies should not exceed \$5,000 when only requesting offers,<sup>296</sup> and requires that supplies are of the best products at the best prices, and at the purchase is not split into a number of parts.

The Supplies Department in the Ministry of Finance undertakes the purchase of supplies required by the various PNA bodies through tender boards constituted for this purpose by a decision of the Council of Ministers, under the chairmanship of the Director General of the Supplies Department<sup>297</sup> for a period of two years. The Minister of Finance may reduce the period or extend it for one further year. The Tenders Department is under the Ministry of Works, however it has a special organisation that undertakes analysis and documentation of tenders for government works and performs the secretarial work for the various tender boards.<sup>298</sup> The law does not require the existence of specific skills for employees in the tender boards, although it requires the membership of a representative of specific specialist bodies. The law also requires the appointment of an employee from the State Audit and Administrative Control Bureau in the capacity of an observer on tender boards for the purchase of government supplies and works.<sup>299</sup>

A purchase request submitted by a government body or department must include the specifications of the supplies that must be purchased, together with the precise quantities, according to the law. The Tenders Department passes it through a technical committee to assesses the requirements and transfers it to the tender board for processing the purchase after the necessary procedures have been followed.<sup>300</sup>

The Public Supplies Law distinguishes between the body responsible for the purchase or award of the contract and the receiving committee. The latter should be formed by a decision from the body submitting the purchase request, in order to carry out an examination to check that the specifications of the supplies have been met and to ensure that they conform to the conditions prescribed in the supply contract.<sup>301</sup>

294 See: Article 6 of the Law for Tenders and Article 7 of the Law for Public Supplies.

295 See: Article 7 of the Law for Public Supplies and Article 17 of the Law for Tenders.

296 See: Article 7 of the Law for Public Supplies.

297 See: Article 3 & 14 of the Law for Public Supplies.

298 See: Articles 2 & 6 of the Law for Tenders.

299 See: Article 10 of the Law for Tenders, and Article 14 of the Law for Public Supplies.

300 Interview with Mr Nasir Al-Khateeb, previous source.

301 See: Article 30 of the Law for Public Supplies.

The Supplies Department publishes the names of the parties submitting tenders and the initially winning party on the notice board in the department and on its website. Any person or body may present an objection to the decision of the tender board, which should clarify the reason for rejecting or awarding the contract to that party.<sup>302</sup>

The tenders committee is formed from the general procurement directorate and representatives of the ministry of public works, the ministry of national economy and the state audit and administrative control bureau, in addition to the ministry involved in the tender. During 2012, 208 tenders (194 of them were for 2012 and 14 for 2013) were advertised in local papers and on the website of the procurement directorate. Tenders are divided into two types; the first included 10 general central tenders that are periodically conducted, two of them annually on vehicles and official seals and others six monthly (computers, electronic sets, operators, detergents, furniture, stationary and printing, curtains and carpets, and air-conditioning). The second type are specific tenders related to the work of the institutions.

The Supplies Department files applications for purchase and competitive tendering in the archive of the department subordinate to the Warehouses Department following the Financial Regulation for the Authority. The Supplies Department publishes various pieces of information and statistics on competitive tendering on the website of the Ministry of Finance, and bids are opened with a live broadcast on the website of the Public Directorate for Supplies in the Ministry of Finance.

The Law for Tenders does not state penalties for a violation of the law. However the Public Supplies Law includes a provision for the punishment of all those who violate its provisions with the penalties laid down in other laws and regulations.<sup>303</sup> Therefore the penalties recorded in the Civil Service Law can be imposed, such as notice, warning, and dismissal from the position of employment. Furthermore the Procurement Law, ratified by the President of the PNA, whose implementing regulations are awaiting being put into operation, provides for dismissal of an employee and denial of pension rights in the event of a violation of the principles for the conduct of employees, as recorded in Article 63. These include the avoidance of a conflict of interest, acting with integrity and within the law, not utilising information received by virtue of the position, not working to audit accounts or for any person seeking to be awarded a contract. However the law does not include prohibiting corrupt officials taking further government positions. The Civil Service Law has however stipulates that an employee must not have been convicted of a misdemeanour or crime for breach of trust or honour. Hence if an employee is convicted by a court judgment, he may not be employed again in a government position in either the West Bank or the Gaza Strip.

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302 Interview with Mr Nasir Al-Khateeb, previous source.

303 Article 51 of the Law for Public Supplies of 1998.

**LAW ENFORCEMENT BODIES**  
**57 / 100**

## SUMMARY

The public prosecution gets its independence from the Judicial Authority Law. To ensure the independence and neutrality of members of the prosecution, members cannot be a member of a political party or organisation and must resign upon appointment. The public prosecution suffers of a shortage administrative and legal staff. The affiliation of the public prosecution is not settled yet in practice - whether it sits under the judiciary or the executive, which affects the nature of its work in relation to the body it refers to and its independence. The supervision of members of the public prosecution is also still lacking, despite of the issuance of the Judicial Authority Law.

The Law Enforcement Commission publishes annual reports, as well as its activities and information about it, on its websites. The assets and interests of members of the prosecution and police members are not disclosed. There are no restrictions on post-employment work for persons working in law enforcement institutions.

Mechanisms of accountability, follow-up and appeals are still limited in practice. No information is available about measures taken by the public prosecution and police to prevent conflict of interest, to deal with gifts or about the policies adopted to promote and enhance integrity.

The public prosecution and police are the most important components of the law enforcement pillar in Palestine. Their task consists of maintaining public order, controlling crime, reforming criminals and enforcing the law to guarantee the rights and liberties of citizens. Law enforcement bodies rely in their work on a set of laws, including the Police Law (1963) (West Bank), the Palestinian Law for the Police (6/1963) (Gaza Strip), the Public Security Law (1965), the Security Forces Service Law (8/2005), the Criminal Procedures Law (3/2001) and the Judicial Authority Law (1/2002), in relation to members of the public prosecution.

According to the provisions of Article 60 of the Judicial Authority Law (2002) the public prosecution consists of the public prosecutor, one or more assistant public prosecutors, heads of the public prosecution, attorneys for the public prosecution and assistants for the public prosecution. The Criminal Procedures Law (3/2001) specifies the assistants for the public prosecution as the agents of the judicial police, including the director of police, his deputies, directors of police in the provinces, the general departments, police officers and non-commissioned officers, each in their particular department, captains of maritime and air vessels and employees who are granted the powers of the judicial police.<sup>304</sup> The draft Palestinian Police Law has been on the agenda of the Legislative Council for a number of years but has not yet been ratified. The number of members of the public prosecution is 110 on the West Bank and 58 in the Gaza Strip.

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304 See Article 21 of the Law of Criminal Procedures number 3 of 2001. [http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?Ink=2&LegPath=2001&MID=13854#A13854\\_21](http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?Ink=2&LegPath=2001&MID=13854#A13854_21)

**OVERALL PILLAR SCORE: 57 / 100**

<b>Category</b>	<b>Index</b>	<b>Law</b>	<b>Practice</b>
<i>Capacity</i> 50 / 100	Resources	---	50
	Independence	75	25
<i>Governance</i> 46 / 100	Transparency	50	50
	Accountability	100	25
	Integrity	25	25
<i>Role</i> 50 / 100	Corruption prosecution	75	

## CAPACITY: RESOURCES

### PRACTICE

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

**Score: 50 / 100**

The operational budget of the public prosecution was around 2,400,000 NIS, of which 1,340,000 shekels were spent in 2012. The budget for the salaries of employees comes under the Finance Department in the Ministry of Justice,<sup>305</sup> but does not meet the requirements for the work of the public prosecution. The salaries of public prosecution employees are high in comparison with the salaries of other public sector employees. Furthermore the public prosecution looks to obtain non-budget funding from donor organisations supporting the justice sector, for infrastructure and training.<sup>306</sup> However some of the buildings of the public prosecution are unsuitable and inappropriate, while the number of employees in the public prosecution is not enough for the requirements of the courts.<sup>307</sup> The public prosecution suffers from a shortage of computer equipment.

The public prosecution suffers from a shortage in the number of administrative and legal staff, which has led to an increase in the workload of public prosecution employees and an inability to complete cases within the required time. The public prosecution for combating corruption is deemed a 'judicial' authority appointed for work in the Commission for Combating Corruption. It examines and investigates cases in its role to pursue and bring criminal legal actions under the Law for Combating Corruption<sup>308</sup>, and is a special unit charged with investigating violations related to corruption. It is represented by the Palestinian Anti Corruption Commission.<sup>309</sup>

The budget for the police is included within the budget for the security forces.<sup>310</sup> However the salaries of the members of the police are not appropriate relative to the cost of living and there is a need for more computer equipment for the police.<sup>311</sup>

The task of following up potential corruption crimes within the police is entrusted to three special units: (1) The Department of the Inspector General, with responsibility for monitoring financial liabilities and maintaining registers,<sup>312</sup> (2) The Department for Police Security, responsible for hearing complaints from the public regarding the performance of the police in general and individual complaints related to an officer or individual, and which also follows-up on military judiciary complaints received against members of the police,<sup>313</sup> and (3) the Grievances and Human Rights Department, responsible for complaints from citizens and ensuring appropriate treatment in any direct or indirect relationship with the police. It is a body that monitors the work of the police at the stage of detention, arrest and the search of houses.<sup>314</sup>

In the Gaza Strip, law enforcement agencies lack adequate financial and human resources and infrastructure to perform their work effectively. During the wars from 2008 to 2009 and in 2012 Israel destroyed most police stations in the Gaza Strip and their budgets are totally inadequate to achieve the objectives of law enforcement.<sup>315</sup>

305 Interview with Mahmoud Al-Khaleeli, in charge of the Finance Department in the Public Prosecution on the West Bank, 18/8/2013.

306 Fourth Annual Report of the Public Prosecution, 2012, Pages 25 & 28.

307 The Public Prosecution, the Second Legal Observatory to Reveal the Changes in the State of Justice in Palestine (the Palestinian Centre for the Independence of Attorneys and Judges, Equality), Ramallah, April 2012, Page 79.

308 \_\_\_\_\_, The Annual Report, 2012, Ramallah, The Commission for Combating Corruption, Ramallah, Page 14.

309 Interview with Mr Ashraf Uraiqat, Assistant Public Prosecutor on the West Bank, 18/08/2013.

310 Pursuant to the Provision of Article 17 of the Law for Public Intelligence, number 17 of 2005.

311 Interview with Dr Khalid Al-Sabateen, Director of the Office of the Director General of Police, 17/8/2013.

312 Interview with Dr Khalid Al-Sabateen, previous source.

313 See: The following website: [http://www.palpolice.ps/ar/?page\\_id=9](http://www.palpolice.ps/ar/?page_id=9).

314 See: The following website: [http://www.palpolice.ps/ar/?page\\_id=11](http://www.palpolice.ps/ar/?page_id=11).

315 Interview with Mr Ihab Al Dairyoui, Head of the Public Prosecution for General Jurisdiction in Gaza, 27/6/2013.

## CAPACITY: INDEPENDENCE

### LAW

To what extent are law enforcement agencies independent by law?

**Score: 75 / 100**

The Public Prosecution derives its independence from the Judicial Authority Law (1/2002). This specifies the conditions for appointments, promotions and transfers. Article 61 stipulates that a person appointed as a member of the public prosecution must meet the terms required for someone to become a judge. The most important of these terms is that when taking up a position in the public prosecution, s/he terminates membership of any political party or political organisation to ensure his independence and neutrality.<sup>316</sup> Furthermore the law grants the Minister of Justice the power to determine the place of work of members of the public prosecution and their transfer outside the court to which they have been appointed pursuant to a proposal from the Prosecutor-General. It is also states that the period of work of members of the public prosecution outside the departments must not exceed four years after the terms for work in the departments have been met.<sup>317</sup> Members of the public prosecution are supervised by their superiors depending on their ranks. Pursuant to the provision of Article 74, promotions take place on the basis of seniority and competence, i.e. they are based on objective criteria in accordance with the law. In 2012 the number of members of the public prosecution was 110.<sup>318</sup>

The general prosecutor does not interfere or instruct members of the prosecution in their cases, unless there is a mistake in following law enforcement procedures. Interference in the public prosecution and its members is a criminal offence not permitted in any circumstances.<sup>319</sup>

The Security Forces Service Law (8/2005) applies to the police as part of the internal security forces, sets out the terms of service for the Palestinian security forces, and in Articles 54-64 states the terms related to transfers, secondments and lending of staff.

In the Gaza Strip laws prohibit any political interference in the work of the law enforcement agencies. Article 124 of the Criminal Law (74/1936) as amended states, “anyone who: ... (c) hinders or interferes in any manner whatsoever in the implementation of any legal procedure, whether civil or criminal, or knowingly prevents its implementation will be deemed to have committed a misdemeanour.”

<sup>316</sup> To study the terms that must be met in those who are judges, see Article 16 of the Law for the Judicial Authority. Article 61 of the same law states, “it is stipulated in anyone who is appointed a member of the Public Prosecution that he meets the terms set out in Article 16 of this law.”

<sup>317</sup> Article 65 of the Law for the Judicial Authority.

<sup>318</sup> Telephone interview with Mr Wail Lafi, Head of the Planning Department in the Public Prosecution, 18/8/2013.

<sup>319</sup> Interview with Mr Ashraf Oreiqat, previous source.

## PRACTICE

To what extent are law enforcement agencies independent in practice?

**Score: 25 / 100**

The mechanisms for appointment to the police are clear, consist of advertising, and the formation of an internal committee to consider applications and the extent to which they conform to the advertised terms. The medical suitability of the candidate is investigated. Students, who have received a higher secondary level education, can obtain a grant to study police sciences, and are appointed after they have completed their university studies.

The police enjoy independence in practice, as they are monitored by the prosecutor general and monitored administratively by the Director General of Police.<sup>320</sup> However, appointments are not published to enable the extent of their conformity to the law to be examined.<sup>321</sup> Transfers are announced in the departments and provinces.

The overseeing institution to the public prosecution has not yet been decided in practice; whether it is subordinate to the judiciary or to the executive is still to be determined. This impacts the nature of its work with respect to its authority and independence.<sup>322</sup> Likewise the inspection of members of the public prosecution has still not been put in place; while Article 42 of the Judicial Authority Law states that the Inspection Department in the Supreme Judicial Council is constituted of judges and members of the public prosecution, the implementing regulation for the Judicial Inspectorate (4/2006) restricts the constitution of the department to judges and restricts its powers to inspection of the judges. This has led to a lack of monitoring of members of the public prosecution, except in drafting policies, and limited accountability.

The seizure of journalists and bloggers by the public prosecution in 2011 and 2012 due to articles published in newspapers and/or on websites and comments on the pages of social networks has shown that there is pressure from some influential persons in the executive authority, which interferes in the public prosecution, especially in dealing with issues of freedom of opinion and expression.

During 2013 an investigation was conducted by the Commission for the Combating of Corruption of two members of the public prosecution in cases of corruption. Subsequently their immunity was lifted.<sup>323</sup>

In the Gaza Strip during 2013 the appointments of assistants in the public prosecution has seen a significant improvement in comparison with the appointments that took place following the division in 2007, when they did not uphold clear professional standards. Standards are still inadequate however. This also applies to appointments in the police, which has seen almost daily interference in its work by the government and security organisations.<sup>324</sup> Likewise external interference exists and is present in investigations conducted by the public prosecution and depends on the personality of the public prosecutor and his attorneys<sup>325</sup>.

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320 Interview with Dr Khalid Al-Sabateen, previous source.

321 Interview with Mr Nasir Al-Rayyis, the Legal Consultant to the Al-Haq Institute, 17/08/2013.

322 Report on Corruption and Combating It, the Coalition for Accountability and Integrity - AMAN, 2012, Page 55.

323 Interview with Mr Rasha Amarina, Director General of the Legal Department in the Commission for Combating Corruption on 1/8/2013.

324 Interview with a police commander, previous source.

325 Interview with Mr Zain Al-Deen Baseesu, Attorney in the Technical Office in the Public Prosecution (not a restrictive factor), on 3/7/2013.

# GOVERNANCE: TRANSPARENCY

## LAW

To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?

**Score: 50 / 100**

The Law for the Judicial Authority requires members of the public prosecution on appointment to submit assets declarations in sealed envelopes, held by the chairperson of the supreme court without being disclosed.<sup>326</sup> Likewise these declarations are not subject to periodic investigation.<sup>327</sup> The Law for Combating Corruption also requires police employees to submit asset declarations to the Commission for Combating Corruption, which are again not disclosed.<sup>328</sup>

Records of investigations are not published, as they relate to parties who have a right to study the records of hearings related to them only.<sup>329</sup> A victim may submit an application for the file to be photocopied or for study, and may submit a further application to hear a witness not called by the public prosecution, as well as a number of other applications.<sup>330</sup> The accused, the victim and the claimant in a civil case may apply for copies of the papers or documents of the investigation at their own expense.<sup>331</sup>

Litigants, their attorneys and prosecutors in a civil case have the right to examine the minutes of the investigation following its conclusion, after they have obtained permission to do so from the public prosecution,<sup>332</sup> and parties to a case can study the papers as soon as they are served notice to attend the court.<sup>333</sup>

In the Gaza Strip there are no detailed and specific legal provisions that allow the public to obtain information regarding the organisation and conduct of the work of the law enforcement agencies, decisions related to them and how these decisions are taken. There is no requirement to reveal the activities of law enforcement openly. The activities of the public prosecution are numerous and the nature of its work is shrouded in secrecy to a large extent.<sup>334</sup>

## PRACTICE

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

**Score: 50 / 100**

Law enforcement agencies publish their annual reports, activities and information related to their organisation and work on their websites.<sup>335</sup> Daily newspapers publish news and information on the transfers and appointments in leading positions of the police,<sup>336</sup> and information regarding appointments to the public prosecution. The assets and interests of members of the public prosecution and police or are not disclosed. The same is the case in the Gaza Strip, although the police and public prosecution in the GazStrip publish annual reports.

326 See: Article 28 of the Law for the Judicial Authority, number 1 of 2002.

327 Report on Corruption and Combating It of 2002, Ramallah, Coalition for Accountability and Integrity - AMAN, 2012, Page 53.

328 Pursuant to the provision of Article 2 of the Law for Combating Corruption, number 1 of 2005.

329 Interview with Mr Abdul Ghani Al Uwaiwi, Prosecutor General on the West Bank on 14/8/2013.

330 Pursuant to the provision of Article 62 of the Palestinian Law for Criminal Procedures, number 3 of 2001.

331 See Article 63 of the Palestinian Law for Criminal Procedures, number 3 of 2001.

332 See Article 92 of the Palestinian Law for Criminal Procedures, number 3 of 2001

333 See Article 188 of the Palestinian Law for Criminal Procedures, number 3 of 2001

334 Interview with Mr Zain Al-Deen Baseesu, previous source.

335 See the website of the Public Prosecution, [www.pgp.ps](http://www.pgp.ps), and the website of the police [www.palpolice.ps](http://www.palpolice.ps).

336 Saeed Zaid, Regime for Integrity in the Security Services, previous source, Page 14.

# GOVERNANCE: ACCOUNTABILITY

## LAW

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

**Score: 100 / 100**

Pursuant to penal law procedures, prosecutors are required to state the reasons on which their decisions are based, and the reasons for detention or a decision to charge.<sup>337</sup>

Persons who have suffered harm from a crime may initiate a criminal action. In accordance with Article 3 of the Criminal Procedures Law, 'the Public Prosecution will initiate the criminal legal action, even if the person harmed brings it himself as a claimant in the civil right in accordance with the rules specified in the law.'

The Basic Law for the Palestinian Authority provides for the establishment of the national commission for human rights - the Independent Commission for Human Rights - which is the body to which citizens can submit complaints related to the arbitrary action of public employees, including those responsible for law enforcement. However the prosecution of corruption and judicial prosecution is conducted by the Commission for Combating Corruption and the Public Prosecution for Combating Corruption.<sup>338</sup>

The Mathalem Department and Human Rights in the police follows up on complaints made by citizens related to excess on the part of police personnel to counter injustice, arbitrary action, action against the rights of citizens, and where unlawful arrangements have been made.<sup>339</sup>

Members of the public prosecution enjoy judicial immunity preventing them being accountable criminally or disciplinarily until immunity is lifted in accordance with the procedures found in Article 47 of the Judicial Authority Law. This states that in the event a member of the public prosecution has committed an act that requires him to be held accountable disciplinarily, the provisions of Ch.4 S4. 'Disciplinary accountability of judges' applies to members of the public prosecution. Disciplinary action will be brought against them by the Prosecutor General of his own accord, pursuant to a request from the Minister of Justice.<sup>340</sup>

In the Gaza Strip, complaints are submitted to the Independent Commission for Human Rights for police misconduct.<sup>341</sup> There is no legal provision specifying a particular body for investigation of members of the police, and the investigation is conducted with them in accordance with general rules that grant the public prosecution authority of investigation as a general principle.

## PRACTICE

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

**Score: 25 / 100**

Statistics, including those published by the Independent Commission on Human Rights or those available at the security agencies, show that there are a large number of complaints concerning legal violations by individuals in security agencies, including the police. Mechanisms of accountability, follow-up and appeal are in practice however still limited.

The public prosecution prepares annual reports, annual plans and provides the reasons for other work it does. Citizens have a right to contact the Department of Administrative Employees and submit a complaint.

<sup>337</sup> See Articles 149, 241 & 276 of the Law for Criminal Procedures, number 3 of 2001.

<sup>338</sup> For Further Information See the Section on the Commission for Combating Corruption of this Report.

<sup>339</sup> See the following website: [http://www.palpolice.ps/ar/?page\\_id=157](http://www.palpolice.ps/ar/?page_id=157).

<sup>340</sup> Pursuant to the Provision of Article 72 of the Law for the Judicial Authority, number 1 of 2002.

<sup>341</sup> Interview with a police commander, previous source.

This is followed up and replied to within a reasonable period<sup>342</sup> However the Office of the Prosecutor General does not periodically and openly announce its activities, and in particular the means by which it grants priorities and implements them.<sup>343</sup> Internal disputes are sometimes not dealt with objectively, and sometimes there defers to the PNA presidency rather than confronting the issue.

During 2012 the Independent Commission for Human Rights received 399 complaints against the police in the West Bank. It followed up on these in two ways; 116 complaints through on site visits and 157 by letter. The police replied to 60% of the letters. The Independent Commission on Human Rights assessed the results of the follow-up as satisfactory in 125 complaints out of 208 complaints that were resolved. In the Gaza Strip the Commission received 353 complaints. It sent 229 original letters and reminders to the Director of Police in the Gaza Strip and received 105 replies. Most of them were superficial, in which the claim made in the complaint was denied. In other limited cases it stated that it had taken disciplinary action against the members of the police, but did not clarify the procedures followed against those responsible for violations.<sup>344</sup>

There is more than one department in the security services responsible for receiving complaints, including the Department for Internal Security, the Department of the Inspector General for Monitoring the Services and the Grievances Office in the police. Some of these document complaints through a form for this purpose. However there is still no official system for dealing with complaints. From the complaints that were received by the security services in 2012 (as set out in the table below), it is clear that there was internal accountability within the security services that is not declared to the public.<sup>345</sup>

**TABLE 3: INTERNAL ACCOUNTABILITY IN THE SECURITY AND MILITARY SERVICES AS SHOWN IN THE RECORDS OF INTELLIGENCE FOR 2009-2012**

Item	2009	2010	2011	2012
Complaints	1509	2082	2106	1846
Military summonses	1329	1437	1743	2140
Military personnel referred for public prosecution	716	634	1156	1311
Violations by military personnel	1147	459	611	663

*The above table shows the total number of individuals in the security organisations, including the police, as researchers were not able to obtain separate statistics.*

In the West Bank, in practice, the Commission for Combating Corruption has investigated two members of the public prosecution on charges of corruption pursuant to the Law for Combating Corruption (1/2005), after immunity was lifted from them by the Supreme Judicial Council. Members of the police do not enjoy immunity.<sup>346</sup>

The Independent Commission for Human Rights received 42 complaints against the public prosecution in the West Bank related to arbitrary action. However the replies the Commission received from the public prosecution were unsatisfactory. In the Gaza Strip the Independent Commission for Human Rights received 7 complaints against the public prosecution related to arbitrary action, and the replies from the Public Prosecution were unsatisfactory, with the exception of one positive reply that stated that the ban on travel

342 Interview with Mr Ashraf Oreiqat, Assistant Prosecutor General, previous source.

343 Interview with Mr Nasir Al-Rayyis, Consultant to the Al-Haq Institute, previous source.

344 \_\_\_\_\_, The State of Human Rights in the Territories of the Palestinian Authority, 18th Annual Report, 2012, Ramallah, the Independent Commission for Human Rights, 2013, Pages 182-183.

345 \_\_\_\_\_, Corruption and Combating It, previous source, Pages 28-29.

346 Interview with Dr Khalid Al Sabateen, Head of the Office of the Director General of Police, previous source.

had been lifted from the complaining citizen.<sup>347</sup> The public prosecutor and his office in the Gaza Strip do not report their activities fully,<sup>348</sup> but attorneys for the public prosecution provide the reasons to the parties concerned regarding their decisions to prosecute before the courts or otherwise.<sup>349</sup> One of the heads of the public prosecution was sent for trial on a charge of exploiting his position of employment. A judgment in the case has not yet been issued.<sup>350</sup>

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347 The previous source, Page 181.

348 Interview with Mr Zain Al-Deen, Baseesu, previous source.

349 Interview with Mr Ihab Al-Dairyoy, previous source.

350 Interview with Mr Muneer Al-Uqbi, previous source.

## GOVERNANCE: INTEGRITY

### LAW

To what extent is the integrity of law enforcement agencies ensured by law?

**Score: 25 / 100**

The Instructions of the Prosecutor General (1/2006), deemed an alternative to a code of conduct for members of the public prosecution, contain a number of aspects related to conflict of interest, however do not contain rules related to gifts and the values of integrity. Likewise the public prosecution has not produced a code for its members and administrative employees. Article 29 of the Judicial Authority Law prohibits members of the public prosecution from disclosing the secrets of its work, engaging in political activity, becoming a candidate in presidential elections, elections to the Legislative Council or local councils, or joining political organisations until they have resigned and their resignation has been accepted. Likewise members of the public prosecution are not permitted to engage in any commercial work and they may not perform any work that is not in accord with the independence or dignity of the work of the public prosecution. They also must not take any action that is contrary to the duties of the position of employment and good performance within it.<sup>351</sup>

The police are in process of preparing a code of conduct, however it has not yet been approved. Nevertheless legislation in force includes a number of rules for professional conduct and ethics, particularly provisions of the Civil Service Law (2005) and the regulations implementing it, that relate to conduct in employment.

There are no restrictions on appointments of an employee after he has left his position of employment, whether in the public prosecution or in the police.<sup>352</sup> Likewise the laws do not require disclosure by officials responsible for implementation of the law of their assets and possessions.<sup>353</sup> This also applies to the Gaza Strip, with the law for the police applied in the Gaza Strip prohibiting members of the police from accepting any gifts or hospitality.

### PRACTICE

To what extent is the integrity of members of law enforcement agencies ensured in practice?

**Score: 25 / 100**

In spite of the lack of existence of a code for conduct for the police and the public prosecution, attention is paid to training their members in professional ethics. The police have held numerous courses for staff on professional ethics and are given courses to strengthen the culture of the members with respect to the ethics of the work that they perform.<sup>354</sup> In the public prosecution lectures are given to members of staff on professional ethics and professional conduct is maintained within the public prosecution.<sup>355</sup> The Coalition for Accountability and Integrity - AMAN, has provided numerous training opportunities regarding issues of integrity in the work of the security services, including the police.

351 See Article 28 of the Law for the Judicial Authority, number 1 of 2002.

352 Interview with Dr Khalid Al-Sabateen, Head of the Office of the Director General of Police, previous source.

353 Interview with Mr Ashraf Oreiqat, Assistant Prosecutor General, previous source.

354 Interview with Dr Khalid Al Sabateen, previous source.

355 Interview with Mr Abdul Ghani Al-Owaiwi, previous source.

There is no information regarding the procedures taken in either the public prosecution or the police to prevent conflicts of interest and to deal with gifts. Nor is there information on policies adopted to strengthen the values of integrity within the professions. In practice in the Gaza Strip, a number of police personnel combine two jobs due to the inadequacy of the salaries. There is no monitoring of this.<sup>356</sup>

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<sup>356</sup> Interview with Colonel Jamal Al-Deen, Police Commander in the Province of Gaza on 23/6/2013.

## ROLE: CORRUPTION PREVENTION

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

**Score: 75 / 100**

Laws grant legal powers to the police to apply appropriate methods of investigation to thoroughly investigate cases of corruption in coordination with the military judiciary. The powers granted to the police in relation to cases of corruption are deemed appropriate.<sup>357</sup> At the same time the powers granted to the public prosecution (the Public Prosecution for Combating Corruption and the Public Prosecution for Economic Crimes) are deemed more appropriate than the powers granted to the police, as the laws regulating its work and specifying its powers are recent.<sup>358</sup>

The prosecution of corruption resulted in decisions in 25 cases out of 99 cases and 81 cases during 2012.<sup>359</sup> During the previous three years (2010, 2011 and 2012) 170 investigations related to corruption were recorded at the Public Prosecution for Combating Corruption, while 57 were archived, with 8 were found irrelevant and referred to other bodies of speciality, and 55 files under on-going investigation. During 2012, 12 complaints were followed-up by the police security unit related to nepotism and corruption, while 206 complaints were received by the grievances and human rights unit.

The procedures for preliminary investigation seek to gather evidence, test it and assess it. In achieving this objective, procedures are followed that seek to detain the accused to prevent her/him from fleeing from justice or prevent her/him from interfering with the evidence and investigation procedures. This covers both detention with the objective of gathering evidence such as inspection, interrogation, searching, hearing witnesses and the appointment of experts, or precautionary measures such as arrest and detention sufficient and appropriate for the investigation into crimes of corruption.<sup>360</sup>

In the Gaza Strip there have been no cases of judicial prosecution on charges related to corruption in the last 12 months. There have been no cases that have led to charges being made,<sup>361</sup> and there are no final statistics on the number of cases that have concluded with corruption charges being brought before the courts.<sup>362</sup>

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357 Interview with Dr Khalid Al-Sabateen, previous source.

358 Interview with Mr Nasir Al-Fayyis, previous source.

359 The Fourth Annual Report, Public Prosecution, p. 78.

360 Interview with Colonel Jamal Al-Deen, previous source.

361 Interview with Mr Ihab Al-Dairyoy, previous source.

362 Interview with Colonel Jamal Al-Deeb, previous source.

**CENTRAL ELECTIONS  
COMMISSION  
73 / 100**

## SUMMARY

The Central Elections Commission enjoys independence according to the law. In practice it has a high level of confidence and neutrality in dealing with all parties, confirmed by the reports of local and international monitoring agencies, as well as the political parties, the government and the public in general. The commission had succeeded in preventing persons from interfering in its work. The commission has experienced and qualified human resources, and it has the necessary facilities to carry on its tasks efficiently.

The election commission is committed to publishing all its decisions, issues relevant to election process, the minutes of its meetings, its different activities and the dates of elections, all on its website. The law or the regulations that were issued in relation to it do not specify what should be included in the financial and administrative report about its activities, produced three months after declaring the final results, and the procedure for discussing the report by the Legislative Council. The commission is not a subject to monitoring by the State Audit and Administrative Control Bureau.

Neither the law nor the code of conduct of the commission members includes post-employment restrictions or rules related to gifts, and it lacks a code of conduct for the employees at the commission, in addition to not requiring an asset declaration by the commission members and employees.

The Central Elections Commission undertakes the administration and supervision of presidential, legislative and local elections. It takes all the measures necessary to ensure their integrity and freedom, and plans and implements the electoral processes from the date on which a decision is issued to conduct the elections by the relevant body until the result is announced. These include registration of the electors, ratification of the observers, acceptance of the nomination of lists, balloting, counting of votes, and declaration of the results. The Elections Commission operates in accordance with the legislation for elections in Palestine and pursuant to this has supervised multiple electoral cycles.

The Central Elections Commission is an independent body that is not subject to any government or administrative authority. It consists of nine members who are selected from among judges, senior academics and lawyers who have expertise and a professional curriculum vitae. They are appointed by a decision of the President of the Palestinian National Authority for a term of four years.

The Central Elections Commission was constituted in 2002 under the Public Elections Law number 13 in 1995. Presidential Decree 15 (2002), issued on 10 November 2002, appointed Dr. Hanna Nasir to act as Chairman of the Commission and a few days later, members of the Commission were appointed by Presidential Decree 15 (2002). The Commission was reconstituted by a Presidential Decree in 2005, by a further Decree in 2009 and finally by a Presidential Decree issued in 2011.<sup>363</sup>

OVERALL PILLAR SCORE: 73 / 100			
Category	Index	Law	Practice
<i>Capacity</i> 83 / 100	Resources	---	75
	Independence	75	100
<i>Governance</i> 67 / 100	Transparency	75	75
	Accountability	75	50
	Integrity	50	50
<i>Role</i> 88 / 100	Campaign Regulation	75	
	Election Administration	100	

363 Ahmad Abu Diya, Effectiveness and Strength of the Regime for Integrity in the Work of the Central Elections Commission, Ramallah, the Coalition for Accountability and Integrity - AMAN, 2013, Page 3.

## CAPACITY: RESOURCES

### PRACTICE

To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

**Score: 75 / 100**

The Elections Commission consists of nine members from among judges, academics and lawyers who have relevant expertise. They are selected in accordance with the factional (political party) agreement within the framework of the Conciliation Process in Cairo. This was ratified by the Palestinian President through the issue of a decree appointing the members of the Commission. Women and regional groups are represented in the Elections Commission, even though there is no written policy stipulating this. A number of them have acquired expertise through their long work in the Commission and there are members, including the Chairperson of the Commission, whose service in the Commission has lasted for more than 10 years.<sup>364</sup> Therefore, Commission membership should be renewed twice and clear criteria to select commission members should be fair and ensure fair representation for all societal categories.

The law specifies the conditions that must be met to be a member of the Commission. These are: that s/he must be Palestinian, at least 35 years old, must have obtained a first university degree at a minimum, must have experience and competence, must be of good conduct and have no conviction in any electoral crimes, or crime or misdemeanour that breaches honour, must not be an employee or member in the management of any charitable or civil society organisation, and must not nominate her/himself for general or local elections.<sup>365</sup>

The Commission undertakes the appointment of the management body to assist it in performing its tasks independently and without interference from any other body. The personnel are qualified and have experience that enables them to manage the electoral processes. Many countries that have created independent electoral commissions seek to benefit from the experience and expertise of Palestine.<sup>366</sup> In spite of this it became apparent during the local elections in 2012 that there was a need for the existence of a legal team to support the Commission in taking decisions, as a result of the difficulties that appeared in rejecting and accepting the electoral lists.<sup>367</sup>

The Commission employees are divided into two categories, permanent and temporary. The permanent staff are managers of departments and sections, most of the employees in the central office and some of the employees in the electoral offices. There are 93 permanent employees.<sup>368</sup> Assistance is sought from the temporary employees during the days of balloting. They come from the Ministry of Education. This is in accord with an agreement signed by the Elections Commission with the Ministry that lays down terms for competence and neutrality for those who are appointed. During the period of registration and objection, there are two employees in each centre. One of them is from the Ministry of Education, and the other from the Elections Commission.<sup>369</sup>

The Commission conducts a continuous process of qualification and training of its teams and any human resources whose assistance it might seek in any electoral process, in addition to training the observers, agents of the political parties and others.<sup>370</sup>

364 Interview with Mr Arif Jaffal, Director General of the Arab World Observatory for Democracy and Elections (Al-Mirsad) on 23/6/2013, and Dr Ammar Al-Duwaik, the Former Executive Director of the Central Elections Commission on 8/7/2013.

365 See: Article 10 of the Decree Issuing Law Number 1 of 2007, regarding General Elections.

366 Interview with Mr Hisham Kuhail, the Executive Director of the Central Elections Commission, on 10/7/2013.

367 Interview with Mr Arif Jaffal, previous source.

368 Interview with Mr Muhammad Zakariya, In Charge of the Functions of the Director for Administrative Affairs in the Elections Commission, on 8/7/2013.

369 Ahmad Abu Diyya, Effectiveness and Strength of the Regime for Integrity in the Work of the Central Elections Commission, previous source, Page 4.

370 Interview with Mr Hisham Kuhail, previous source.

The Commission has the facilities necessary to enable it to perform its tasks effectively.<sup>371</sup> These include a central headquarters in the West Bank, a regional office in Gaza and 16 offices in the provinces, which operate as electoral offices. It has a data entry centre and polling stations are opened in any location the Commission considers appropriate. The Commission has a small number of means of transportation, and during electoral operations the Commission leases a sufficient number of vehicles to enable it to perform its tasks. It has an organised and institutional archive that contains all the electoral and administrative cases.<sup>372</sup>

The Central Elections Commission drafts its annual budget, which it submits to the Council of Ministers. It is included as an independent financial centre in the general budget of the Palestinian National Authority without discussion by the Council of Ministers. In each of 2012 and 2013 the Commission's budget amounted to 10,000,000 shekels. If a decision is taken to hold elections, the Commission sets out a special budget for this purpose. However the Commission requires effort and energetic follow-up to obtain its allocations.

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371 Interview with Mr Arif Jaffal, previous source.

372 Interview with Mr Hisham Kuhail, previous source.

## CAPACITY: INDEPENDENCE

### LAW

To what extent is the electoral management body independent by law?

**Score: 75 / 100**

The General Elections Law is the legal framework governing the work of the Central Elections Commission. It stipulates the formation of the Commission by means of a decree for a period of four years, unless the President of the PNA decides to reconstitute it before the end of its term. It consists of judges, academics and lawyers with experience. However the law does not deal with the situation of the end of membership of the Commission, specified by the Basic Law of the Commission as on death, resignation, dismissal or sickness.<sup>373</sup> This is considered insufficient to give the Commission independence and immunity, because the President is able to reconstitute the Commission by replacing any of its members at any time. Hence members of the Commission do not enjoy adequate immunity that enables them to perform their duties with neutrality and independence, without being subject to pressures.

Independence of the Commission derives from the Elections Law that grants it legal personality with financial and administrative independence and an independent budget that appears as a financial centre in the general budget.<sup>374</sup> The law furthermore strengthens the independence of the Commission by granting it the power to issue regulations without reference to the Council of Ministers.<sup>375</sup>

The Commission acts in accordance with the Elections Law and the Law for Elections to the Councils of Local Bodies, which specify the tasks and powers of the Commission and enable it to perform its work with neutrality and transparency, because it deals with the whole election process, and is granted the power to manage all aspects of the elections from registration to the declaration of the results.

The Elections Commission is divided into two basic parts. The Law for Elections and the Basic Law for the Commission specify the tasks of each part. The first consists of members of the Commission appointed by presidential decree as the body for supervision and monitoring. It has powers to appoint employees and advisers to work in its offices and powers to take the decisions necessary to prepare for elections and approve the opening of registration centres and polling stations, as well as centres for applications for nomination and the declaration of the preliminary and final results.<sup>376</sup> The Commission meets periodically once every month upon a summons from its Chairperson and is deemed to be permanently in session from the moment a call for elections is announced. It discusses and approves all the procedures necessary for the electoral process and certifies the decisions of the committee responsible for its policies.<sup>377</sup>

The second component of the Elections Commission is the executive branch of the Commission; the electoral administration. It consists of the office of the Elections Commission and regional offices that include employees appointed by the Elections Commission. Its function is to implement the decisions of the Elections Commission and perform the task of managing the elections, making the necessary preparations for the electoral processes and organising them under the supervision of the Commission.<sup>378</sup> The head of the elections department is an executive director appointed by a decision of the Elections Commission. The process of appointing employees takes place following the announcement in newspapers of standards to ensure equal opportunities in accordance with the Internal Regulation for Employees of the Elections Commission and the Law for Work under Special Contracts. The employees may be dispensed with and their services terminated by a decision of the Elections Commission, in accordance with the law, if their

373 Article 8 of the Basic Law of the Central Elections Commission, previous source.

374 Article 12 of the Decree Issuing Law Number 1 of 2007, Regarding General Elections.

375 Article 118 of the Basic Law of the Central Elections Commission, Previous Source. The Coalition for Accountability and Integrity, AMAN, National integrity system, Palestine 2009, Page 55.

376 See: Article 13 of Decision Number 1 of 2007 regarding General Elections and Article 5 of the Basic Law of the Central Elections Commission.

377 Article 6 of the Basic Law of the Central Elections Commission.

378 Article 11 of the Basic Law of the Central Elections Commission.

contract ends or they commit violations that call for their dismissal in accordance with the disciplinary regulation for employees of the Elections Commission. The Labour Law is not deemed adequate to protect employees from arbitrary removal.<sup>379</sup>

## PRACTICE

To what extent does the electoral management body function independently practice?

Score: 75 / 100

The Elections Commission is accorded a high level of trust and neutrality in its dealings with all parties. This is confirmed by reports of local and international monitoring bodies together with the political actors, the government and the public. Officials in the Commission adhere to neutrality and it has not been stated that any of the officials in the Commission have issued statements that are in conflict with the principle of neutrality in issuing political statements related to political action.<sup>380</sup>

The Elections Commission has been successful in preventing interference in its work. As an example the decision to call local elections specified a number of local bodies that would be included in the elections. However the Ministry of Local Government attempted to change the number of bodies by merging a number of them into a single body after the call for elections; the Elections Commission rejected this decision. Furthermore the Commission rejected a request from the Palestinian presidency to extend the voting period for one hour in the local elections on the pretext that there was a large number of voters outside polling stations. The polling stations were closed at the appointed time and the presidency accepted the decision of the Commission, commending it.<sup>381</sup> The Hamas Movement demanded the appointment of new employees in the Commission before allowing it to begin the process of registration of electors in the Gaza Strip. However this request or attempt was rejected by the Commission and the Commission used employees from the Ministry of Education in accordance with custom.<sup>382</sup>

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379 Interviews with Mr Arif Jaffal & Dr Ammar Duwaik, previous source.

380 The same source.

381 Interview with Mr Hashim Kuhail, previous source.

382 See the Ayyam Newspaper issued on 30/5/2012. "The Elections Commission rejects a request from Hamas to employ its personnel." <http://www.al-ayyam.com/article.aspx?did=192521&date=5/30/2012>.

## GOVERNANCE: TRANSPARENCY

### LAW

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

Score: 75 / 100

There are many legal provisions in the Elections Law that guarantee that the public can obtain information related to electoral processes. The law stipulates that the election process should be conducted with transparency and openness, that observers and the media should be able to monitor it at every stage, that a preliminary register of electors should be declared to enable objections, followed by the final register in the office of the constituency, with approval for applications for nomination, and publication of a preliminary list of the names of candidates for the presidency and lists and the candidates on them for objection, as well as publication of the final list in at least one daily newspaper.<sup>383</sup> The law requires that the agents of the party lists, candidates, observers and journalists should be able to attend the balloting and counting, and a copy of the accounting records should be published in the polling station, with publication of the preliminary results in the media within 24 hours.<sup>384</sup>

A financial and administrative report is published on its activities within three months of the date of declaration of the final results of the elections.<sup>385</sup>

There is no clear provision indicating the need for the Elections Commission or the political parties to publish details on the financing of political parties, or on the lists or opening of meetings of the Elections Commission to observers, the media and representatives of the candidates and lists.

### PRACTICE

To what extent are reports and decisions of the electoral management body made public in practice?

Score: 100 / 100

The Elections Commission publishes all its decisions, matters related to the electoral process, minutes of its meetings, the various activities of the Commission, the times for the electoral processes (registration, campaigning, polling and so on) on its website, and is diligent in ensuring transparency in all that it does, in all the stages of its work, starting from its financial policies to its procedures for employment, tenders, and the process for the registration of local and international observers, agents for the political parties and the media. It also publishes its financial reports and those of the candidates on its website and in its final report.<sup>386</sup> It holds press conferences regularly and discloses the agenda for its electoral processes a short time before starting them. The Commission has a centre to reply to the queries of citizens, the political parties, the observers and others, and the location of the registration centre can be found on the website.<sup>387</sup>

383 Articles 40 & 42 of the Decree Issuing Law Number 1 of 2007 Regarding General Elections.

384 Articles 89, 93 & 97 of the Decree Issuing Law Number 1 of 2007 Regarding General Elections.

385 Paragraph 3 of Article 12 of the Decree Issuing Law Number 1 of 2007 Regarding General Elections.

386 Ahmad Abu Diya, Effectiveness and Strength of the Regime for Integrity in the Work of the Central Elections Commission, Ramallah, the Coalition for Accountability and Integrity - AMAN, 2013, previous source, Page 7.

387 Interview with Mr Hisham Kuhail, previous source.

# GOVERNANCE: ACCOUNTABILITY

## LAW

To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

**Score: 75 / 100**

According to law the Elections Commission should prepare a financial and administrative report on its activities within three months of the date of declaration of the final results of elections and submits a copy of it to both the President of the PNA and to the Legislative Council.<sup>388</sup> Neither the law nor the regulation issued under it specify what should be included in the report, or the mechanism for the Legislative Council to discuss the report. As such, the relationship of the Legislative Council and the Executive Authority with the Elections Commission is not clear. The law grants the President the power to form the Elections Commission and to issue a decree setting the general election date.<sup>389</sup> The Council of Ministers has the power to set the date for elections to the councils of local authorities.<sup>390</sup>

The State Audit and Administrative Control Bureau Law states that public and civil society organisations, as well as similar organisations and institutions that receive assistance from the PNA or donors are subject to State Audit and Administrative Control Bureau monitoring.<sup>391</sup> As the Elections Commission is a public institution and is an independent financial centre within the general budget, it is subject to monitoring by the State Audit and Administrative Control Bureau.

The law grants citizens, political parties and blocs the right to object to decisions of constituency offices of the Elections Commission to the Commission, which must be submitted three days from notification of the decision. The Commission has three days to consider the objection.<sup>392</sup>

The Elections Law requires the formation of a court for electoral cases, consisting of a chairman and eight judges appointed by the Supreme Judicial Council, This court regularly sits with three of its judges, which can be increased to a minimum of five judges by a decision of the Chairman of the Court for important cases. The law grants the right to citizens, political parties and blocs to challenge decisions of the Commission before the court, includes a deadline for submitting an objection and for the court to decide the case.<sup>393</sup> It exempts challengers to election decisions from paying any fees.<sup>394</sup>

388 Article 12 of the Decree Issuing Law Number 1 of 2007 Regarding General Elections.

389 Articles 2 & 9 of the Decree Issuing Law Number 1 of 2007 Regarding General Elections.

390 Article 4 of the Law for Elections to the Councils of Local Bodies, number 10 of 2005, as amended.

391 Article 31 of the Law for the Financial and Administrative Monitoring Office, number 15 of 2004.

392 Articles 19 & 34 of the Decree Issuing Law number 1 of 2007 Regarding General Elections.

393 Articles 20, 21 & 25 of the Decree Issuing Law number 1 of 2007 Regarding General Elections.

394 Articles 14 & 25 of the Decree Issuing Law number 1 of 2007 Regarding General Elections.

## PRACTICE

To what extent does the EMB have to report and be answerable for its actions in practice?

Score: 50 / 100

The Elections Commission prepares two types of reports. The first are internal reports created by the executive office; the Elections Department. These are periodic reports to the Commission, for it to take appropriate decisions. The Chairman of the Commission is required to work full-time and be dedicated to the Commission.<sup>395</sup> Despite this, lines of communication between the Chairman of the Commission and the executive office are not specified and it is unclear where the powers of the Chairman of the Commission end and the powers of the Executive Director begin.<sup>396</sup>

The second type of report consists of external reports prepared by the Elections Commission for the President of the PNA and the Legislative Council. It has issued reports on the legislative and local elections, and has published them on its website. The reports contain all the issues and points of focus related to the electoral process, the decisions of the courts, reports of candidates, financial statements and other matters.<sup>397</sup> The Commission submits financial reports to the Ministry of Finance and the donor organisations setting out the work and activities it has performed, while an external accounting firm audits the accounting processes in the Commission and submits its report to the Ministry of Finance and to the Elections Commission. When projects are submitted by the Commission to donor organisations, at the request of the donor and pursuant to the agreement with them, audits are also carried out.<sup>398</sup>

There is no manual for complaints to the Elections Commission or a box for complaints in the Commission.<sup>399</sup> However every bloc or observer is able to submit a complaint to the Department for Electoral Affairs in the Elections Commission, which is the relevant body to receive complaints. The Commission deals with complaints at a number of levels. There are complaints that are handled in the constituency offices and there are complaints that are handled by the central committee (the Elections Department). There are others at the level of the members of the Commission, some of which can be referred to the Prosecutor General for the necessary legal action to be taken. The blocs and candidates have the possibility to go to court to challenge any decision taken by the Commission regarding a complaint.<sup>400</sup>

The Election Commission does not impose penalties or fines; this is within the scope of the judiciary. However the Commission requires the legislative blocs and candidates for the presidency to pay a guarantee of not less than \$10,000 or its equivalent in the currency circulating during the legislative elections, and a sum of 500 Jordanian dinars in local elections to ensure adherence to the removal of publicity after the elections. In the event of failure to adhere to this, the Commission deducts an amount for the removal.<sup>401</sup>

The Elections Commission holds regular meetings with the political parties and the media. There are meetings with public trustees to inform them of the plans and legal issues on the district and other levels. The Commission trains members of the political parties and blocs on electoral issues.<sup>402</sup>

An external firm audits the Elections Commission. However the Commission is not subject to monitoring by the State Audit and Administrative Control Bureau, even though the the State Audit and Administrative Control Bureau Law requires public and civil society organisations and institutions and similar institutions to be subject to it, and also stipulates that institutions that receive aid from the PNA or from donors are

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395 Interview with Mr Hisham Kuhail, previous source.

396 Interview with Dr Ammar Duwaik, previous source.

397 See: \_\_\_\_\_, Report on the Second Legislative Elections, 25 January 2006, Ramallah, the Central Elections Commission, 31 May 2006, interview with Dr Ammar Duwaik, previous source.

398 Ahmad Abu Diyya, Effectiveness and Strength of the Regime for Integrity in the Work of the Central Elections Commission, previous source, Page 7.

399 Interview with Mr Hisham Kuhail, previous source.

400 The Coalition for Accountability and Integrity, AMAN, the National integrity system, Palestine 2009, Page 59.

401 Interview with Mr Hisham Kuhail, previous source.

402 Previous source.

subject to its oversight.<sup>403</sup> There are those who consider that there is no need for monitoring by the office, 'in the context of the existence of an external auditor and the fact that the Commission prepares and publishes its reports and sends them to the relevant authorities.'<sup>404</sup>

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403 Article 31 of the Law of the Financial and Administrative Monitoring Office, number 15 of 2004.

404 Ahmad Abu Diyya, Effectiveness and Strength of the Regime for Integrity in the Work of the Central Elections Commission, Coalition for Accountability and Integrity - AMAN, previous source, Page 7.

## GOVERNANCE: INTEGRITY

### LAW

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

Score: 50 / 100

On the 3 March 2013 the Elections Commission approved a code of conduct for its members and began treating it as a guide for them. Its objective is to achieve the highest standards of integrity and transparency and to avoid anything that might adversely impact the integrity of the electoral process, while achieving the principles of neutrality and professionalism. The code espouses five basic principles for the ethical duties for the conduct of members of the Commission, these include: working with integrity, honesty and trustworthiness; maintaining the confidence of the citizens; neutrality of action and objectivity without bias or discrimination; ensuring accountability and transparency, in reliance upon the openness of the work of the Commission; and respect for the law.

The code includes a paragraph referring to: the need for continual disclosure of any personal interests that might conflict with the interest of the work: the use of the Commission's resources for the implementation of its tasks without personal objectives: not combining membership of the Commission with any other work that is in conflict with its functions: diligence in not exploiting membership to achieve personal, family, party political, or material interests: and not accepting any gifts, remuneration or donation.<sup>405</sup> The law deals with conflict of interest in the conditions that must be met by the chairperson and members of the Commission, through stating that a member of the Commission or the chairperson must not be, 'an employee or member of the management of any charitable association or civil society organisation,' must not nominate her/himself in any general or local elections, and must not participate in the electoral promotion of candidates while a member of the Commission.<sup>406</sup>

Neither the law nor the code contain any post-employment restrictions. For an example the Secretary General of the Commission, Dr Rami Al-Hamadallah, was appointed Prime Minister during his service in the Elections Commission and did not announce the appointment of a replacement within the legal period specified of two weeks.<sup>407</sup>

The law states principles and legal provisions that are sufficient to provide an appropriate capability to the Commission to conduct free and fair elections, such as counting in the polling station itself and attended by observers and representatives of the candidates. However the Elections Law that regulates the work of the Commission lacks clear principles on the need of members of the Commission to adhere to political neutrality. For example the law lacks provisions or conditions that stipulate that appointment to membership of the Commission shall only be for persons are independent or who have ceased their party political activity some years earlier.

The committee provides good services to the electors and various parties. It also provides civil and media education and enables voters to ensure registration of their names on the electoral roll and to know what is taking place during the electoral process.<sup>408</sup>

<sup>405</sup> Code of conduct of the members of the Central Elections Committee, <http://www.elections.ps/ar/tabid/1071/language/en-US/Default.aspx>

<sup>406</sup> Article 13 of the Decree Issuing Law Number 1 of 2007 Regarding General Elections.

<sup>407</sup> Article 11 of the Decree Issuing Law Number 1 of 2007 Regarding General Elections.

<sup>408</sup> Interview with Mr Arif Jaffal, Dr Ammar Al-Duwaik and Mr Hisham Kuhail, previous source.

## PRACTICE

To what extent is the integrity of the electoral management body ensured in practice?

**Score: 50 / 100**

The Elections Commission has still not issued a code of conduct for employees. Employees are however required to sign a commitment that they will adhere to integrity and neutrality as a condition of employment. However there are no post-employment restrictions or rules regarding gifts. An employee undertakes in her/his contract of work to perform the duties that are required by the nature of the work and during the hours of work prescribed by the Commission. They are also required to protect the material and intangible interests of the Commission, to dedicate their time and effort to performing the tasks entrusted to them, to safeguard the Commission's property, and to not use the Commission's property for their personal interests. Rules or stipulations do not require that an employee can be suspended from work on grounds related to neutrality or bias towards one of the blocs or candidates.

The code of conduct for members of the Commission contains an obligation to act to adopt a code of conduct for employees in the Commission however, to circulate it to them and to follow up on compliance. Despite this, the Elections Commission has still not issued the code for employees or written instructions stating the criteria and guarantees for integrity and neutrality among the Commission's employees. Nevertheless, the Commission requires that all those who apply to occupy a position in the executive office must sign a commitment that includes a requirement to work with integrity, neutrality and without bias towards any candidate or political party at the expense of another, or take any action that might damage the integrity of the electoral process or the neutrality or independence of the Elections Commission. The temporary contracts for employees contain a clause requiring them to adhere to neutrality in their work.<sup>409</sup>

The Commission has issued a regulation for disciplinary procedures for its employees that states the need for employees to ensure disciplined and professional action. To strengthen this, an explanation and clarification is given to employees of their duties and tasks when they are appointed.

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<sup>409</sup> Ahmad Abu Diyya, Effectiveness and Strength of the Regime for Integrity in the Work of the Central Elections Commission, previous source, Page 4.

## ROLE: CAMPAIGN REGULATION

Does the electoral management body effectively regulate candidate and political party finance?

Score: 25 / 100

There is no special law that regulates the financial affairs of candidates and political parties. The decree issuing the Law Regarding Elections (1/2007), not recognised in the Gaza Strip by the dismissed government, deals with this briefly and prohibits any electoral list or candidates in elections from obtaining funds for its electoral campaign from any non-Palestinian foreign or external source either directly or indirectly. It also prohibits the lists or candidates for the position of President from spending more than US\$1 million or its equivalent in the currency legally circulating, and every electoral list participating in the elections, or candidate participating in them, must submit a detailed statement of all sources of funding it has obtained and the amounts it has spent to the Elections Commission within a maximum of one month following the declaration of the results. The Elections Commission may request an audit of the report submitted by a certified auditor of accounts, and in the event that there are irregularities related to this, the Elections Commission can refer the case to the judiciary.<sup>410</sup>

The Elections Commission lacks adequate mechanisms for monitoring the expenditure on publicity and this is one of the flaws that became apparent in the elections in 2006. The Commission needs to develop regulations and procedures that will enable it to monitor this effectively.<sup>411</sup> There are also no adequate legal provisions to disclose sources of funding, and neither the Elections Commission nor the Council of Ministers has issued a regulation enabling the Commission to do this. In this area, the role performed by the Commission does not meet the required standard.<sup>412</sup>

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<sup>410</sup> Articles 68 & 69 of Decree number 1 of 2007 Regarding General Elections.

<sup>411</sup> Interview with Dr Ammar Duwaik, previous source.

<sup>412</sup> Interview with Mr Arif Jaffal and Dr Ammar Duwaik, previous source.

## ROLE: ELECTION ADMINISTRATION

Does the EMB ensure the integrity of the electoral process?

**Score: 75 / 100**

The Elections Commission guarantees that voters can exercise their right to register and vote within the Palestinian territories. The Commission covers all locations and population regardless of their associations and places of residence.

The Elections Commission adheres to the demands of integrity in the electoral process, the first stage of which is registration of the voters, publication of the register and providing opportunity for objections. The final register is then published and is used as a basis for the election. Within this context the Election Commission adheres in all the electoral processes that it supervises to the requirements of integrity. No instances have been identified of large number of voters being unable to vote for reasons related to errors in the electoral roll or the inadequacy of the time allocated for polling. However some monitoring reports related to local elections in 2012 indicated that the Central Elections Commission did not take into account the needs of voters with special needs and the elderly when they chose polling stations located on the second floor of buildings, leading to a number of them being denied the right to vote.<sup>413</sup>

The Elections Commission adopts a policy of openness in dealing with observers and journalists and permits them to be present at polling stations, attend the voting processes and counting, and study the counting records. 92% of those whose opinions were surveyed outside the polling stations indicated that the election process was transparent and all the observers from the Coalition for Accountability and Integrity - AMAN, stated that the Elections Commission had permitted the presence of local observers in polling stations in the local elections that took place in 2012 without any obstacles. 86% of them stated that they had attended the process for counting the votes and 95.5% of the observers who attended the counting of the votes stated that they had studied the counting report.<sup>414</sup>

Counting takes place in the same polling station as the vote and a record is prepared in four copies that record the names and agents of the candidates or the lists that attended the counting process. Every record is signed by the leader and team at the polling station and the candidates or lists or their agents or representatives present who wish to sign. A copy of the record is published in the polling station and the remaining copies are sent to the office in the constituency. All the records are stamped officially, using the Commission's stamp.<sup>415</sup> They are collected and the results are checked. After that they are sent to the head office where the votes are combined precisely and effectively and the final results of the general elections are declared.

The Commission adopts additional procedures to safeguard the electoral process and prevent forgery and falsification. For example it uses paper allocated for the polling that has been imported from abroad bearing secret marks and the Commission adopts procedures adequate to safeguard the polling papers and stamps of every polling station.<sup>416</sup> The law requires a design of seals that is difficult to imitate and these are held in an appropriate location. The law also deems falsification of ballot papers and electoral records to be crimes punishable under the law by detention for a period not exceeding one year and/or a fine of not less than \$1,000 or its equivalent.<sup>417</sup>

The Elections Commission adopts an open policy with the public and every electoral process is preceded by an awareness campaign using various methods, included printed material distributed on-site in the constituencies, advertisements in the press and on radio and television stations. The Commission also provides civil society organisations with publicity material to assist them in spreading awareness and information.<sup>418</sup>

413 Isam Abdeen, Monitoring Report of the Al-Haq Institute on Elections for Local Councils in 2012, the Al-Haq Institute, 2012, Page 13.

414 Ahmad Abu Diyya, previous source, Page 11.

415 See: Decree Issuing Law number 1 of 2007 Regarding General Elections.

416 Interview with Mr Hisham Kuhail, previous source.

417 Articles 77 & 112 of the Decree Issuing Law number 1 of 2007 Regarding General Elections.

418 Interview with Mr Arif Jaffal, previous source.

**INDEPENDENT COMMISSION FOR  
HUMAN RIGHTS (OMBUDSMAN)  
55 / 100**

## SUMMARY

The Independent Commission for Human Rights is considered an independent institution; its work, periodic reports, activities, and appointment of its employees are not affected by any political interference. The commission has resources to carry out its activities, as its budget is funded to a large extent from donor agencies. It presents its reports to the President of the PNA, the prime minister and the head of the legislative council, but is not accountable to any of them. The commission has the respect of civil society organisations, political parties and the public.

The commission publishes its action plan, budget and work, but does not publish the decisions taken by its council of commissioners and executive bodies, as well as some internal issues. There are no legal provisions that regulate public access to information.

No code of conduct has been adopted that regulates its rules of work, conflict of interest, and gifts and hospitality. There are also no clear rules on asset disclosure for the commissioner general or the members of the commissioners' council or employees. In practice they do not declare their assets. There are no restrictions on engaging in political activities and communication confidentiality, except upon permit.

The commission monitors the extent of the commitment to protecting human rights contained in laws of the three government authorities (the executive, legislature and judiciary), public and private institutions and detention centres. It also undertakes raises awareness of laws and monitors national legislation and policies for compliance with international human rights standards.

### Structure and organisation

The Independent Commission for Human Rights was established by a presidential decree issued by the late president, Yasser Arafat, in his capacity as Chairman of the Palestine Liberation Organisation, on 30 September 1993. This decree was subsequently published in the Palestinian Official Gazette, n. 59 of 1994.<sup>419</sup>

In the law, the tasks and responsibilities of the Commission are specified as follows: 'to monitor and ensure the availability of the requirements for the maintenance of human rights in all Palestinian laws, legislation and regulations, and in the work of all departments, agencies and establishments in the State of Palestine and the Palestine Liberation Organisation.' The Commission began to engage in its work at the beginning of 1994.

Article 31 of the Basic Law enshrines the formation of the Commission, stating, 'an independent commission for human rights will be established by a law, and the law will specify its structure, functions and jurisdiction. It will submit its reports to the President of the Palestinian National Authority and the Palestinian Legislative Council.'

In the middle of 2005 the Commission submitted a draft law regulating its work to the Legislative Council through one of its members. This was accepted for general discussion. However discussion of it was not completed, as the work of the Council ceased following the elections in 2006 the resulting division in Palestine in 2007.

The Legislative Council in the Gaza Strip, through the Change and Reform Bloc was however not satisfied with this situation and issued an Independent Commission for Human Rights Law in 2010. This law has not been activated in reality due to the division and the location of the headquarters of the Commission on the West Bank, with the Gaza Strip presence being a branch that treats the government in the Gaza strip as the de facto authority.

The commission monitors the extent of the commitment to protecting international human rights standards by the three government authorities (the executive, legislature and judiciary), by public and private institutions and in legislation and agreements made by the PNA. The Commission also spreads human rights awareness and culture among the public and officials. It concentrates its programmes on the categories most subject to violations of human rights, and/or those categories that require an arrangement that will strengthen their knowledge of human rights. The Commission also assists in supporting institutions within civil society

419 Guide to Complaints in the Independent Commission on Human Rights, 2012, Page 5. This guide is not available for everyone. It was provided to the researcher for research purposes only.

focusing on spreading human rights awareness and culture. It receives complaints from individuals and groups in the event that rights are violated and works to remedying these violations.<sup>420</sup>

The granting of Palestine the position of an observer state in the United Nations by decision of the General Assembly in November 2012 has strengthened the importance of the Commission in relation to the additional responsibilities arising from this new situation in the field of protecting human rights in Occupied Palestine.<sup>421</sup> This gives it the opportunity to submit applications for membership of specialist agencies of the United Nations and international organisations, programmes and funding bodies.<sup>422</sup>

OVERALL PILLAR SCORE: 55 / 100			
Category	Index	Law	Practice
Capacity 67 / 100	Resources	-	75
	Independence	50	75
Governance 42 / 100	Transparency	50	50
	Accountability	25	50
	Integrity	25	50
Role 75 / 100	Investigation	75	
	Promoting good practice	75	

420 See the website of the Commission: <http://www.ichr.ps>.

421 Cecelia Karlstidit, John Bees, Khaleel Ansara, External Assessment Report of the Palestinian Independent Commission for Human Rights, the Sixth Final Report, May 2013, Page 5.

422 \_\_\_\_\_, The State of Human Rights in the Territories of the Palestinian National Authority, 1 January to 31 December 2012, 18th Report, Ramallah, the Independent Commission for Human Rights, 2013, Page 17.

## CAPACITY: RESOURCES

### PRACTICE

#### SCORING QUESTION?

Score: 100 / 100

The Palestinian Commission for Human Rights has adequate resources to perform its activities, particularly as its budget relies largely and is based on donors who provide finance for long terms of between three and five years.<sup>423</sup> This provides the Commission with a situation of financial stability that allows it to execute its objectives in full.<sup>424</sup> The Director of the West Bank Programme at the Independent Commission for Human Rights notes that the financial resources are handled strategically every three years to meet the Commission's requirements.<sup>425</sup>

Since June 2011, the donors have contributed approximately \$1.9 million to the annual budget of the Commission, which is 95% of its total budget, whereas the Palestinian National Authority finances 5% of the Commission's budget, which is \$100,000. The Donors Association consists of the governments of Sweden, Norway, Denmark, Holland and Switzerland. Each of these countries provides its support to the Commission within the context of a bilateral arrangement between them.<sup>426</sup> As to financial continuity, the Commission, through the Donors Association, has been able to achieve a stable financial position to some extent and achieved its budget forecast in both the short and long term.<sup>427</sup> It is also noted that the Palestinian Authority has not met its financial obligations to the Commission since 2011.<sup>428</sup>

The number of employees is 60 on the West Bank and Gaza Strip in addition to 14 employees on short-term contracts.<sup>429</sup> There is also stability in human resources to a large degree, in that there are employees in the Commission who have worked there for more than 10 or 15 years.<sup>430</sup> Also noted is the resignation of a number of employees in the last five years for personal reasons or reasons related to the Commission or reasons related to the work. These include those who have obtained senior positions in local institutions and/or international institutions operating within Palestine.<sup>431</sup> The external assessment of the Commission also notes that the Commission in the Gaza Strip needs an allocation of greater human resources.<sup>432</sup>

Now that the Commission has been working for 19 years in the field of human rights, it is considered as a house of expertise in this field on the local, Arab and international levels, as it has many internal activities and activities at an Arab, regional and international level.<sup>433</sup> It has provided this expertise in Iraq, Sudan, Jordan, Qatar, countries in East Asia and others. It also has activities it undertakes that qualify it to be a source of expertise and consultative body to institutions in the PNA.<sup>434</sup>

The Commission has made urgent efforts in the field of the development of the skills of its employees and has participated in many training courses and conferences. This has strengthened the capabilities of the employees working in the Commission.<sup>435</sup> The training relies upon a plan to enhance the abilities of the team working within the establishment that is in conformity with the strategic plan of the Commission and includes an item for enhancing the financial, educational and cultural capabilities of the team and its training and skills. Based on this plan, the Commission's team is developed at all administrative, legal and executive levels.<sup>436</sup>

423 Interview with Mr Musa Abu Daheem, Director of the West Bank Programme in the Independent Commission for Human Rights, on 2/6/2013.

424 Interview with Mr Majid Al-Aroui, a media worker and specialist in human rights, on 15/5/2013.

425 Interview with Mr Musa Abu Daheem, previous source.

426 External Assessment Report of the Palestinian Independent Commission for Human Rights, the Final Report, 6 May 2013, Page 11.

427 External Assessment Report of the Commission, previous reference, Page 39.

428 External Assessment Report of the Commission, previous source.

429 External Assessment Report of the Palestinian Independent Commission for Human Rights, previous source, page 10.

430 Interviews with Mr Musa Abu Daheem and Mr Majid Al-Aroui, previous source.

431 Interview with Mr Musa Abu Daheem, previous source.

432 External Assessment Report on the Commission, previous source, Page 60.

433 Interview with Mr Musa Abu Daheem, previous source.

434 Interview with Mr Musa Abu Daheem, previous source.

435 Interview with Mr Majid Al-Aroui, previous source.

436 Interview with Mr Musa Abu Daheem, previous source.

## CAPACITY: INDEPENDENCE

### LAW

To what extent is the ombudsman independent by law?

Score: 50 / 100

There are requirements for appointments to positions of employment; through advertisements and interviews. However these criteria require clarity, especially in relation to the formation of interview and appointments committees, with the administrative and financial regulations requiring continual review. Regarding the Commissioner General and Board of Commissioners, there are internal regulations for the monitoring of their work which comply with international norms. However they themselves prepared and ratified them without the law in place, raising a question of the clarity of the criteria for the method of selection and appointment. Agreement has been reached to replace half the Board of Commissioners every two years until a law is passed.<sup>437</sup>

The Commissioner General is selected at the annual meeting by the Commissioners and appointed for a period of four years, renewable once. The selection is internal among the members of the Board of Commissioners and may be by agreement or a majority of voters. However there is no clear criterion as to how the Commissioner General is selected, elected or nominated.<sup>438</sup> The salary of the Commissioner General is approximately in line with the salary of the Prime Minister of the PNA.<sup>439</sup> There are no specific restrictions on the political activities of the commission's commissioner general.<sup>440</sup>

There are no legal provisions to guarantee that the Commission is not prosecuted in a criminal prosecution for the work it performs. There are also no provisions that subject the activities of the Commission to judicial review in the courts. The Commission could present a challenge in the courts to enhance the powers granted to it under the law.

### PRACTICE

To what extent is the ombudsman independent in practice?

Score: 75 / 100

In practice the Commission is an independent body, as evidenced by its periodic reports and activities. The Director of the West Bank programme in the Commission considers that throughout his 12 year period of work in the Commission, no official claim has been made that it does not enjoy independence, integrity or neutrality, with the exception of a few commentaries. As such, the Commission is able to operate professionally and without bias.<sup>441</sup>

Likewise there is no explicit political interference in the work of the Commission. However it is believed that the Commission has been subject to pressure in issuing some of its reports, for example, a report related to the killing of a youth in the Al-Najah University, following which the Commissioner was subjected to a direct threat from unknown people. The university administration brought a legal action and the contents of the report were discussed at the highest Palestinian political levels in the presence of the Board of Commissioners. All of this can be classified as pressure on the Commission to refrain from involvement in contentious issues.<sup>442</sup>

437 Interview with the lawyer Mr Musa Abu Daheem, previous source.

438 Interview with the lawyer Mr Musa Abu Daheem, previous source.

439 Interview with Dr Azmi Al Shuaibi, Commissioner of the Coalition for Accountability and Integrity - AMAN, on 5/6/2013.

440 Interview with Mr Majid Al-Aroui, previous source.

441 Interview with the lawyer Mr Musa Abu Daheem, previous source.

442 Interview with Mr Majid Al-Aroui, previous source.

There has been no influence on the appointments of employees. Appointments are made based on criteria, interviews and committees with clear standards. The Commission's activities take place in accordance with its strategic plan, which is prepared every three years. The commission conducts many joint activities with the security services and organs of the PNA; this has no negative impact but rather acts positively on these bodies. It should be noted that criticism has been made about individual activities, but in general there is no interference in this regard. Regarding

complaints, reports indicate no pressure has been put upon complainants to withdraw complaints and no threats have been made, although rarely there are unreported cases of this occurring.<sup>443</sup>

The external assessment report notes, "everyone in the government and civil society organisations who were met by the assessment team were unanimous that the Commission is independent and neutral. Some considered that the situation was not so, but that the developments that have taken place in the last year leave no scope for doubt even though there remain some remnant issues with respect to the security services that are extremely sensitive. The environment in which the Commission operates imposes massive challenges for it to ensure its independence and neutrality. It must be independent and neutral in all its actions and activities and ensure that this independence and neutrality is visible to the divided partner bodies".<sup>444</sup>

During 2010, 2011 and 2012, the Commission received 3,185, 2,876 and 3,828 complaints respectively.<sup>445</sup> From the time it was established until now the Commission has received tens of thousands of complaints in various fields, indicating that there is no fear of revenge, threats or restrictions on complaining.<sup>446</sup>

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443 Interview with the lawyer Mr Musa Abu Daheem, previous source.

444 The External Assessment Report of the Independent Commission, previous reference, Pages 31-32.

445 The Annual Report of the Independent Commission for Human Rights for 2012, Page 166.

446 Interviews with Mr Musa Abu Daheem and Mr Majid Al-Aroui, previous source.

## GOVERNANCE: TRANSPARENCY

### LAW

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ombudsman?

Score: 50 / 100

There are no rules providing for the public to obtain information or receive replies in response to their complaints.<sup>447</sup> The public are able to study information related to the Commission through its reports, on its website and through its daily updates however. Likewise there is nothing to specify how a citizen can obtain information. There are two types of information held by the Commission: general information that can be obtained by simple procedures, and information that has a measure of privacy, especially regarding citizen complaints. Most complaints take place based on specific procedures, but in general a citizen and researcher have a right to obtain information. Nevertheless if a citizen wishes his complaint to be kept confidential, this is respected.<sup>448</sup>

There is also nothing regulating the concept of confidentiality of complaints. For example legally the complainant is not questioned in the environment in which the complaint is made on paper, if the citizen wants the Commission to follow up on this complaint through its mechanisms or if s/he only wants partial or no follow up. As soon as the complaint is made, the information becomes available to the extent that the complainant approves and the Commission receives information from the complainant, from the witnesses and from the victims related to violations of the law and maintains the confidentiality of any information that must be withheld, to the extent that publication of this information would expose the complainant to risk in providing this information. There are also no criteria specifying which information is confidential, which is open and what determines the confidentiality of information. As the Commission is a grievance office, whose basic function is to receive complaints, there should be a regulation specifying this.<sup>449</sup>

There is a clause in the regulation for complaints used within the Commission related to the confidentiality of information regarding complaints, but this may not be read without permission.<sup>450</sup>

There are also no rules specifying the open disclosure of assets of the Commissioner, members of the Board of Commissioners or employees within the Commission. The situation is similar in relation to rules governing the inclusion of citizens in the Commission's activities, especially activities related to decision-making.<sup>451</sup>

447 Interview with Mr Majid Al-Aroui, previous source.

448 Interview with the lawyer Mr Musa Abu Daheem, previous source.

449 Interview with Mr Majid Al-Aroui, previous source.

450 Interview with Mr Musa Abu Daheem, previous source

451 Interview with Mr Majid Al-Aroui, previous source.

## PRACTICE

To what extent is there transparency in the activities and decision-making processes of the ombudsman in practice?

Score: 50 / 100

The Commission's plan, balance sheet and work are published. It does not publish the decisions taken by the Board of Commissioners, executive organs and some internal bodies.<sup>452</sup>

The annual report published by the Commission sets out adequate details of the work performed by the Commission, and the website ([www.ichr.ps](http://www.ichr.ps)) provides all the activities, data, information and reports issued by the Commission.

Participation by the public in the Commission's activities depends upon the nature of the activities in which people from outside the Commission are included. The nature of the participation focuses on a particular activity or attending, representing or monitoring an action, which comes with different levels for participation. Sometimes civil society organisations form part of the Commission's activities, as a partner, monitor or coordinator, depending upon the type of activity.<sup>453</sup> However there is no participation in the drafting of the Commission's general policies from outside the board of commissioners.<sup>454</sup>

The Commission participates in three special projects following up on people with disabilities, women and children. This is a starting point for participation in matters related to economic, social and cultural rights. However it is still too early to assess the experience, as two of these initiatives were launched only at the end of 2012.<sup>455</sup>

The Commissioner does not disclose his financial assets, as there are no legal provisions requiring him to do so. Asset declarations are considered as documents belonging to the Commission, are not published on the website or in annual reports. The Commission has published its full balance sheet only once, in the first annual report. At the beginning of the first year of its formation it published its financial report in full within its first annual report. A summary of the Commission's balance sheets are currently disclosed in its annual reports.<sup>456</sup>

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452 Interview with the lawyer Mr Musa Abu Daheem, previous source.

453 Interview with the lawyer Mr Musa Abu Daheem, previous source.

454 Interview with Mr Majid Al-Aroui, previous source.

455 The External Assessment Report of the Independent Commission, previous source, Pages 19-22.

456 Interview with Mr Majid Al-Aroui, previous source.

## GOVERNANCE: ACCOUNTABILITY

### LAW

To what extent are there provisions in place to ensure that the ombudsman has to report and be answerable for its actions?

**Score: 25 / 100**

There is no body to which the Commission is responsible. It submits its reports to the President of the PNA, to the prime minister and to the president of the Legislative Council. However it is not answerable to any one of them. It is not therefore a parliamentary grievance office answerable to the Legislative Council and nor a presidential establishment answerable to the president.<sup>457</sup> There is also currently no state body to which it submits information on its activities,<sup>458</sup> nothing to compel the Commission to submit its annual reports on a specific date, and there no period for submission of information. Furthermore there are no provisions stating the need for the Commission's reports to be considered or discussed and there are no deadlines for the Commission to submit information and reports. Legal action was brought against the Commission on one occasion by the Al-Najah University.<sup>459</sup>

There are also no legal provisions guaranteeing that the Commissioner General of the Commission and its Commissioners are not prosecuted in a criminal case.

### PRACTICE

To what extent does the ombudsman report and is answerable for its actions in practice?

**Score: 50 / 100**

The Commission submits an annual report on the state of human rights in Palestinian territories in which it records its achievements and violations of human rights to the President of the Palestinian Authority, the head of government and the legislative council. The Commission is subject to monitoring by the State Audit and Administrative Control Bureau - a report was prepared during an examination of the criteria for internal auditing and it obtained a mark of 68.8% in 2010. Following that an internal auditor was appointed for the Commission.<sup>460</sup>

457 Interview with Mr Majid Al-Aroui, previous source.

458 Interview with the lawyer Mr Musa Abu Daheem, previous source.

459 Interview with the lawyer Mr Musa Abu Daheem, previous source.

460 Interview with Mr Musa Abu Daheem, previous source.

## GOVERNANCE: INTEGRITY

### LAW

To what extent are there provisions in place to ensure the integrity of the ombudsman?

**Score: 25 / 100**

The Administrative and Financial Regulation includes rules to guarantee integrity in the Commission.<sup>461</sup> There is no code of conduct however setting out the rules for a conflict of interests and there are no rules regarding gifts. Likewise there are no restrictions on commissioners and employees engaging in political activities, there is nothing to regulate the disclosure of financial assets, and nothing on conflict of interest.

There is a draft code of conduct, but this has not been confirmed and approved by the Board of Commissioners. This sets out the rules for conduct, rules for work and conflicts of interest and gifts. In the draft code there are also restrictions on engaging in political activities, rules on the confidentiality of communications, and requiring communication with those who seek assistance.<sup>462</sup> There are internal instructions for employees regarding the relationship with citizens regarding neutrality and objectivity.<sup>463</sup>

### PRACTICE

To what extent is the integrity of the ombudsman ensured in practice?

**Score: 50 / 100**

There is no code of conduct setting out the mechanisms for integrity, as stated above. Commissioners do not publish their financial assets and do not record gifts and hospitality.<sup>464</sup>

Integrity in the Commission is guaranteed in practice to the maximum possible extent, especially as the Commission operates to monitor establishments within the PNA. However the Commission has not trained its employees on issues of integrity.<sup>465</sup> Furthermore there are no cases of violation of ethical standards and the Commission has the lowest proportion of dismissal of employees. The maximum penalty that can be imposed on a person is a notice if he has acted improperly or a warning if he has stopped working or not adhered to working hours. There is no penalty imposed for a failure of integrity.<sup>466</sup>

461 Interview with the lawyer Mr Musa Abu Daheem, previous source.

462 Interview with the lawyer Mr Musa Abu Daheem, previous source.

463 The National Integrity System in Palestine, 2009, the Coalition for Accountability and Integrity - AMAN, in Cooperation with the International Organisation for Transparency, Page 101.

464 Interview with Mr Majid Al-Aroui, previous source.

465 Interview with Mr Ghandhi Al Rabi, Director of the Department for the Monitoring of Legislation and Public Policies, 4/6/2013.

466 The previous source.

## ROLE: INVESTIGATION

To what extent is the ombudsman active and effective in dealing with complaints from the public?

Score: 75 / 100

The procedures for submitting a complaint to the Commission are simple and straightforward, the Commission has well-distributed branch offices and the public are easily able to reach them.<sup>467</sup> The Commission has started to open small offices in Hebron, Bethlehem, Jenin and Tulkarm to make it easier for citizens to submit complaints within their areas. In the Gaza Strip two offices have been opened, one in North Gaza and one in South Gaza. In cases where the complainant cannot reach the commission then the researcher, “the commission employee,” can go to him.

The Commission is extremely active and effective, evidenced by an ever-increasing number of complaints it receives and its maintenance of its high response rates. This indicates the confidence that citizens have in submitting complaints to the Commission.<sup>468</sup>

According to the annual report of the Commission for 2012, the number of complaints increased by 309 above the figure for 2011 (3,185 compared to 2,876 complaints), amounting to an increase of 10%.<sup>469</sup> The rate of replies to correspondence from the Commission was 35% and 33% of the total number of complaints in the 2011 and 2012 respectively. This means that the response of the authorities on both the West Bank and Gaza Strip is still low.

The Commission conducts investigations on its own initiative, such as a report investigating the facts surrounding the death of Akram Mansour and Haitham Omar in PNA prisons.<sup>470</sup> However some commentators state that the Commission does not have the authority to investigate an issue without receiving a complaint. Its role is closer to mediation than it is to investigation.<sup>471</sup>

It was stated in the external assessment of the Commission for 2013 that the Commission is effective in the field of complaints, but its investigation would be more beneficial if it granted its branch offices greater powers, especially as the mechanism for the receipt of complaints for these offices is successful and built on a clear foundation.<sup>472</sup>

A relative difference is observed in relation to the execution of recommendations of the Commission by public institutions. Some respect them and adopt them, whereas others do not. There is no binding mechanism for acceptance of these recommendations or even revealing the reply in the event that they are not adopted.<sup>473</sup> In one respect, this is caused by the absence of the Legislative Council, which should discuss the results of the Commission’s annual report and hold the government accountable for violations. The absence of its role has adversely impacted the work of the Commission.<sup>474</sup>

Even though there are no public opinion polls indicating the extent or level of confidence the public have in the Commission, a large part of the public has confidence in the work of the Commission and its achievements, which is deemed an element of strength.<sup>475</sup> Furthermore the Commission has gained the respect of civil society organisations and the political parties.<sup>476</sup>

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467 Interviews with Mr Ghandhi Al Rabi and Mr Majid Al-Arouri, previous source.

468 Interview with Mr Ghandhi Al Rabi, previous source.

469 The Annual Report of the Independent Commission for 2012, previous reference, Page 166.

470 Interview with Mr Ghandhi Al Rabi, previous source.

471 Interview with Mr Majid Al-Arouri, previous source.

472 External Assessment Report of the Commission, previous reference, Page 17.

473 Interview with Mr Majid Al-Arouri, previous source.

474 Interview with Mr Ghandhi Al Rabi, previous source.

475 Interview with Mr Majid Al-Arouri, previous source.

476 Interview with Mr Ghandhi Al Rabi, previous source.

The Commission has had a programme of spreading awareness of its services to improve public knowledge about it for a number of years.<sup>477</sup> This includes meetings and workshops in marginalised locations and remote villages.<sup>478</sup> The Commission is active and effective in spreading awareness of ethical conduct, human rights and laws within the precincts of the government and governmental bodies, and among the public.<sup>479</sup>

The Commission does not have the right to summon witnesses or investigate, nor does it have the function of a judicial police body. However the Commission has presented cases in the Supreme Court of Justice as a litigant against the government and officials.

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<sup>477</sup> Interview with Mr Majid Al-Aroui, previous source.

<sup>478</sup> Interview with Mr Ghandhi Al Rabi, previous source.

<sup>479</sup> Interview with Mr Ghandhi Al Rabi, previous source.

## ROLE: PROMOTING GOOD PRACTICE

To what extent is the ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?

**Score: 75 / 100**

The Commission observes the extent of adherence by the executive, legislature and judiciary, as well as public and private bodies and detention centres, against the human rights standards listed in Palestinian laws and in the work of various departments, organs and establishments of government. The scope of its work extends to include dealing with cases and citizen complaints of human rights violations by the executive. It spreads awareness of the law, and monitors legislation and national policies for compliance with international human rights standards.<sup>480</sup>

The Commission welcomes constructive criticism and replies positively.<sup>481</sup> However the effectiveness of monitoring is still weak, due to an absence of programmes and mechanisms for monitoring the processing of complaints it receives.<sup>482</sup> The Commission noted in its strategic plan the need for it to play the role of a mediator between the authorities and civil society organisations. However these institutions do not consider that the Commission has played this role between the two parties in the West Bank and Gaza Strip, while there are a number of examples of mediation and involvement of civil society organisations with the authorities in the West Bank and in the Gaza Strip in support of the Commission.<sup>483</sup>

Awareness campaigns target the public, aiming to increase awareness, whereas training programmes are with officials as their objective is to change conduct. Recommendations are continually being presented through meetings, special reports and annual reports. Monitoring is of prisons, detention centres and other places of detention, of courts, and of the treatment of marginalised groups.<sup>484</sup>

The Commission assesses the implementation of its results and recommendations through its annual reports. For example, in the current annual report it recorded recommendations that were repeated from previous years and monitored recommendations not implemented or adopted, in Annex 3: 'Regarding the reality of the Commission's recommendations in its reports for 2010, 2011 and 2012'. In this annex, 41 recommendations were compared with 2010 and 2011 to determine the extent to which the authorities adopted the Commission's recommendations. It was found that seven recommendations had been adopted and applied in full out of a total of 41 recommendations, whereas nine recommendations were adopted in part and 25 recommendations were not adopted.<sup>485</sup>

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480 <http://www.ichr.ps/ar>.

481 Interview with Mr Gandhi Al Rabi, previous source.

482 Interview with Mr Majid Al-Aroui, previous source.

483 The External Assessment Report on the Commission, previous source, Page 30.

484 Interview with Mr Gandhi Al Rabi, previous source.

485 The Annual Report of the Independent Commission for 2012, Pages 224-229, previous source.

**The State Audit and Administrative  
Control Bureau**

**56/100**

## SUMMARY

The State Audit and Administrative Control Bureau has reasonable legal provisions to protect its independence; the head and deputy head of the bureau enjoy immunity and cannot be dismissed for any reason except by absolute majority vote of the legislative council. It has prevented other institutions from interfering in its work. The monitoring powers of the bureau over public institutions are wide. However misunderstandings of independence by the bureau officials and the executive authority, has on occasion weakened the efficiency and role of the bureau in enhancing the NIS.

The bureau publishes annual reports, as well as summaries from them on occasion, and quarterly reports on its website, but bureau staff do not consider themselves authorised to disclose information and have concerns about publishing information. This is a result of the traditional mentality that is governed by a culture of confidentiality, meaning that information is the property of the senior officials and disclosing needs a decision from the high ranking leadership of institutions. The bureau had issued a professional code of conduct that includes rules on conflict of interests and gifts, but it is not fully activated.

The State Audit and Administrative Control Bureau practices supervision on administrative bodies through inquiries, assessments and supervisory visits for the purpose of a comprehensive audit and for follow-up to complaints, media stories or press reports that deal with issues of negligence, carelessness, mismanagement or abuse of authority. It also attends tender procedures of these public bodies as an observing member. The bureau's recommendations are not mandatory however for the relevant institutions.

### Structure and organisation

The State Audit and Administrative Control Bureau was established to implement the provisions of the Palestinian Basic Law pursuant under Article 96. Its work is regulated by the special law for it (15/2004). It has a special budget included within the general budget of the PNA and enjoys an independent legal personality to engage in its work. The law makes the bureau an independent agency that has powers to publish its reports, with the law stating it is an independent legal personality, with a special budget included within the general budget of the PNA (Article 2).

The Bureau performs its financial and administrative monitoring functions, through instructions and guidance to the bodies subject to monitoring. It does so by assessing their performance, with the aim of enabling them to achieve competence and effectiveness in performance.<sup>486</sup>

It consists of a chairperson of the bureau, deputy chairperson, a director general, a number of administrative units and general monitoring departments. The PNA is required to provide the necessary resources and budget for the bureau to enable it to perform its work with professionalism, efficiency and independence.

The chairman of the office is appointed by a decision of the President of the PNA pursuant to a nomination from the Council of Ministers, and this appointment is ratified by the Legislative Council (Article 4). If the Legislative Council refuses to ratify the nominated person, the President of the PNA should submit an alternative within two weeks of the date of the refusal (Article 5). The chairman of the bureau, his deputy, and the director general of the office enjoy immunity for all the work they perform related to implementation of their tasks (Article 11).

It is prohibited to interfere in any work of the bureau, and all the bodies subject to monitoring by the bureau are required to co-operate fully in everything requested of them by them (Article 12). The chairman of the bureau may not be dismissed for any reason without an absolute majority vote of the Legislative Council (Article 10).

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<sup>486</sup> See the following website: [http://www.saacb.ps/index\\_page.aspx](http://www.saacb.ps/index_page.aspx).

**OVERALL PILLAR SCORE: 56 / 100**

<b>Category</b>	<b>Index</b>	<b>Law</b>	<b>Practice</b>
<i>Capacity</i> 58 / 100	Resources	---	50
	Independence	75	50
<i>Governance</i> 46 / 100	Transparency	75	50
	Accountability	50	50
	Integrity	75	50
<i>Role</i> 50 / 100	Effective financial audits	50	
	Detecting and sanctioning misbehaviour	75	
	Improving financial management	25	

## CAPACITY: RESOURCES

### PRACTICE

To what extent does the audit institution have adequate resources to achieve its goals in practice?

Score: 50 / 100

The actual budget for the bureau in 2012 amounted to 13,266,867 shekels, the equivalent of USD 3,537,800.<sup>487</sup> The budget for 2012 was prepared in accordance with the budget for programmes and performance and was implemented in two basic programmes: the first was a high quality monitoring project, which took up 75% of the total budget. The second programme was “institutional development of the monitoring bureau” that made up 25% of the total of the actual budget.<sup>488</sup> 97% of the budget for the Office in 2012 was spent.<sup>489</sup>

The budget for the bureau is considered reasonable in terms of its adequacy. The process of planning and the financial resources available to the bureau take place in accordance with the processes for the government budget, as it is subject to the general rules, rather than special rules that would ensure independence and play a role in strengthening the competence of the bureau.<sup>490</sup>

Over the last four years the resources that the bureau has requested have been generally available, in part as it has modest plans and operates with limited capability. For example the bureau is not able to employ external audit firms because this requires considerable expenditure.<sup>491</sup>

The number of employees in the bureau in the West Bank was 152 on the 31 December 2012, including seven contract workers.<sup>492</sup> However there is no stability in human resources because the employees seek better conditions of work and benefits with other bodies,<sup>493</sup> due to the salaries of employees in the bureau being governed by the Civil Service Law.

Employees have academic knowledge and work experience, but the high level of specialisation calls for an allowance for service, and the bureau requires some staff with specialist qualifications as it concentrates on financial cases and adherence to the law, more than aspects of financial auditing.<sup>494</sup> Employees have adequate opportunities for professional development and training, as the bureau seeks to develop the work of the employees and improve their performance.<sup>495</sup>

In the Gaza Strip, the budget for the State Audit and Administrative Control Bureau is adequate for it to perform its duties.<sup>496</sup> The Office controls its own resources, manages them and there are regular increases in financial resources.<sup>497</sup> It has stability in human resources,<sup>498</sup> and its employees have both academic knowledge and sufficient work experience.<sup>499</sup>

487 The Annual Report for 2012 of the Financial and Administrative Monitoring Office, Page 21. See the following website: <http://www.aman-palestine.org/ar/reports-and-studies/1514.html>

488 Interview with Mr Muaawiya Asaad, Financial Director in the Financial and Administrative Monitoring Office, on 16/9/2013.

489 The Annual Report for 2012 of the Financial and Administrative Monitoring Office, previous source, Page 21.

490 Interview with Mr Jaffal Jaffal, previous source.

491 Interview with Dr Azmi Al-Shuaibi, Commissioner for the AMAN Coalition for Accountability and Integrity - AMAN, on 21/9/2013.

492 The Annual Report for 2012 of the Financial and Administrative Monitoring Office, previous source, Page 22.

493 Interview with Dr Azmi Al-Shuaibi, previous source.

494 Interview with Dr Azmi Al-Shuaibi, previous source.

495 Interview with Mr Jaffal Jaffal, previous source.

496 Interview with Mr Ismail Mahfoudh, Chairman of the Financial and Administrative Monitoring Office in Gaza, on 2/7/2013.

497 Interview with Mr Ismail Mahfoudh, previous source.

498 Interview with Mr Ismail Mahfoudh, previous source.

499 Interview with Mr Ismail Mahfoudh, previous source.

## CAPACITY: INDEPENDENCE

### LAW

To what extent is there formal operational independence of the audit institution?

**Score: 75 / 100**

Article 96 of the Basic Law requires the establishment of a Financial and Administrative Monitoring Office and Article 2 of the State Audit and Administrative Control Bureau Law (15/2004), grants it legal personality. However there is a problem in the understanding persons have of independence of non-ministerial establishments in the Palestinian Authority, as they consider them to be non-independent administratively and financially unless the law explicitly states this.<sup>500</sup>

By virtue of the law for the bureau, it receives requests from ministers or the president related to procedures in investigations in their departments.<sup>501</sup> This is in conflict with the Mexico Declaration,<sup>502</sup> and may impact the independence of the bureau, its chair and the chair's assistants.

The Basic Law and the State Audit and Administrative Control Bureau Law specify a mechanism for the appointment of the chair of the bureau that guarantees independence – the chair is appointed by a decision of the President of the PNA pursuant to a nomination from the Council of Ministers and approval by an absolute majority vote of the Legislative Council. However the law does not place restrictions on the political activities of the bureau's employees.

The bureau audits accounts in accordance with the programmes and methods it sets itself.<sup>503</sup> The law refers the procedures for appointments of executive directors, inspectors, technical experts and employees to the procedures laid down in the Civil Service Law.<sup>504</sup> Article 21 of the State Audit and Administrative Control Bureau Law states that a person appointed in the position of inspector in the bureau must be specialised in the field of work to be performed.

Article 10 requires that the chairperson of the bureau may not be dismissed for any reason without an absolute majority vote of the Legislative Council. This is to ensure the independence of the chair. This article also sets the period of chairpersonship at seven years, non-renewable. This period exceeds the period of the chairperson of the Legislative Council by three years.<sup>505</sup> Article 11 of the same law grants immunity to the chairperson of the bureau and its employees for the work they perform, when it relates to the implementation of their functions.

500 Article 12 of the Law for the Financial and Administrative Monitoring Office, no. 15 of 2004, guarantees independence from interference in the work of the Office and requires the bodies subject to the monitoring of the Office to cooperate with it.

501 See: Article 23 of the law on the State Audit and Administrative Control Bureau no. 15 of 2004

502 Interview with Mr Jaffal Jaffal, previous source. See the Mexico Declaration [http://ar.issai.org/media/14019/issai\\_10\\_a.pdf](http://ar.issai.org/media/14019/issai_10_a.pdf).

503 Interview with Mr Jaffal Jaffal, previous source.

504 See: Article 4 of the Law for the Financial and Administrative Monitoring Office, no. 15 of 2004.

505 See the following website: [http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?lnk=2&LegPath=2004&MID=14742#A14742\\_6](http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?lnk=2&LegPath=2004&MID=14742#A14742_6)

## PRACTICE

To what extent is the audit institution free from external interference in the performance of its work in practice?

**Score: 50 / 100**

The concept of exercising independence, in the sense of not permitting external parties to interfere in the work of the bureau with regard to priorities and the nature of the decision taken, and that the employees in the bureau act highly professionally without regard for the political power or bias towards any particular party, and in particular the political players or centres of influence in the ruling authority or opposition, is not clearly defined. As such, practice reflects the lack of understanding of independence by officials in the bureau on occasion, or by the executive on other occasions. This weakens the effectiveness and role of the bureau in strengthening the national integrity system.<sup>506</sup>

The bureau has worked relatively professionally and without bias during recent years, 2012-2013, with interference in the activities of the institution declining. However the political division impacted the institutional reality of the bureau and has led to the existence of one bureau in the West Bank and another in Gaza. This has weakened its capacity and resources, as well as opening up an opportunity for the presence of employees with political associations. However the immunity of employees of the bureau in practice has continued, and so far no case of any employee being held to account has been registered regarding her/his work in the audit bureau.<sup>507</sup>

The bureau's budget is imposed by the government, as the Ministry of Finance negotiates with the bureau, with the indicators and basis of the budget approved by the Minister of Finance. This affects its independence and makes the idea of financial independence more difficult, as the bureau is subject to the executive and the ministry of finance.<sup>508</sup> This violates international standards that stipulate the financial independence of monitoring bodies, according to the Mexico declaration.<sup>509</sup>

In the Gaza Strip the bureau is prohibited from monitoring the security services.<sup>510</sup> There are no apparent cases of the involvement of the chair of the bureau or its employees in political activities, engaging in other activities the law prohibits them to engage in or of employees occupying positions that adversely impact the independence of the bureau.<sup>511</sup>

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506 Interview with Dr Azmi Al-Shuaibi, previous source.

507 Interview with Dr Azmi Al-Shuaibi, previous source.

508 Interview with Jaffal Jaffal- legal consultant in the state audit and administrative control bureau, 16-9-2013

509 Mexico declaration on independence, [http://ar.issai.or/media/14019/issai\\_10\\_a.pdf](http://ar.issai.or/media/14019/issai_10_a.pdf)

510 Interview with an official of the Financial and Administrative Monitoring Office in Gaza (subordinate to the Ramallah Authority) who preferred that his name should not be revealed, on 6/7/2013.

511 Interview with an official of the Financial and Administrative Monitoring Office, previous source.

# GOVERNANCE: TRANSPARENCY

## LAW

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

Score: 75 / 100

According to the law, the audit bureau is required to submit annual reports, quarterly reports and special reports on request to the President of the PNA, the Legislative Council and the Council of Ministers, under Article 26 of the State Audit and Administrative Control Bureau Law. Special reports are submitted to the President of the PNA, the Legislative Council, the Council of Ministers and the relevant minister.<sup>512</sup>

The law permits the publication of the reports and information for citizens, including the annual reports. There are no detailed regulations or clear instructions in operation that facilitate the process by which information held by the bureau can be accessed.<sup>513</sup>

## PRACTICE

To what extent is there transparency in the activities and decisions of the audit institution in practice?

Score: 50 / 100

The bureau publishes annual reports, and sometimes summaries of them, as well as quarterly reports on its website.<sup>514</sup> However the culture that prevails in the work of employees in public establishments still results in confidentiality, due to a belief that the information belongs to the officials and this means that its disclosure requires a decision from senior management. Therefore employees at the bureau consider themselves unauthorized to disclose the information that they have. There is also a measure of fear of disclosing it. In recent times however the bureau has begun to publish some reports and summaries, information on general activities and the organisational structure on their website, while not publishing information that concerns the public directly.<sup>515</sup> The bureau also publishes a monthly magazine on the website of the State Audit and Administrative Control Bureau,<sup>516</sup> but financial issues and the budget of the bureau are not published.<sup>517</sup> Information is also not up to date.<sup>518</sup>

In the Gaza Strip, some people consider that all the information that is recorded in the annual reports is revealed openly.<sup>519</sup> The chairperson of the bureau says that this information is not disclosed openly.<sup>520</sup> The information published on the website provides adequate details on the activities of the State Audit and Administrative Control Bureau,<sup>521</sup> but researchers were not able to obtain a copy of the 2012 annual report on the website, even though several months had passed since it was delivered to the Legislative Council.

512 Article 28. Likewise the draft annual budget for the Office is referred to the Council of Ministers for ratification within the annual general budget pursuant to the provisions of Article 23. Likewise the Chairman of the Office submits to the President of the Palestinian Authority, the Legislative Council and the Council of Ministers an annual report, or report on request, regarding his work. The annual report is published in the Official Gazette pursuant to Article 8.

513 Interview with Dr Azmi Al-Shuaibi, previous source.

514 See the following website: <http://www.saacb.ps/rports.aspx>.

515 Interview with Dr Azmi Al-Shuaibi, previous source.

516 See the following website: <http://www.saacb.ps/mnRpts.aspx>.

517 Interview with Dr Azmi Al-Shuaibi, As above.

518 Interview with Mr Jaffal Jaffal

519 Interview with an Official of the Financial and Administrative Monitoring Office, previous source.

520 Interview with Mr Ismail Mahfoudh, previous source.

521 Interview with an Official of the Financial and Administrative Monitoring Office, previous source. See: [www.facb.gov.ps](http://www.facb.gov.ps).

## GOVERNANCE: ACCOUNTABILITY

### LAW

To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?

**Score: 50 / 100**

The chairperson of the state audit and administrative control bureau is required to submit an annual report to the President of the PNA, the Legislative Council and the Council of Ministers, as well as providing reports on request, regarding her/his work and findings on the activities of the PNA establishment. The chairperson is also required to provide them with any data or information, studies or research they request and to perform any other work entrusted to him. As the Legislative Council is not functioning, the report on the work of the bureau is not being discussed currently. There are no final deadlines for submission of the annual report to the Legislative Council.

There is no provision in the law requiring officials in government establishments to reply to comments made by the bureau regarding the work of their establishments within 30 days.

### PRACTICE

To what extent does the SAI have to report and be answerable for its actions in practice?

**Score: 50 / 100**

The state audit and administrative control bureau presents an annual report to the President of the PNA, the Parliamentary Blocs Board (the Legislative Council) and the Council of Ministers. The report includes the activities of the bureau and the work of auditing public establishments that it has performed during the year. It also includes the internal work of the bureau and its progression.<sup>522</sup>

The bureau audits the final accounts of the budget of the PNA, and has issued five reports related to this. They have been submitted to the Legislative Council and to the chairpersons of the committees, but they have not been discussed.<sup>523</sup> Likewise the Legislative Council does not discuss the annual report and reports related to the extent to which the public establishments to which the reports are issued are also compliant.<sup>524</sup> However the reports the bureau produces are generally discussed with the bodies that are audited in the reports.<sup>525</sup>

The chairperson of the bureau holds an annual conference to discuss a number of important issues in the work of the bureau, and open meetings are held with the media to reply to their queries. It also cooperates with relevant civil society organisations, such as the Coalition for Accountability and Integrity – AMAN.<sup>526</sup>

522 Interview with Mr Jaffal Jaffal, previous source.

523 The previous source.

524 The previous source.

525 The previous source.

526 Interview with Dr Azmi Al-Shuaibi, previous source.

## GOVERNANCE: INTEGRITY

### LAW

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

**Score: 75 / 100**

The audit bureau ratified the code for professional conduct on 13 January 2013. This includes the rules for a conflict of interest and gifts. A special regulation governing gifts will be issued that will determine the value and mechanisms for disposing of them, in addition to the mechanisms for the integrity, transparency and political neutrality of employees in the bureau and their professional competence. However it will not put in place post-employment restrictions.<sup>527</sup> The bureau uses manuals in its work and there are special instructions and internal manuals that seek to ensure neutrality and professionalism.<sup>528</sup>

In the Gaza Strip, there is no code of conduct for employees in the audit bureau, or other rules, such as for gifts or hospitality, that seek to ensure integrity and place post-employment restrictions on the chairperson of the bureau or its employees, with the exception of the rules recorded in the Civil Service Law.

### PRACTICE

To what extent is the integrity of the audit institution ensured in practice?

**Score: 50 / 100**

The code for conduct and ethics in a public office has still not been fully implemented. Furthermore awareness of the importance of these issues among the employees and officials is weak. Respect for the provisions of the code by employees is not reviewed by managers or through internal monitoring.<sup>529</sup> However there is continuous training of employees on the code for conduct and the rules and mechanisms for integrity within the institution. Cases of gross breach by the employees are dealt with either seasonally or individually, for example the rules for work ethics were breached by one employee during 2012, and he was punished by being sent a final warning of dismissal.<sup>530</sup>

<sup>527</sup> See the Register of Professional Conduct issued by the Chairman of the Financial and Administrative Monitoring Office in Decision no. 3 of 2013.

<sup>528</sup> Interview with Dr Azmi Al-Shuaibi, previous source.

<sup>529</sup> The previous source.

<sup>530</sup> Interview with Mr Jaffal Jaffal, previous source.

## ROLE: EFFECTIVE FINANCIAL AUDITS

To what extent does the audit institution provide effective audits of public expenditure?

**Score: 50 / 100**

The bureau examines the financial accounts of public expenditure primarily relying upon the general budget ratified for the PNA since 2006. The training process for this has particularly taken off in the last three years.<sup>531</sup>

Even though the law gives the audit bureau's power and responsibility to audit the final accounts for the budget within one year of the end of the financial year, the government is late in providing the relevant financial data. This delays the process of the audit and reduces the ability to intervene to correct the situation at an appropriate time. During recent years, the bureau has recorded reservations with respect to a number of items in the final accounts and this has become a source of dispute with the Minister of Finance. However the absence of the role of the paralysed Legislative Council caused by the division has not allowed the opinion of the bureau to be converted into genuine accountability of the government or it being held to account for discrepancies noted in the report of the bureau.<sup>532</sup>

During 2012 the State Audit and Administrative Control Bureau conducted a number of monitoring tasks of the administrative bodies subject to it. Teams from the bureau conducted visits to approximately 1,121 administrative bodies in 2012, including investigative visits, instructional visits and monitoring visits, with the purpose of a comprehensive audit and follow-up of complaints. It attended tenders in these bodies in its capacity as an observer.<sup>533</sup>

The reports of the bureau on the results of its audit of the final accounts are still irregular, due to poor cooperation by the government in general, and the lack of regularity in the preparation, ratification and implementation of the government's budget, causing a delay in the preparation of the report on the final accounts.<sup>534</sup> To ensure regularity of the reports, it is essential that the financial data is comprehensive, precise and presented at the specified time. However the situation indicates that there is a violation in all three, as the bureau's report on the concluding balance sheet of 2012 shows.<sup>535</sup> All these factors have led to weakness in the effectiveness of the financial audit of the expenditure, particularly if the Legislative Council remains inoperative.<sup>536</sup>

531 Interview with Mr Jaffal Jaffal, previous source.

532 Interview with Dr Azmi Al-Shuaibi, previous source.

533 Report of the Financial and Administrative Monitoring Office for 2012, previous source, Page 20.

534 Interview with Dr Azmi Al-Shuaibi, previous source.

535 Interview with Dr Azmi Al-Shuaibi, As above

536 Interview with Dr Azmi Al-Shuaibi, previous source.

## ROLE: DETECTING AND SANCTIONING MISBEHAVIOR

Does the audit institution detect and investigate misbehaviour of public officeholders?

**Score: 75 / 100**

The bureau has appropriate mechanisms for identifying violations through the right to apply pursuant to the provisions of Article 24, to study pursuant to the provisions of Article 25, and to express reservations pursuant to the provisions of Article 29 of the State Audit and Administrative Control Bureau Law (15/2004). This law gives the bureau the power to study all reports, information and data received from employees and investigate reports into violations that affect financial and administrative matters. It may also request information and clarifications that relate to their work from all government departments.

The bureau has the power to investigate violations and the necessary authority, influence and independence to identify the responsibilities of persons in public positions,<sup>537</sup> pursuant to the provisions of Article 27 of the State Audit and Administrative Control Bureau Law (15/2004). The process of holding to account has a criminal nature, in collaboration with the public prosecution and the prosecution for combating corruption.<sup>538</sup> Accountability procedures are based on a recommendation of previous administrative violations and assessment of performance in the Legislative Council, which holds the government to account. The absence of the Legislative Council has weakened accountability procedures in general.

Relevant Palestinian laws are applied. The Civil Service Law is applied to administrative violations, the Service in the Security Forces Law applies to the security services and the Law for Combating Corruption applies to violations related to corruption, in addition to the Criminal Law (16/1960).<sup>539</sup>

The Office has received 267 complaints that have been followed up by the General Department for Legal Affairs, in cooperation with the specialist monitoring departments in the bureau and have included investigations of the complaints made by citizens regarding violations or negligence in the performance of the employment duties. Complaints or journalistic investigations published by the media that deal with aspects of negligence, neglect, maladministration or misappropriation are investigated.<sup>540</sup> The number of files transferred to the Commission for Combating Corruption during 2012 was 43. These included 29 files related to the work of the bureau during 2012 and 14 files on reports prepared during previous years.<sup>541</sup>

From a practical point of view, the bureau uses mutual understanding and settlement of objections to rectify the matter, before recourse to the bodies that have authority to conduct a criminal investigation. Neglect by the government and the office of the President of the PNA in following up on the recommendations of the bureau, and the failure of the Legislative Council to perform its accountability role, have weakened the ability of the bureau to hold senior employees to account when they commit violations of the law.

In the Gaza Strip, the bureau issued 50 monitoring reports during 2012 and received 34 complaints. It dealt with 16 of them and 8 complaints were transferred to the relevant authorities. 10 complaints were kept in "archived" files and representatives of the bureau attended as observers in 131 government tenders, including 113 tenders for supplies and 18 tenders for government works.

537 Interview with Mr Jaffal Jaffal, previous source.

538 Interview with Mr Jaffal Jaffal, previous source.

539 Interview with Dr Azmi Al-Shuaibi, previous source.

540 Report of the Financial and Administrative Monitoring Office for 2012, previous source, Page 17.

541 Report of the Financial and Administrative Monitoring Office for 2012, previous source, Page 8.

## ROLE: IMPROVING FINANCIAL MANAGEMENT

To what extent is the SAI effective in improving the financial management of government?

**Score: 50 / 100**

Bureau's recommendations are not obligatory, rather they are recommendations, as the other party is not bound to accept them. However the bureau follows up on the recommendations it issues, especially related to performance.<sup>542</sup>

The arrangement for follow-up still requires development to implement performance and financial recommendations. There are studies and reports on the follow up of performance, through replies that are received from the bodies subject to the bureau, as an indication as to whether the government acts on reports of the institution or not.<sup>543</sup>

During 2012 the bureau issued 123 reports on the performance of administrative bodies. The reports included the results of the financial, administrative and technical audit of these bodies in addition to recommendations of the bureau to correct the performance of these bodies.<sup>544</sup>

The general observations made by the bureau show a lack of adherence to applying the bureau's recommendations by the various bodies. There is no follow-up by the bodies concerned in the Ministry of Finance of two previous letters sent from the bureau during 2008 and 2009 and the recommendations and proposals contained within to overcome points of weakness, improve financial performance and strengthen monitoring arrangements.<sup>545</sup>

The bureau is not able to hold bodies to account, as the Legislative Council is responsible for this and has been inoperative. This absence has affected the results of the bureau's reports. This is because there is no coordination between the bureau and the Legislative Council and on most occasions the bureau takes a personal initiative to prepare a number of reports based on a specific complaint or observations made by individuals. The failure by the government to adopt the recommendations recorded in the bureau's reports, and the absence of the Legislative Council impacts the considerable effort of the bureau and its good results.<sup>546</sup>

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<sup>542</sup> Interview with Mr Jaffal Jaffal, previous source.

<sup>543</sup> Interview with Mr Jaffal Jaffal, previous source.

<sup>544</sup> Report of the Financial and Administrative Monitoring Office for 2012, previous source, Page 20.

<sup>545</sup> Report of the Financial and Administrative Monitoring Office, previous source, Page 242

<sup>546</sup> Interview with Dr Azmi Al-Shuaibi, previous source.

**ANTI-CORRUPTION  
COMMISSION**

**54 / 100**

## SUMMARY

The Anti-Corruption Commission has reasonable legal provisions to protect its employees. They have immunity and protection from legal prosecution when carrying out their duties specified by law. It has a wide authority for carrying out its role in combating corruption, including through preventive procedures (such as receiving and examining asset declarations and coordinating national efforts to combat corruption), awareness-raising efforts, and the power to investigate allegations of corruption. The commission had completed a number of investigations in the previous three years, particularly in relation to political personalities such as ministers, but is slow in concluding investigations due to shortages in information and in technical, specialised teams.

The commission has approved the national strategy for combating corruption in cooperation with relevant bodies, conducts investigations in corruption cases and some awareness raising activities in cooperation with governmental and non-governmental institutions to implement the strategy. The strategy is considered by the commission as an alternative to the national plan to combat corruption.

The information that the commission makes available is still limited; it does not publish its reports in print or on its website, only providing a summary of its 2011 annual report on its website. The commission does not have its own code of conduct that includes rules on conflict of interests or on gifts. No rules regulate the process of asset declaration for the commission head or its employees. There are no specific post-employment restrictions, and the law does not prevent the head of the commission from engaging in political and other activities, in order to ensure her/his independence and neutrality.

### Structure and organisation

The Commission for Combating Corruption was established during the second half of 2010, following an amendment of Unlawful Gains Law (decree issuing Law 7 (2010) amending the Unlawful Gains Law (1/2005) that changed it into the Law for Combating Corruption. The Commission has legal personality and financial and administrative independence.<sup>547</sup>

The Commission is established in line with the United Nations Convention Against Corruption. Article 5 of Convention requires the establishment of one or more bodies to combat corruption. The decree issuing the law enumerated the crimes of corruption as including: (1) crimes in violation of the duties of positions of public employment and crimes in breach of public trust as recorded in the criminal laws in force, (2) crimes arising from money laundering as recorded in the Money Laundering Law, (3) every act that leads to an adverse impact on public assets, (4) the misuse of authority contrary to the law, (5) acceptance of the use of intermediaries and nepotism, that denies a right or gives a right without justification, (6) all the acts recorded in Arab and international agreements on combating corruption that have been ratified or acceded to by the PNA.

The scope of persons subject to the Law for Combating Corruption has expanded, starting with the President of the PNA and all public employees in addition to civil society organisations, political parties and trade unions. The law provides for the secondment of members of the Public Prosecution to work in the Commission, giving them jurisdiction to investigate crimes of corruption and bring legal actions to the court with jurisdiction, provided for in the Law for Combating Corruption itself.

The law establishing the Commission entrusted the Commission with the task of coordination of national efforts for combating corruption. This means in practice that it is entrusted with establishing mechanisms to facilitate all parties in performing their roles in a coordinated manner. The law provides it with all the necessary resources and powers, as the anti-corruption law gives the commission authority over all parties, with the exception of the private sector in which the PNA is not a partner.<sup>548</sup>

<sup>547</sup> Decree issuing Law number 7 of 2010 amending the Unlawful Gains Law number 1 of 2005, issued on 20/6/2010.

<sup>548</sup> Interview with Dr Azmi Al-Shuaibi, Commissioner of The Coalition for Accountability and Integrity, on 13/7/2013.

OVERALL PILLAR SCORE: 54 / 100			
Category	Index	Law	Practice
<i>Capacity</i> 75 / 100	Resources	100	75
	Independence	75	50
<i>Governance</i> 38 / 100	Transparency	25	50
	Accountability	50	50
	Integrity	25	25
<i>Role</i> 58 / 100	Prevention	50	
	Education	50	
	Investigation	75	

It is noted that the decree issuing the Law for Combating Corruption is not recognised by the dismissed government in the Gaza Strip, and the Unlawful Gains Law is still in force there, even though there is still no commission for combating unlawful gain.

## CAPACITY:RESOURCES

### LAW

To what extent are there provisions in place that provide the ACA with adequate resources to effectively carry out its duties?

**Score: 100 / 100**

Article 3 of the Law for Combating Corruption<sup>549</sup> states that the Commission has legal personality, administrative and financial independence, and is allocated a special budget within the general budget of the Palestinian Authority. Article 6 “Repeated” grants power to the head of the commission to approve the annual budget for the commission and refer it to the Council of Ministers for inclusion within the general budget of the PNA.

The Budget Law (7/1998), considers the Commission for Combating Corruption to be a public body. Article 22 states, ‘ministries and public bodies must adhere fully to the instructions laid down by the Budget Department for the preparation of the draft general budget law, draft regulation of the schedule of employment structures and any other instructions to enable the General Budget Department to perform its tasks fully.’

The Budget Law in the Palestinian Authority allows the institution concerned to set the amount of its budget in accordance with its requirements to perform the work entrusted to it.<sup>550</sup> The legislature has also granted the Commission for Combating Corruption the ability to obtain additional funding, such as through obtaining foreign aid and grants, with the aim of achieving its objectives.<sup>551</sup> This law does not allow the Commission to obtain a proportion or part of the funds confiscated as a result of its work.

549 Decree issuing Law number 7 of 2010 Amending the Law for Unlawful Gain number 1 of 2005, issued on 20/6/2010.

550 Interview with Mrs Rasha Amarina, Director General of the Legal Department in the Commission for Combating Corruption, on 1/8/2013.

551 See: Article 3 of the Decree issuing Law number 7 of 2010 Amending the Law for Unlawful Gain, number 1 of 2005, previous source.

## PRACTICE

To what extent does the ACA have adequate resources to achieve its goals in practice?

**Score: 75 / 100**

The Commission for Combating Corruption has an adequate budget, enabling it to perform its work in accordance with its financial estimates.<sup>552</sup> The reports of the Commission for the years 2011 and 2012 indicate that it obtained adequate financial resources for its establishment, operational expenditure and to perform its activities from the public treasury, in addition to some funding for specific projects from international donors.

The Commission has signed an agreement with the UNDP for a sum of US\$270,000 of which 40% (approx. US\$108,000) of its total was transferred at the end of September, and about US\$14,000 of which has been spent.

According to the commission's 2012 annual report, it had 40 employees, in addition to seven seconded members of the public prosecution. This compares with 15 employees and six seconded members of the public prosecution in 2011.

The commission works to develop the abilities of its employees by providing training related to the management and planning of resources and grants opportunities to attend courses, workshops and conferences to increase employees' knowledge and skills.<sup>553</sup> Job advertisements are advertised in local newspapers and on the commission's website,<sup>554</sup> specifying the conditions related to education and work experience, in addition to a condition that the candidate should not have been convicted in a court with jurisdiction of any financial crime or crime of dishonour or breach of trust. It is noted that there is shortage of specialist staff.<sup>555</sup>

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552 Interview with Mrs Rasha Amarina, previous source.

553 See: The Annual Report for 2012 of the Commission for Combating Corruption, Page 37.

554 Interview with Mrs Rasha Amarina, previous source.

555 Interview with Dr Azmi Al-Shuaibi, previous source.

## CAPACITY: INDEPENDENCE

### LAW

To what extent is the ACA independent by law?

**Score: 75 / 100**

The Commission has legal personality, administrative and financial independence and a special budget allocated within the general budget of the PNA. It is able to perform all necessary legal actions to achieve its objectives. It has the right to enter into contracts, to litigate and can use the public prosecution seconded to it to represent it in court.

The Law for Combating Corruption does not put in place clear professional criteria for the appointment of the chairperson and employees of the commission. It does however include a number of general conditions related to integrity and good reputation. The chairperson of the commission is subject to the exceptional conditions that s/he should be at least 40 years old and that her/his parents and grandfathers must be Palestinians and have no other nationality.<sup>556</sup>

The chairperson of the commission is appointed on the basis of a nomination from the Council of Ministers. The Council of Ministers considers candidates for this position without advertising the position.<sup>557</sup> The law does not require Legislative Council approval of the appointment of the chairperson of the commission, as was provided for in the Unlawful Gains Law. This was changed because of the paralysis of the Legislative Council at that stage. This position is considered to be one of primary responsibility for all the work of the commission, its employees and their sources of guidance. In terms of governance structures, there is only a consultative committee, and no deputy to the chairman has been appointed so far.

The law does not place restrictions on the political activities or other activities with the aim of ensuring independence and neutrality on the chairman of the commission.<sup>558</sup> The law sets the legal period for the chairman of the commission to remain in office at seven years, non-renewable. The chairman of the commission may not be dismissed unless: convicted in a conclusive criminal ruling for a crime violating the duties and tasks entrusted; after committing anything that impacts the honour or dignity of the position; or any other act that comes within the scope of corruption in accordance with the provisions of the law.<sup>559</sup>

The chairperson and employees of the commission enjoy protection from prosecution arising from their performance of their duties specified in the law.<sup>560</sup>

<sup>556</sup> See: Articles 4 & 5 of the Decree issuing Law number 7 of 2010 Amending the Law for Unlawful Gain, number 1 of 2005.

<sup>557</sup> Interview with Mrs Rasha Amarina, previous source.

<sup>558</sup> Interview with Mrs Rasha Amarina, previous source.

<sup>559</sup> See: Article 6 of the Decree issuing Law number 7 of 2010 Amending the Law for Unlawful Gain, number 1 of 2005.

<sup>560</sup> See: Article 7 of the Decree issuing Law number 7 of 2010 Amending the Law for Unlawful Gain, number 1 of 2005

## PRACTICE

To what extent is the ACA independent in practice?

**Score: 50 / 100**

The political system suffers from widespread political polarisation due to the Israeli occupation and political division. This affects the filling of positions of public employment and has led to most of the senior positions being occupied by politicians. It is therefore difficult for neutral persons to fill these positions.<sup>561</sup> The current head of the commission is a political personality close to PNA president and belonging to the ruling party

As the Commission has been recently established, the chairperson of the commission has only been in post for three years, and most of the employees in the commission were appointed in 2012. No employees in the commission have been removed from their positions before the end of the term of their appointment.<sup>562</sup>

Seven members of the public prosecution were seconded, including an assistant to the public prosecutor, for work in the Commission for Combating Corruption. Their role is to conduct investigations related to crimes of corruption referred to them by the chairperson of the commission. The Public Prosecution for the Commission for Combating Corruption represents the Commission before all the courts, conducts investigations and seeks evidence regarding reports and complaints submitted to the Commission for Combating Corruption.<sup>563</sup> There is also coordination with all the security services in the PNA, including the police, that respond to requests from the commission on the one hand, and refer cases in which there is a suspicion of corruption while they are following up their work on the other.<sup>564</sup> The commission is independent from a technical point of view in the investigation process, in filing a case and in referring it to a court with jurisdiction.<sup>565</sup>

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561 Interview with Dr Azmi Al-Shuaibi, previous source.

562 Interview with Mrs Rasha Amarina, previous source

563 See: The Annual Report for 2012 of the Commission for Combating Corruption, Page 14.

564 Interview with Mrs Rasha Amarina, previous source.

565 Interview with Dr Azmi Al-Shuaibi, previous source.

## GOVERNANCE: TRANSPARENCY

### LAW

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACA?

**Score: 25 / 100**

The Commission for Combating Corruption prepares an annual report on its work,<sup>566</sup> and submits it to the President of the PNA, the Council of Ministers and the Legislative Council.<sup>567</sup> The investigations conducted by the Commission are confidential in law and may not be disclosed.<sup>568</sup>

There are no requirements in the law for publication of the annual report or the proposals submitted for amending laws.<sup>569</sup> Likewise there are no deadlines for openly revealing this information. The law reflects the conservative culture of processes for obtaining information and revealing it by public bodies in Palestine.<sup>570</sup>

### PRACTICE

To what extent is there transparency in the activities and decision-making processes of ACA in practice?

**Score: 50 / 100**

Information provided by the commission is limited. This is because of the law that does not permit publication of details about cases before a person is convicted before the court, and due to the absence of a law granting a right to obtain information. The commission publishes irregularly numbers and statistics related to its achievements, either through meetings with the chairperson or while attending sessions of conferences or workshops.<sup>571</sup> The Commission for Combating Corruption has published a summary of its annual report for 2011 within the framework of providing information to the public,<sup>572</sup> and announced in its annual conference on the occasion of International Anti-Corruption Day in 2012 a number of statistics related to the number of complaints, their types and the number it referred to the Public Prosecution for Combating Corruption and to the Court for Crimes of Corruption.

The Commission has a website ([www.pacc.pna.ps](http://www.pacc.pna.ps)) through which it provides information on its activities. This is still a basic page that describes the activities of officials and is not used as a mechanism for raising awareness or communicating information to citizens. It is rather a page of news.<sup>573</sup> The Commission's website requires development as an important means of openness to the public, and for communicating and publishing general information on the work of the Commission.<sup>574</sup>

566 See: Article 8 of the Decree issuing Law number 7 of 2010 Amending the Law for Unlawful Gain, number 1 of 2005.

567 See: Article 6 Repeated of the Decree issuing Law number 7 of 2010 Amending the Law for Unlawful Gain, number 1 of 2005.

568 See: Article 22 of the Decree issuing Law number 7 of 2010 Amending the Law for Unlawful Gain, number 1 of 2005.

569 Interview with Mrs Rasha Amarina, previous source.

570 Interview with Dr Azmi Al-Shuaibi, previous source.

571 Interview with Dr Azmi Al-Shuaibi, previous source.

572 See: <http://www.pacc.pna.ps/ar/index.php?p=main&id=72>.

573 Interview with Dr Azmi Al-Shuaibi, previous source.

574 \_\_\_\_\_, Report on Corruption and Combating It, Palestine, 2012, Fifth Annual Report, The Coalition for Accountability and Integrity - AMAN, Ramallah, 2013, Page 51.

# GOVERNANCE: ACCOUNTABILITY

## LAW

To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?

Score: 50 / 100

The Law for Combating Corruption states that the chairperson of the Commission for Combating Corruption is appointed by the President of the PNA pursuant to a nomination from the Council of Ministers.<sup>575</sup> However the annual report is submitted by the chairperson to the President of the PNA, the prime minister and the Legislative Council.<sup>576</sup> The 2005 Unlawful Gains Law required the Legislative Council to approve the appointment of the chairperson of the Commission. However, due to the political circumstances arising from the division and the fact that the work of the Legislative Council has ceased, the decree issuing the law amending the Unlawful Gains Law stated that the chairperson of the Commission should be subordinate to the President of the PNA.<sup>577</sup>

There is no legal provision that requires the Commission to announce or publish its annual reports on its website or by any other means to make the information available to the public.<sup>578</sup> This therefore limits the potential for the public to hold the Commission to account. Similarly the law does not impose on the Commission a requirement to submit reports on its investigations to any public body. Rather it issues its rulings in follow-up files as soon as the procedures specified in the law have been completed. It may initiate a legal action for crimes of corruption through the public prosecution: 'the Public Prosecution for Combating Corruption, seconded to the Commission' in accordance with the provisions of Article 21 of the Law for Combating Corruption.

There are no provisions for protecting whistleblowers from within the Commission. However the provisions of Article 18 apply to everyone who reports corruption, whether inside the Commission or outside it.<sup>579</sup> It states, "the commission guarantees for witnesses, experts and those who report crimes of corruption in good faith that it will provide legal, employment and personal protection. The procedures for their protection and the arrangements for this will be determined in a regulation the Commission will prepare that will be issued by the Council of Ministers.'

The Commission is subject to the monitoring of the State Audit and Administrative Control Bureau in accordance with the provisions of Article 23 of the State Audit and Administrative Control Bureau Law (15/2004), regarding financial and administrative issues. Para. 7 of the Article states that the jurisdiction of the bureau includes monitoring all public bodies within the Palestinian National Authority.<sup>580</sup>

The Basic Law prohibits granting immunity to any administrative decision in accordance with the provision of Article 30. Hence recourse is possible to the Supreme Court of Justice in relation to administrative decisions issued by the Commission. Judicial rulings issued by the Court for Crimes of Corruption are capable of appeal and appeal at cassation in the Palestinian courts. Internal regulations of the Legislative Council allow every citizen to submit complaints related to public affairs.<sup>581</sup>

There are no legal provisions related to the possibility of forming committees of citizens to supervise the Commission.<sup>582</sup> However the Commission has a consultative board whose members are selected from persons who have the expertise and competence for their opinion to be taken into consideration with respect to matters that are referred to them by the chairperson of the Commission.

575 See: Article 3 of the Decree issuing Law number 7 of 2010 Amending the Law for Unlawful Gain, number 1 of 2005

576 See: Article 6 Repeated of the Decree issuing Law number 7 of 2010 Amending the Law for Unlawful Gain, number 1 of 2005

577 Interview with Dr Azmi Al-Shuaibi, previous source.

578 Interview with Mrs Rasha Amarina, previous source.

579 Interview with Mrs Rasha Amarina, previous source.

580 Paragraph 7 of Article 23 of the Law for the Financial and Administrative Monitoring Office, number 15 of 2004, stipulates, "implementation of the policies for monitoring and inspection, including enhancing transparency, credibility and clarity in the work of the government, public establishments and authorities and those of a similar nature."

581 Article 100 of the Internal Regulation for the Palestinian Legislative Council states, "Any Palestinian may present to the Council a petition or complaint that relates to public affairs."

582 Interview with Mrs Rasha Amarina, previous source.

## PRACTICE

To what extent does the ACA have to report and be answerable for its actions in practice?

**Score: 50 / 100**

The Commission submitted its annual report for the years 2011 and 2012 to the President of the PNA, the prime minister and the Legislative Council via the Parliamentary Blocs Board.<sup>583</sup> The Commission did not publish its report either on its website or in print. However it published a summary of its annual report for 2011 on its website.<sup>584</sup> The Commission's reports do not provide general information sufficient to provide an opportunity to interested parties in the community to benefit from effective participation in the development of national policies for combating corruption or for monitoring the work of the Commission. Nevertheless the media has played an active role in holding the Commission to account, as have a number of establishments concerned with combating corruption, such as AMAN, by holding community accountability sessions related to the work and responsibilities of the Commission.<sup>585</sup>

The policy for the protection of informants of corruption from within the Commission has not been tested and complaints are not submitted without fear because of the recent establishment of the Commission itself.<sup>586</sup> There is no supervisory committee for citizens.<sup>587</sup>

The effectiveness of judicial review cannot be assessed due to the recent establishment of the commission.<sup>588</sup>

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583 Interview with Mrs Rasha Amarina, previous source. For further information, see: <http://www.wafaimages.ps/album.aspx?id=10347>

584 See: <http://www.pacc.pna.ps/ar/index.php?p=main&id=72>.

585 Interview with Dr Azmi Al-Shuaibi, previous source.

586 Interview with Dr Azmi Al-Shuaibi, previous source.

587 Interview with Mrs Rasha Amarina, previous source.

588 Interview with Dr Azmi Al-Shuaibi, previous source.

## GOVERNANCE: INTEGRITY

### LAW

To what extent are there mechanisms in place to ensure the integrity of members of the ACA?

**Score: 25 / 100**

The Commission has no code of conduct laying down the rules for a conflict of interests or rules regarding gifts. However on 23 October 2013 the Council of Ministers ratified a code of conduct and ethics in public employment, which has yet to be published in the Official Gazette or circulated to government establishments.<sup>589</sup>

Article 3 of the Law for Combating Corruption requires the chairperson of the Commission and all its employees to disclose their assets, the properties of their wives and minor children before they take up their work.<sup>590</sup> However the regulations detailing the rules for the declaration process have not been laid down.<sup>591</sup>

There are no post-employment restrictions, and there are no specific rules regarding inspection or checking that the rules for integrity are put into practice during the processes for appointment to the Commission.

### PRACTICE

To what extent is the integrity of members of the ACA ensured in practice?

**Score: 25 / 100**

In the absence of a code for conduct for the Commission for Combating Corruption containing the rules for a conflict of interests or the rules for gifts and hospitality, post-employment restrictions, and policies for conflict of interest, it is not possible to measure their effectiveness. Furthermore there is nothing to indicate the training of employees on a regular basis in the provisions in the code for conduct.<sup>592</sup> Asset declarations of the commission employees were submitted and kept at the commission.

The Commission is taking action to implement the code of conduct of the Commission for Combating Corruption in 2013. Furthermore employees are required to declare any work they perform outside official hours of work, and it is stipulated that this should not be in conflict with their work in the Commission. The Commission also provides technical training for its employees. There have been no violations reported related to conduct at work.<sup>593</sup>

589 Decision of the Council of Ministers number 04/23/14/M.W/S.F of 2012, issued on 23/10/2012.

590 Paragraph 9 of Article 3 of the Law for Combating Corruption states, "The Chairman of the Commission and all its employees must disclose their properties and the properties of their wives and minor children before they take up their work. The statements will be retained in the Commission with respect to employees and by the Supreme Court with respect to the Chairman of the Commission."

591 Interview with Dr Azmi Al-Shuaibi, previous source.

592 Interview with Dr Azmi Al-Shuaibi, previous source.

593 Interview with Mrs Rasha Amarina, previous source.

## ROLE: PREVENTION

To what extent does the ACA engage in preventive activities regarding fighting corruption?

Score: 50 / 100

The Law for Combating of Corruption grants the Commission powers related to the prevention of corruption. These include: (1) holding and inspecting declarations of financial assets, (2) coordination with all establishments within the PNA to strengthen and develop arrangements necessary for the protection from crimes of corruption and updating mechanisms and methods of combating them, (3) collection of information related to all forms and types of corruption and action to create a database, information systems and an exchange of information with the bodies and parties concerned in cases of corruption both at home and abroad in accordance with the legislation in force, (4) to draft a general policy for combating corruption in cooperation with relevant parties and drawing up plans and programmes necessary for its implementation, (5) reviewing, assessing and studying legislation related to combating corruption and proposing amendments to it in accordance with the procedures generally adopted, (6) coordination and cooperation with Arab, regional and international parties, organisations and bodies concerned with combating corruption, and participation in programmes leading to the prevention of this type of crime.<sup>594</sup>

The effectiveness of the Commission in coordination between activities in combating corruption is apparent through the preparation and issue of the national strategy for combating corruption, 2012-2014. 24 memoranda of understanding have also been signed between the Commission for Combating Corruption and government and civil society organisations, private sector bodies, and academic institutions to implement the education and awareness-raising programmes and activities.<sup>595</sup> However this activity is still limited.<sup>596</sup>

Within the structure of the Commission for Combating Corruption there is a research department called the General Department for Planning and Studies, with the Commission having the ability to instruct external researchers to conduct research. Its work until now has been restricted to preparing working papers submitted to conferences and workshops.<sup>597</sup> The Commission has not published any studies or research, whether produced by the General Department for Planning and Studies, or by external researchers, either on its website or in printed form.<sup>598</sup>

The Commission has no advice centre to reply to requests for advice in combating corruption made by the public and/or government bodies. Nevertheless the Commission does reply to questions from citizens before they submit complaints through the Legal Department, whether the contact is made by telephone or in person.<sup>599</sup> The Commission has prepared a number of publications related to the strategy or introducing the Commission, its law and work.<sup>600</sup>

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594 See: Article 8 of the Decree Issuing Law number 7 of 2010 Amending the Law for Unlawful Gain, number 1 of 2005.

595 Interview with Mrs Rasha Amarina, previous source.

596 Interview with Dr Azmi Al-Shuaibi, previous source.

597 Interview with Mrs Rasha Amarina, previous source.

598 Interview with Dr Azmi Al-Shuaibi, previous source.

599 Interview with Mrs Rasha Amarina, previous source.

600 Interview with Dr Azmi Al-Shuaibi, previous source.

## ROLE: EDUCATION

To what extent does the ACA engage in educational activities regarding fighting corruption?

**Score: 50 / 100**

The Law for Combating Corruption specifies the powers of the Commission in the area of spreading awareness and educational activities as follows: (1) spreading awareness within the community at all official and non-official levels, making transparent the dangers and effects of the crimes of corruption on economic, social and political development and the means of protection from it and combating it, (2) coordination with the media to exercise an effective role in publishing a culture of integrity and combating corruption within the community, (3) work to strengthen the contribution and participation of civil society organisations and educational institutions in the activities of countering corruption and creating public awareness of its dangers and effects, including strengthening a culture of not tolerating corruption and corrupt persons, (4) preparation of periodic publications setting out the risks of corruption, the use of intermediaries and nepotism for institutions in the PNA and its general management.<sup>601</sup>

During 2012 the Commission implemented a set of activities consisting of holding a competition for school students in years seven, eight and nine in relation to the types of corruption, and held a workshop on the role of charitable associations in combating corruption. It also held a training day for educational supervisors in the Ministry of Education and held five training meetings for teachers. This was in addition to holding 10 introductory meetings in relation to filling in asset declarations for employees in the PNA, and it preparing a training manual entitled, 'The Role of Education in Combating Corruption' in collaboration with the Ministry of Education. It also published two pamphlets; the first to introduce the Commission and the second on types of corruption and the means of reporting it.<sup>602</sup>

However the work of the Commission still suffers from a lack of awareness-raising and comprehensive educational activities or the use of the media to spread awareness among the public. It also needs to provide more extensive training and qualifications for employees in the public sector on the means of protection against corruption and how to combat it. Likewise the Commission has not established periodic mechanisms for assessing the results of its educational activities and processes of spreading awareness, due to the indicators for measuring and observing changes in the awareness of citizens having not been approved.<sup>603</sup>

<sup>601</sup> See: Article 8 of the Decree Issuing Law number 7 of 2010 Amending the Law for Unlawful Gain, number 1 of 2005.

<sup>602</sup> Interview with Mrs Rasha Amarina, previous source. See also the Annual Report of 2012 of the Commission for Combating Corruption, previous source, Pages 22-29.

<sup>603</sup> Interview with Dr Azmi Al-Shuaibi, previous source.

## ROLE: INVESTIGATION

To what extent does the ACA engage in investigation regarding alleged corruption?

Score: 75 / 100

The commission has completed a number of investigations over the past three years, especially in relation to political personalities such as ministers, but is slow in completing investigations due to a shortage in information and technical expertise.

The Law for Combating Corruption grants the Commission clear powers<sup>604</sup> to investigate cases of corruption. These include: (1) investigation of complaints submitted regarding corruption, (2) investigation of suspicions of corruption committed by persons subject to the provisions of the law, (3) prosecution of all those who violate the provisions of the law, seizure of their movable and immovable property and preventing them from travel, (4) summoning witnesses and persons concerned, whether public employees or employees in the private sector or any person related to the query and investigation regarding an event related to crime of corruption, (5) obtaining all files, data, papers, documents, information or studies, or obtaining photocopies of them from bodies holding them, including from bodies that consider this information confidential in accordance with the legal procedures in force, (6) conducting enquiries and investigations necessary to follow up any cases of corruption independently or pursuant to information or complaints it receives from any party, (7) initiating legal action related to the crimes specified in the law through the public prosecution and prosecuting them in accordance with the provisions of this law and other relevant legislation. They cannot bring cases other than in the circumstances set out in the law.

The Commission for Combating Corruption has initiated investigations into three ministers, two of whom were in place when the investigation took place, two members of the public prosecution - (the head of a public prosecution and an attorney) - and a number of senior employees on charges related to corruption.<sup>605</sup> In the event of a balance between data collection (that is that the Commission prevents the corruption before it occurs) and investigation following the occurrence of corruption (that is being satisfied with an investigation pursuant to complaints) in the work of the Commission, the Commission relies fundamentally upon investigation following the occurrence of corruption and relies on complaints and investigations it receives from the monitoring organisations, whether administrative, financial or security,<sup>606</sup> or upon its own initiative after a media story..

The number of complaints received by the Commission during 2012 was 245. 105 were rejected for a lack of jurisdiction, and 35 complaints were filed for lack of proof derived from the enquiries and to seek evidence of suspicions that the crime of corruption had been committed. 32 cases were referred to the public prosecution seconded to the Commission, and 73 complaints were recorded for follow-up by the Commission.<sup>607</sup> The annual report for 2012 of the Commission for Combating Corruption notes that the public prosecution seconded to it referred 26 cases to the court with jurisdiction, of which 14 cases were determined. In 11 of them the court issued convictions and ruled in three cases that it lacked jurisdiction.<sup>608</sup> During the period from 18 July 2010 to the end of 2011, the Public Prosecution for Combating Corruption referred 24 cases to the court, the court ruled in six of these cases and in all of them the accused were convicted.<sup>609</sup>

604 See: Article 8 of the Decree Issuing Law number 7 of 2010 Amending the Law for Unlawful Gain, number 1 of 2005.

605 \_\_\_\_\_, Report on Corruption and Combating It, Palestine 2011, Fourth Annual Report, Coalition for Accountability and Integrity - AMAN, Ramallah, 2012, Page 35.

606 Interview with Dr Azmi Al-Shuaibi, previous source.

607 Interview with Mrs Rasha Amarina, previous source.

608 See the Annual Report for 2012 of the Commission for Combating Corruption, Page 15. Mrs Rasha Amarina in the interview conducted with her by the researcher for the purposes of this research noted that the court with jurisdiction had determined 18 cases by the end of July 2013, in which it ruled to convict in 14 cases and in three cases it ruled that it lacked jurisdiction and in one case it found the accused to be innocent.

609 See the Annual Report for 2011 of the Commission for Combating Corruption, Pages 30-31.

**POLITICAL PARTIES**  
**42 / 100**

## SUMMARY

Although there is no clear legal system that governs the process of registering political parties and regulates its scope of work, most Palestinian factions practice their work as legal parties, movements and factions gaining their legitimacy from PLO's legitimacy, as a de facto and political heritage. These factions and organizations, except Islamic Jihad and the Tahrir (Liberation) Party, participated in the 2006 elections were treated as political blocs and were registered at the central elections commission. The current laws that deal with the parties do not mention that parties should adhere to democratic procedures to elect their leadership and representatives in government.

The reliance of some parties and factions on external support offered by some Arab states affected them negatively in many aspects, with small parties suffering from unsustainability of funding and lack of diversity of funding sources. At the same time, there are no integrated legal systems that govern financial accountability of the political parties to disclose information about governmental assistance or private funding in well-defined, regular periods, except reports related to election campaigns that are submitted to the central elections campaign by the electoral blocs. Other than that, no reports are submitted to any official agency. The electoral blocs adhere to the elections law and submit the required financial reports to the central election commission. Public opinion polls show citizens' negative impression with regards to corruption in political parties and to their role in combating corruption.

### Structure and organisation

Political parties are political organisations that aim to achieve political, social and economic objectives and seek to achieve political power within the framework of a government by running in elections. They are a fundamental pillar of democratic systems. Palestinians had political party plurality before the establishment of the PNA and during their struggle against occupation. Political parties that have quasi-party structures, are governed by an internal regulation and have a vision and political programme include sections of the Palestine Liberation Organisation, Islamic organisations and new political parties.

Even though the Basic Law refers to the regulation of the formation of political parties and their membership, a special law on this has yet to be issued. The Legislative Council has not regulated this matter and has not yet issued any political parties law. Among the main reasons that motivated the political parties and civil society organizations to oppose issuing a law on political parties, was "the absence of Palestinian sovereignty over land and the continuation of Israeli occupation with what it represents in terms of measures of oppression that restrict the freedom of political work and endangers the safety of political activists."<sup>610</sup> The presence of the Israeli occupation does not permit the necessary openness to practice democracy in its components on a regular basis, and does not permit work with the groups of Palestinian refugees who are forced to live outside the territories of the Palestinian Authority territories.

OVERALL PILLAR SCORE: 42 / 100			
Category	Index	Law	Practice
Capacity 31 / 100	Resources	25	50
	Independence	25	25
Governance 42 / 100	Transparency	50	25
	Accountability	50	25
	Integrity	50	50
Role 63 / 100	Interest aggregation and representation	75	
	Anti-corruption commitment	50	

<sup>610</sup> Ammar Dwaik, The Legal Framework for the Registration of Political Parties in Palestine - General Introduction within the Context of the Electoral Experience. <http://www.passia.org/meetings/2005/Ammar-Dwaik-2005.htm>.

## CAPACITY:RESOURCES

### LAW

To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

**Score: 25 / 100**

In general, provisions the Basic Law guarantee: the principle of political party plurality as a basis for the system of government in Palestine; and the right of Palestinians to participate in political life as individuals and groups, to form political parties and to join them in accordance with the law.

Furthermore pursuant to Presidential Decree number 1 of 1994 Regarding Continuation of the Operation of Legislation that Existed before June 1996, Jordanian Law 15 of 1955 is deemed to remain in force in the West Bank in theory.<sup>611</sup> This law granted Palestinians “Jordanians” the right to form political parties on the condition that their objectives were legitimate, their methods peaceful and they did not violate the constitution.<sup>612</sup> It did not place restrictions on an ideology for an established political party.

In the Gaza Strip there is no law for political parties. In order to fill the legislative vacuum in relation to political parties, the General Elections Law (9/2005), applied in the Gaza Strip, and the Law for Elections to Local Councils (10/2005) deal with the legal regulation of Palestinian political parties implicitly.

The decree issuing the Elections Law (1/2007) issued in the West Bank deals with acceptance of nominations of electoral lists formed from a political party, an alliance of parties or a group of voters for the purpose of participation in the elections. It is apparent that the law does not stipulate registration with the Ministry of the Interior for the acceptance of a nomination.<sup>613</sup>

There is no clear legal regulation governing the process for registration of political parties or regulations of their powers and work either in the West Bank or in the Gaza Strip.<sup>614</sup> However registration of political parties from a practical point of view is totally different. For example, pursuant to directions from the late Chairman Yasser Arafat, the Ministry of the Interior considered factions within the Palestinian Liberation Organisation to be registered, and the Ministry registered the Islamic Salvation Party and the Green Party pursuant to instructions from the President of the PNA. As for the Initiative Party, it was registered with the Central Elections Commission after three of its founding members sent a letter to the Minister of the Interior at that time, Hukm Balawi, expressing their desire to form a party on 5 August 2004, two years after the announcement of the formation of the party. The Minister of the Interior replied explaining in the letter in his own handwriting that he had no objection to the participation of the party as monitors in the elections. Pursuant to this the Elections Commission deemed that to be registration and deemed the party to be a political electoral body.<sup>615</sup> There are no legal provisions related to the provision of financial support or privileges for political parties or candidates in general elections. However the Law of Elections permits candidates and parties to obtain support from Palestinians.<sup>616</sup> The Palestinian Liberation Organisation provides financial support to the political parties that operate under its banner.<sup>617</sup>

611 There is no similar law in the Gaza Strip. Furthermore not all the articles of the law are applied. For example an application for registration of a party is not submitted to the Provincial Governor in accordance with the law and a number of political parties have obtained a licence following the approval of the President of the Authority. Mr Sulti Rimouni, Director-General for Political Affairs in the Ministry of the Interior, noted in an interview with him on 25/6/2013 that there were no political parties or regulations or arrangements governing the registration of political parties in the Palestinian Authority.

612 See: Article 3 of the Law of Political Parties number 15 of 1955.

613 See Articles 47, 48 & 50 of the Decree issuing Law number 1 regarding General Elections of 2007.

614 Coalition for Accountability and Integrity - AMAN within the context of the Palestinian situation, that is the Law of Political Parties, Nureed, 2006, Pages 26-27.

616 Article 98 of the Decree issuing Law number 1 Regarding General Elections of 2007.

617 Interview with Mr Ahmad Halas (Abu Mahir), previous source.

## PRACTICE

To what extent do the financial resources available to political parties allow for effective political competition?

Score: 50 / 100

Political parties rely on donations, subscriptions, party political projects and external sources for their funding, in addition to the allocations from the Palestinian National Fund given to factions within the Palestinian Liberation Organisation. These allocations are sometimes used to exert pressure on the parties and factions to change their political stances on a number of issues.<sup>618</sup> The PNA provides no financial support to political parties, and there is no legal provision that requires the government to do so.

However the PNA provided equal opportunities of access to the media during previous election campaigns in 2006.<sup>619</sup> On that occasion the Election Commission established a special programme in cooperation with the official media setting out the times allocated for unrestricted and free advertisement to the lists in an equal manner, and prohibited the official media from broadcasting additional advertisements for any of the lists, whether free or paid for. However the law did not prescribe any controls for the private media.<sup>620</sup> There is no right to equal opportunities in the media at times other than the electoral campaign<sup>621</sup> and the non-official media channels are not restricted in any way whatsoever.<sup>622</sup>

The reliance of some political parties and factions on external resources provided by a number of Arab countries to meet difficulties and severe problems, has had an adverse effect upon them in all respects. The small parties suffer from a lack of continuity and lack of diversity of sources of finance.<sup>623</sup>

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618 Interview with Mrs Khalid Jarrar, Deputy in the Legislative Council for the Popular Front for the Liberation of Palestine, on 30/5/2013.

619 Interview with Dr Ayman Daraghima, Deputy in the Legislative Council for the Hamas Movement, June 2013.

620 \_\_\_\_\_, Report on the Second Legislative Elections, 25 January 2006 Ramallah, Central Elections Commission., 2006, Page 49.

621 Interviews with Mrs Khalda Jarrar and Dr Ayman Daraghima, previously recorded source.

622 Interview with Mr Ahmad Halas, previous source.

623 Interview with Mr Ahmad Halas, previous source.

## CAPACITY: INDEPENDENCE

### LAW

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

**Score: 25 / 100**

The Political Parties Law (15/1955), that is applied in the West Bank, grants the Council of Ministers authority to dissolve political parties on the recommendation of the Minister of the Interior on a variety of ground, including: violation of the party's constitution or the provisions of the law, submission of incorrect data, or receiving material or intangible assistance from any foreign body or otherwise. The decisions of the Council of Ministers related to the dissolution of political parties are final and cannot be challenged.<sup>624</sup> Likewise the law grants the minister with jurisdiction power to request any information or particulars considered necessary from the political party.<sup>625</sup> However it does not impose requirements that prevent the use of the requested information in the service of the narrow party purposes of the minister. Furthermore neither the Political Parties Law nor any other law requires representatives of the government to attend parties' meetings or conferences. However the political parties, on their own initiative, mostly invite government officials to attend opening sessions of their conferences.<sup>626</sup>

The Public Meetings Law grants political parties the right to hold public meetings in closed places without restriction. At the same time the law stipulates that the organisers must submit written notice to the governor for the organisation of meetings in open places and the law prevents government authorities from placing any restrictions on the meetings other than for the purpose of controlling the movement of traffic, and requires the relevant authorities to provide protection for the meeting at the request of the organisers. This is on condition that the procedures for protection do not adversely impact the freedom of the assembled persons and the progress of the meeting.<sup>627</sup> However the Implementing Regulation of the Public Meetings Law issued by a decision of the Minister of the Interior permits the police to break up a meeting if it departs from its purpose or if there is a violation of the conditions under which the licence was granted.<sup>628</sup>

There are no legal powers that require the PNA to monitor political parties, and there is no government supervision reasonably designed and restricted to protect legitimate political interests.<sup>629</sup>

In the Gaza Strip there is no legislation related to the monitoring of political parties by the PNA, or to the investigation or dissolution of parties.

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624 See article 10 of law no. 15 of 1955

625 See article 9 of law no. 15 of 1955

626 Interview with Mrs. Khaledah Jarrar, As above

627 Law number 12 of 1998 Regarding Public Meetings.

628 Article 6 of the Decision of the Minister of the Interior number 1 of 2000 issuing the Implementing Regulation for the Law of Public Meetings number 12 of 1998.

629 Interview with Mr Ahmad Halas, a previous source.

## PRACTICE

To what extent are political parties free from unwarranted external interference in their activities in practice?

Score: 25 / 100

Government interference in the practice of opposition political parties has increased in both the West Bank and the Gaza Strip since 2007, including the harassment of the work of political parties, the prevention of their activities and the arrest of their members. This is due to the state of political division for political reasons, as described by the parties.<sup>630</sup> However the political parties on their own initiative often invite government officials to attend the opening sessions of their conferences.<sup>631</sup>

The circumstances experienced by the state of occupied Palestine arising from the division and requirements of the peace process expose some political parties to persecution. Their activists are arrested for political reasons according to the description of the parties,<sup>632</sup> and for security reasons according to the description of the government in the West Bank or in the Gaza Strip. The government places restrictions on freedom of meetings and on the various activities of the political parties.

When aggression and legal violations occur against political parties, the government sometimes conducts investigations, but it does not announce the results.<sup>633</sup> Some commentators consider that the government acts to justify its actions using security arguments and does not bring people to court.<sup>634</sup>

In the Gaza Strip the detention and arrest of a number of members of political parties on the grounds of their activities, and in particular elements of Fatah and the Salafis has occurred.<sup>635</sup> The situation is the same in the West Bank in relation to elements of Hamas and the Liberation Party.<sup>636</sup> When members of political parties are attacked, the government generally does not intervene to conduct the necessary unbiased investigations.<sup>637</sup> At the same time there are no examples in which the government of Gaza has dissolved and/or prohibited political parties or attempted to do so, and there are no examples of government interference in the activities of political parties.<sup>638</sup>

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630 Interview with Dr. Ayman Daraghme, As above.

631 Interview with Mrs Khalda Jarrar, previous source.

632 Interview with Dr Ayman Daraghima, previous source

633 Interview with Mr Muheeb Awwad, Deputy in the Legislative Assembly for the Fatah Movement, 5/6/2013.

634 Interview with Dr Ayman Daraghima, a previously recorded source.

635 Interview with Mr Ahmad Halas, previous source.

636 Interview with Dr Ayman Daraghima, previous source.

637 Interview with Mr Ahmad Halas, a previous source.

638 Interview with Mr Ahmad Halas, a previous source.

# GOVERNANCE: TRANSPARENCY

## LAW

To what extent are there regulations in place that require parties to make their financial information publicly available?

**Score: 25 / 100**

There are no comprehensive legal regulations governing the financial accounting of political parties, requiring, for example, disclosure of information regarding government assistance or information on private funding, at clearly identified and regular periods. Likewise there are no comprehensive legal regulations for the disclosure of the funding of election campaigns and public assistance etc., that require the disclosure of amounts, names and addresses of contributors.<sup>639</sup>

In relation to the electoral lists, there is no clear provision requiring the publication of financial reports related to the sources of financing and the related aspects of expenditure, which the law requires to be submitted within a maximum period of one month from the declaration of the results of the election.<sup>640</sup> However the Elections Commission can publish reports pursuant to Article 70 of the decree issuing the Elections Law. This states that electoral processes must be conducted at all stages with transparency and openness to ensure that monitors and the media are enabled to monitor processes at all stages. However there are no legal provisions that require political parties to publish the financial contributions they receive either to the Elections Commission or through public information sources, such as the internet.

The Elections Law specifies the sources of funding for the electoral lists and nominees, stating that they must be Palestinians only. The law also requires the parties and electoral blocs to submit detailed statements of all the sources of funding they have obtained together with the sums they expend during the election campaign.

## PRACTICE

To what extent can the public obtain relevant financial information from political parties?

**Score: 25 / 100**

Political parties do not disclose the sources of their funding or their expenditures.<sup>641</sup> The continuation of the occupation of Palestine and the retention by a number of elements of secrecy within the parties, a lack of trust in the political system, a lack of awareness among citizens of the importance and the need to study the financial aspects of political parties provides a justification for the absence of transparency in the work and budgets of the majority of Palestinian political parties and factions.<sup>642</sup>

However with regards to the election campaigns, the Elections Commission publishes a statement of the expenses of the electoral lists that have entered the elections.<sup>643</sup> The Palestinian political parties do not seek to inform the public in advance of this information through information channels, such as the Central Elections Commission or websites.<sup>644</sup> Furthermore the monitoring conducted by the Commission on expenditure on election campaigns is weak. It is satisfied with the financial statements provided by the political parties without investigating them to ensure they are correct.<sup>645</sup>

639 Interview with Mr Ahmad Halas, a previous source.

640 Article 68 of the Decree issuing Law number 1 Regarding General Elections of 2007.

641 Interview with Dr Ayman Daraghima and Mrs Khalida Jarrar, previous source.

642 Ahmad Abu Diya and others, National Integrity System, Palestine 2009, Ramallah, Coalition for Accountability and Integrity - AMAN, (D.T.), Page 53.

643 \_\_\_\_\_, Report on the Second Legislative Elections, 25 January 2006, previous source, Page 355.

644 Interview with Mr Ahmad Halas, a previous source.

645 Interview with Dr. Ammar Dweik, former CEO of the central elections commission, 8/7/2013

## GOVERNANCE: ACCOUNTABILITY

### LAW

To what extent are there provisions governing financial oversight of political parties by a designated state body?

Score: 50 / 100

The Political Parties Law (15/1955) – currently not in operation - requires the executive bodies of political parties to maintain a detailed register of income and expenditure certified by a legal auditor. It allows the minister, or someone deputising for her/him, to study the register at any time.<sup>646</sup> It does not however require periodic financial reports to be submitted to a relevant authority within the state. Hence there are no legal penal provisions for this in the West Bank. In the Gaza Strip, there are no specific financial provisions that political parties are subject to for their accounting and consequently no penalties for failure to submit financial reports to the relevant authorities in full and at an appropriate time.<sup>647</sup>

The decree issuing the Elections Law (1/2007) and the electoral lists require submission of a detailed statement of the sources of funding obtained and the amounts expended during the election campaigns to the Elections Commission. Furthermore the Elections Commission may demand auditing of the statement by a legal auditor, and the law prohibits the lists or candidates for the position of president to receive funds from any non-Palestinian external or foreign source either directly or indirectly. It also places limits for expenditure on publicity, which must not exceed USD 1 million. The law punishes those who violate the provisions on sources of funding, spending limits and failure to submit a statement to the Elections Commission of the funding related to lists and expenditure.<sup>648</sup> The Financial and Administrative Monitoring Law has not subjected political parties explicitly to the oversight of the Monitoring Office in line with its oversight of trade unions, civil society organizations and public institutions and unions.<sup>649</sup>

### PRACTICE

To what extent is there effective financial oversight of political parties in practice?

Score: 25 / 100

With the exception of the reports related to election campaigns, submitted to the Central Elections Commission by the electoral lists, no financial reports are submitted to any official body.<sup>650</sup> Nevertheless the electoral lists adhere to the Elections Law and submit the required financial reports to the Central Elections Commission.<sup>651</sup>

<sup>646</sup> Article 9 of Law number 15 of 1955.

<sup>647</sup> Interview with Mr Ahmad Halas, a previous source.

<sup>648</sup> See Articles 68, 69, 111 & 113 of the Decree issuing Law number 1 of 2007 Regarding General Elections. It is noted that the financial statement for lists does not of necessity target sources of funding of political parties.

<sup>649</sup> Article 31 of the Law of Financial and Administrative Monitoring number 5 of 2004.

<sup>650</sup> Interview with Mr Salti Rimouni, previous source.

<sup>651</sup> Report of the Elections Commission for the Second Legislative Council, previous source, Page 83.

## GOVERNANCE: INTEGRITY

### LAW

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

**Score: 50 / 100**

Within Occupied Palestine there are more than fifteen political parties, including some that have existed for more than 45 years, such as the Fatah Movement and the Popular Front, and others that have existed for more than 25 years, such as the Hamas Movement, in addition to parties that were founded during the era of the Palestinian Authority, that is after 1994. The majority of political parties and movements have internal regulations that specify conditions for membership, rules for selection of party leaders at various levels of leadership, and the body responsible for the preparation and ratification of the various programmes. These are mostly within the jurisdiction of the party's General Congress.<sup>652</sup> For example, Fatah's bylaws stipulate that the general congress elects central committee members and the revolutionary council directly, while province committees (local leadership in governorates) are elected by provincial congresses that are composed of district representatives and local leadership.<sup>653</sup> The majority of Palestinian parties and factions have similar processes.

The laws currently in force, which is the Basic Law and Law of Political Parties, that deal with political parties, do not establish the need for political parties to adopt democratic procedures for the selection of party leaders and their representatives in government.

### PRACTICE

To what extent is there effective internal democratic governance of political parties in practice?

**Score: 50 / 100**

Many political parties hold their congresses openly and elect their leaders, including the Fatah Movement and the Fida party. Others elect their leaders secretly, including the Hamas Movement, due to the special circumstances afflicting the people of Palestine resulting from the occupation. Some conduct their elections periodically like the Democratic Front and the Popular Front, and others irregularly like Fatah, which conducted elections more than 20 years after it held its fifth congress. The Hamas Movement conducts internal elections regularly but secretly, and with complexity, and the extent of its democratic process cannot be known. The majority of the political parties are dominated by men and there is no appropriate representation for women in any of the parties.

Normally the general policies and programmes of parties are ratified in their annual conferences and in spite of what is stated above the leaderships in the parties do not change frequently. Mostly the party chairperson remains in post for a very long period. An exception is the example provided by the Secretary General of the Popular Front for the Liberation of Palestine, Dr George Habash, who resigned from the leadership of the party after 30 years of leading the party.<sup>654</sup> There are political parties in which the internal democracy is inoperative and periodic elections to elect the leadership bodies are not arranged.<sup>655</sup> The

652 Interview with Mr Muheeb Awwad, a previously mentioned source.

653 See FATEH's bylaws, <http://www.fatehmedia.ps/page-90.html>

654 Interview with Mr Jumail Al-Majdalawi, a previous source.

655 The Coalition for Accountability and Integrity - AMAN, The National Integrity System, Palestine 2009, Page 53.

election of the party chairperson in most political parties does not take place through a fully democratic process. The chairperson is selected on the basis of role within the movement, the extent of his participation in the struggle and leadership qualifications.<sup>656</sup>

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<sup>656</sup> Interview with Mr Ahmad Halas, a previous source.

## ROLE: INTEREST AGGREGATION AND REPRESENTATION

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

**Score: 75 / 100**

The political parties propose programmes and political stances, and they recruit, organise and include within their ranks citizens from varying social and regional strands. The majority of parties include interest and focus groups, the extent of influence from these groups differs from one party to another. Nevertheless they do not reach the level of control of any of the parties<sup>657</sup> This is attributable to the nature of the nature of the establishment and development of these parties that consider that their main, common and shared task is to resist occupation across all classes and segments of the society and that this is not an area of dispute or conflict of interest.<sup>658</sup> Public opinion polls conducted by the Palestinian Centre for Political Research and Surveys indicate considerable support for political parties: 65% of citizens whose opinions were canvassed expressed their support for political parties in Survey 47, conducted from 28 to 30 March 2013.<sup>659</sup>

Some political parties are linked to civil society organisation, with which they share points of view with good relationships.<sup>660</sup> It should be noted that there are political parties that have formed civil society organisations loyal to them. There is also party political activity and competition in filling the membership of civil society organisations, and in particular trade unions, student councils in the universities and professional and trade union federations, such as those of workers, journalists and lawyers.

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657 Interviews with Mrs Khalida Jarrar, Mr Muheeb Awwad and Dr Ayman Daraghima, previous source.

658 Interview with Mrs Khalida Jarrar, previously recorded source.

659 <http://www.pcpsr.org/arabic/survey/polls/2013/p47a.html>

660 Interview with Mrs Khalida Jarrar, previously recorded source.

## ROLE: ANTI-CORRUPTION COMMITMENT

To what extent do political parties give due attention to public accountability and the fight against corruption?

Score: 50 / 100

The majority of political parties express an interest in combating corruption in the public sphere, which is apparent from their publications, statements, electoral programmes and speeches of their officials. No electoral programme of the electoral lists that entered the elections in 2006 lacked reference to the need to combat corruption and mechanisms for combating it. Their activities include discussion of laws to enhance financial monitoring, accountability, transparency and the way to implement these,<sup>661</sup> together with holding to account persons proven to have been implicated in corruption by bringing them to court,<sup>662</sup> and political actions to prevent corruption in institutions and organs of the PNA and to hold violators to account.<sup>663</sup> They also include putting in place a system of financial monitoring,<sup>664</sup> implementation of the principle of justice and equality of opportunity for all citizens in appointments, work, and promotion, and combating absenteeism in the government apparatus.<sup>665</sup>

The concern of the political parties to combat corruption in their electoral programmes may well be derived from the great interest shown by the Palestinian people in combating corruption, in an attempt on the part of the political parties to obtain votes. 78% of citizens say that corruption exists in the institutions of the PNA,<sup>666</sup> meaning that combating corruption is seen as a priority for Palestinian society. In spite of this the existence of activities or initiatives that seek to combat corruption among the political factions and parties, effective and serious participation on the part of the leaders of the political parties to cement a national strategy for combating corruption is not observed. This weakens political will to prevent corruption, as it might be supposed the political parties would play an important role in strengthening this will through their representatives in decision-making positions.<sup>667</sup> The political parties exploit cases of corruption as material for incitement against their political opponents.<sup>668</sup> However most political parties do not in practice pay attention to accountability in the public sphere or to combating corruption. The excuse the absence of accountability by stating it is a temporary and exceptional feature and that there is no margin for change due to engagement in resisting the occupation.<sup>669</sup>

A public opinion poll conducted by the Coalition for Accountability and Integrity - AMAN, reveals the existence of a negative impression among citizens with respect to corruption in political parties and their role in combating corruption. In that poll political parties were placed as the second most corrupt in 2011 and 2012, and it appears that the trust citizens have in political parties is still weak.<sup>670</sup>

661 See the electoral programmes of the following: the Fatah Movement, Page 312; the Hamas Movement, Page 272; the Popular Front for the Liberation of Palestine (the Martyr Abu Ali Mustafa list), Page 255, in the Central Elections Commission, Report on the Second Legislative Elections 25 July 2006, Palestine: Ramallah, 31 July 2006.

662 See the Electoral Programme of the Popular Front for the Liberation of Palestine (the Martyr Abu Ali Mustafa list), Page 255, the previous source.

663 The Electoral Programme of the Fatah Movement, previous source, Page 311.

664 The Electoral Programme of the Popular Front for the Liberation of Palestine (the Martyr Abu Ali Mustafa list), previous source, Page 256.

665 The Electoral Programme of the Hamas Movement (Change and Reform list), previous source, Pages 272 & 274.

666 <http://www.pcpsr.org/arabic/survey/polls/2013/p47a.html>

667 Report on Corruption and Combating Corruption, Palestine 2012, previous source, Page 61.

668 Ahmad Abu Diya and others, National Integrity System, Palestine 2009, Page 53.

669 Interview with Mr Ahmad Halas, previous source.

670 The Coalition for Accountability and Integrity - AMAN, Report on Corruption and Combating Corruption, Palestine 2012, Ramallah, 2013, Page 61.

**MEDIA**  
**38/100**

## SUMMARY

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Laws in force provide for a pluralistic media environment and media accessibility by private sector and civil society organisations. However no law has been issued related to the protection of the media and freedom of access to information, and there is an absence of laws regulating the work of the audio and visual media and websites. The laws on defamation are very tough and impose punishment of imprisonment and financial fines, which restricts freedom of expression as a result of loose interpretations which can be used against the media.

Intimidation and harassment of journalists are limited, but there is a clear lack of effort by relevant authorities to investigate violations against journalists and media institutions. But journalists are sometimes questioned about information they publish, and cannot ensure their right to expression.

Although there was improvement in the number of radio and TV programmes in 2012 publishing information, enhancing the values of integrity, and discussing a number of issues with officials, media outlets still do not tackle corruption in a professional way and present them to the public. The absence of investigative reports in the Palestinian media is due to a lack of sections specialised in investigative and inquiry work. Interests and public relations play a role in avoiding investigations in the Palestinian media and limiting the number of such reports. Official media censorship has led to self-censorship by Palestinian journalists. Palestinian law does not require media outlets to uncover the details of their assets, and media outlets do not have in general clear rules on disclosure of information about their employees, and their reporting and editing policies. Media institutions do not offer mechanisms for receiving and dealing with outside complaints, these are dealt with through routine and superficial mechanisms that are inefficient in reality.

A journalistic code of conduct based on professional press ethics was adopted and published on the webpage of the journalist union, of which all journalism employees are members, but it does not include oversight mechanisms, rules on gifts and privileges that are given to journalists.

### Structure and organisation

The media is a recent industry in Palestine and therefore does not constitute a large proportion of Palestinian GDP. The media relies upon advertisements and government support (government media) or from donor programmes (private media). Media competition at a professional level is very limited; competition is for commercial advertising.

Journalists do not have appropriate salaries or other benefits. There is a considerable recruitment of excellent staff by the foreign media and agencies, with local media unable to compete and hence losing many of its staff.

The media is of considerable importance in strengthening issues of integrity and combating corruption due to its role in communicating information to a wide sector of the public. The ownership of media in Palestine can be divided into: (1) government media (Sout Palestine - the Voice of Palestine, Palestine television, quasi-governmental newspapers such as the Al-Hayat - Life - Newspaper and the Palestinian News Agency - WAFA), (2) private media (private television, radio and newspapers and news websites), (3) factional media (affairs, magazines and websites belonging to political organisations).

**OVERALL PILLAR SCORE: 38 / 100**

<b>Category</b>	<b>Index</b>	<b>Law</b>	<b>Practice</b>
<i>Capacity</i> 44 / 100	Resources	50	50
	Independence	50	25
<i>Governance</i> 38 / 100	Transparency	25	25
	Accountability	50	50
	Integrity	50	25
<i>Role</i> 33 / 100	Investigate and expose cases of corruption practice	25	
	Inform public on corruption and its impact	25	
	Inform public on governance issues	50	

## CAPACITY: RESOURCES

### LAW

To what extent does the legal framework provide an environment conducive to a diverse independent media?

**Score: 50 / 100**

Current Palestinian law requires a prior licence for media operations and sets out in detail a number of provisions for the conditions that must be met to obtain a media licence. It governs the powers to consider an application for a licence, the procedures and the circumstances for revocation of a licence. The conditions for granting licences are governed in the Law for Printed Materials and Publications (1995) for the print media, and a decision of the Council of Ministers governing the licensing of stations, for the audio and visual media.<sup>671</sup> Licences for printed materials are granted by the General Directorate for Printed Materials and Publications in the Ministry of Information. The licensing of the audio and visual media is entrusted to a threefold committee constituted of three ministries.

Article 19 of the Law for Printed Materials and Publications states that a decision for a licence should be issued by the Minister of Information within a maximum of 30 days from the date of application. A decision to refuse a licence must state the reasons for doing so and is subject to challenge before the Supreme Court of Justice. However this provision is restricted to specialist periodicals and there is no mechanism for dealing with any other form of printed material. In relation to audio and visual media, the decision of the Council of Ministers governing the licensing of stations requires a decision to reject the application to state the reasons, and it may be challenged before the relevant judicial authorities. The law does not include a provision automatically awarding a licence in the case of non-response within the allotted time.<sup>672</sup>

The Law for Printed Materials and Publications requires that the licence is obtained before work begins. The law specifies the persons/bodies that need a licence: a journalist as defined in the law, a press company established and registered for the issue of printed newspapers, and a political party. Licences are also granted to Palestinian news agencies, and to foreign news agencies on the condition of equal treatment and that the editor-in-chief in charge is a Palestinian journalist.<sup>673</sup>

Legislation related to radio and television transmission is basic, and does not enhance the role of the media in embracing accountability, transparency and integrity.<sup>674</sup>

Current legislation enables a plurality of media outlets and access to it by the private sector and civil society organisations. There are no restrictions on entry to the journalistic profession. During the past two years the Journalists Union has reviewed its membership within a process of developing the profession of journalism and those working in it.

671 Rashad Tawam, The Legal Arrangement for the Freedom of the Media in Palestine, the Palestinian Centre for the Development and Freedom of the Media, MADA, 2001, Page 69.

672 Decision of the Council of Ministers Number 182 of 2004, Governing the Licensing of Radio, Television, Satellite and Wireless Stations issued on 14/9/2014. <http://muqtafi.birzeit.edu/pg/getleg.asp?id=14790>.

673 See: Article 17 of the Law for Printed Matter and Publication, number 9 of 1995.

674 Interview with Mr Khalid Abu Akr, Manager of the Amin Media Network, on 22/7/2013.

## PRACTICE

To what extent is there a diverse independent media providing a variety of perspectives?

**Score: 50 / 100**

Palestinian media has seen an expansion and significant horizontal plurality since the rise of the PNA in 1994. There are three daily newspapers in the West Bank and a fourth party political newspaper in the Gaza Strip. There is a party political weekly newspaper in Gaza and a large number of seasonal publications, as well as TV and radio stations (two independent agencies, Ramtan and Maan, and a number of small agencies) alongside a public news agency; the Palestinian News Agency (Wafa). There are also a large number of websites that are not subject to any monitoring or accountability with respect to the content they publish.

The existence of a local media has assisted in the appearance of local journalists in the provinces who deal with regional issues that the national media and the media whose publication is concentrated on the "interim" capital are not interested in. However against this is a decline in media performance and quality in the local media for financial reasons, with local stations relying upon their ability to obtain advertising. For this reason they do not fundamentally concern themselves with the issue of quality.<sup>675</sup>

Some media outlets have loyalty to particular political organisations. However most widespread media has distanced itself from party political affiliation. They may have specific political tendencies, but these are not declared openly. They seek to present all programmes to the public and this is offset by media that has a shared interest with businessmen, political bodies and bodies that seek to control decision-making. The Palestinian public have access to the available media at reasonable prices.<sup>676</sup>

More than 30 private radio and television stations operate in the West Bank, in addition to the official station (Sout Palestine - the Voice of Palestine). Most of these stations are concentrated in the middle of the West Bank. In Gaza more than 10 stations, most of which are subject to political movements, operate. However all the stations are subject to monitoring by the dismissed government and implement policies in accordance with it.<sup>677</sup>

Most radio and television stations in the West Bank lack professionalism, finance and trained staff. They do not possess the equipment necessary for a professional radio operation, and there is a large proportion, 50%, whose transmission does not exceed 2 km. Furthermore there are few listeners. This does not prevent some stations managed by businessmen from working to strengthen the transmission and extend and increase their scope. Some of these stations belong to networks that operate in the form of a non-profit-making institutions, which obtain limited finance for some of their programmes.<sup>678</sup>

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675 Interview with Mr Khalid Abu Akr, Manager of the Amin Media Network, on 22/7/2013.

676 Previous source.

677 Ghusoub Ala Al-Deen, First Report on the Monitoring of the Transmissions by the Local Stations (Morning Period), Ramallah, the Palestinian Centre for Development and Media Freedom, published on the following website: [http://www.madacenter.org/media.php?lang=2&id=373&category\\_id=7](http://www.madacenter.org/media.php?lang=2&id=373&category_id=7).

678 Ghusoub Ala Al-Deen, previous source.

## CAPACITY: INDEPENDENCE

### LAW

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

Score: 50 / 100

The Basic Law of the PNA guarantees freedom of opinion and expression in its various forms and states that it should not be impinged upon as it is a constitutional right guaranteed for every person. Article 19 states, 'Freedom of opinion must not be impinged upon. Every person has a right to express his opinion and publish it in speech or in writing or by other means of expression or art while observing the provisions of the law.' The Basic Law provides principles for constitutional protection in that it guarantees the formation of newspapers and other media outlets as a right for everyone, and the freedom of the audio, visual and written media, the freedom to print, publish, distribute and transmit, and the freedom of workers in the media. It prohibits censorship of the media and does not allow it to be threatened, suspended, confiscated, revoked or restricted, upon it other than in accordance with the law and by a judicial ruling.<sup>679</sup>

The Law for Printed Materials and Publications adds, 'The press and printing are free and freedom of opinion is guaranteed for every Palestinian. They have the right to express their opinions freely in speech, writing, images and drawings through expression and the media.'<sup>680</sup> The press has the right to engage in its work in freedom, in providing news, information and comments and participating in the spread of ideas, culture and the sciences within the limits of the law and within the framework of preserving freedom, rights and public duties, and with respect for the freedom and sanctity of the personal life of others.<sup>681</sup>

A law for access to information has not been issued, even though the Palestinian legislature prepared a draft law for the right to obtain information in 2005. As regards to defamation laws, there are a number of legal provisions related to insult and slander. Article 37 (6) of the Law for Printed Materials and Publications states, 'Printed materials cannot deal with articles or news that harms the dignity of individuals or their personal freedom or damages their reputation.'<sup>682</sup> With reference to the provisions of the Criminal Law of 1960 regarding cases of slander and libel spread in publications, Article 198 (1) of the law states, 'to achieve the desired objective of this part, the publication of any material that is slanderous or libellous is an unlawful publication unless the subject of the slander or libel is correct and its publication is of benefit to the public interest.'<sup>683</sup> There are numerous provisions that punish disparagement, slander, insult and libel. These include Articles 188 (1), 188 (2), 191, 193, 195 and 196(1) of the Criminal Law of 1960. In the Gaza Strip these crimes are punished under Articles 201, 202, 203 and 204 of Law 74 of 1936. These laws are very strict and impose a punishment of imprisonment and fine, limiting freedom of expression due to vague legal texts that enable the governing authorities to loosely interpret and use them against the media.

Article 4 of the Law for Printed Materials and Publications includes the right of the printed publication of the press, news agencies, editors and journalists to protect sources of information or news that they obtain in confidence, unless a court decides otherwise while hearing criminal legal action, to protect the security of the state, prevent crime or to achieve justice.<sup>684</sup>

The law prohibits censorship of the press and other media outlets. The permitted censorship is self-censorship. However it is clear that there is direct or indirect censorship on many occasions.<sup>685</sup>

679 See: Article 27 of the Basic Law for the Palestinian Authority, previous source.

680 See: Article 2 of the Law for Printed Matter and Publication.

681 See: Article 3 of the Law for Printed Matter and Publication.

682 See: The Law for Printed Matter and Publication, previous source.

683 Isam Abdeen, Analytical Legal Paper on Violations of Freedom of Opinion and Expression and the Freedom of the Media in the Territories of the Palestinian National Authority, Ramallah, Al-Haq Institute, 2012, Page 22.

684 See: The Law for Printed Matter and Publication, previous source.

685 Interview with Mr Khalid Abu Akr, previous source.

## PRACTICE

To what extent is the media free from unwarranted external interference in its work in practice?

Score: 25 / 100

Official and self-censorship have a negative impact on both the current situation of the Palestinian media and its future. In addition to serious effects on the professionalism, credibility and productivity of the media itself, there are also serious consequences from the spread of self-censorship among Palestinian journalists in their reports, in which some journalists have refrained from naming certain families in social cases<sup>686</sup> and in which conditions are imposed by the bodies responsible for journalistic work. Examples of these conditions include the imposition of a particular person responsible for presenting opinions and preventing journalists from hosting certain members of the opposition. Many media establishments make no effort to protect journalists.<sup>687</sup> Granting licences to the television and radio media is a required process and subject to monitoring by the government and Ministry of Information, with an important and effective role of the security services. As long as there is a need for security approval for those who obtain licences, on many occasions the issue is politicised.<sup>688</sup>

Acts of intimidation and harassment of journalists are few, rather than apparent and widespread. However on occasion, journalists are held to account for information that is published, and journalists are not able to insist on their right to freedom of expression without fear of retribution, due to the occupation and political division.<sup>689</sup> At the same time the Independent Commission for Human Rights has listed the arrest of no fewer than 30 journalists in the West Bank and in the Gaza Strip. These arrests, that adversely impact the freedom of opinion and expression, have cast negative shadows on those working in the field of the media, and have created apprehension for many of them, preventing them from reporting events in total freedom, out of fear of prosecution and arrest. Most interrogation and arrest of journalists, that in some cases has lasted for hours and in others for a number of days or months, have lacked sound legal procedures and the guarantees of a fair trial have been missing. A number of journalists have been prevented from travelling; compulsory residence has been imposed on them and their websites have been closed down.<sup>690</sup>

During 2012, the Palestinian Centre for Media Development and Freedoms, MADA, recorded 238 violations of the rights of Palestinian journalists and media establishments. The Israeli occupation forces committed approximately 70% of the total, or 164 violations. The various Palestinian authorities in the West Bank and Gaza Strip committed 74 violations, that is 30% of the total violations. The Palestinian violations consisted of 12 types: arrest, detention, prevention from travelling, subjecting journalists to investigation, assault on media offices and establishments, closure and barring of media websites, preventing journalistic coverage, confiscation of equipment, threats, and committal for trial.<sup>691</sup>

There is also clear negligence on the part of the authorities concerned in investigating violations against journalists and media establishments. Most cases are violations have passed without serious investigation being conducted, and the violators have escaped punishment. This places serious question marks on the declarations by some officials in the West Bank and Gaza Strip regarding their full compliance and support for freedom of opinion and expression in Palestine.<sup>692</sup>

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686 Mahmoud Al-Fatafta, The Effect of Violations on Self-Censorship of workers in the Palestinian Media, Ramallah, the Independent Commission for Human Rights, Seasonal Magazine on Palestinian Human Rights, Issue 41, November 2010, Page 50.

687 Previous source, Page 51.

688 Interview with Mr Khalid Abu Akr, previous source.

689 Interview with Mr Khalid Abu Akr, previous source.

690 \_\_\_\_\_, The State of Human Rights in the Territories of the Palestinian National Authority, the 18th annual report, 2012, Ramallah, The Independent Commission on Human Rights (Grievances Office), 2013, Page 90.

691 \_\_\_\_\_, Report on Violations of Media Freedom in Palestine, Ramallah, the Palestinian Centre for Media Development and Freedoms, MADA, Page 2.

692 The same source, Pages 17-18.

During 2012 eight news websites, pages and groups on Facebook were closed. The political divisions and settlement of scores in the light of these divisions has caused harm to the media as a means of free expression. It was also noticed during 2012 that there was an increase and spread of prosecutions of journalists, writers and bloggers, who have faced charges of corruption and been interrogated by the Public Prosecution, with some having been brought before the Palestinian courts. There is also continued interrogation of journalists or their detention for specific periods in the West Bank and Gaza Strip.<sup>693</sup>

The media institutions belonging to the government have clear agendas; there are no clear agendas in the private media because of the political division, with the exception of a few media outlets. The media has been affected, both those supporting the Hamas government in the Gaza Strip or the government in the West Bank. The PNA has shown no attempt to impose its control on the media through the use of financial allocations or using advertisements or various means of assistance.<sup>694</sup>

Obtaining licences requires a 'recommendation' from the Ministry of the Interior stating that it has no objection for the person concerned to establish a media outlet. The Ministry of Telecommunications specifies the wavelengths on which the broadcast must take place, and complications have increased in obtaining licences for broadcasting following the political division that took place in 2007, when a threefold committee consisting of the Ministries of Information, Telecommunications and Interior was formed to grant approval with direct ratification from the Office of the Prime Minister.<sup>695</sup> As a result, media licenses are granted to an extent through a clear and transparent process.<sup>696</sup>

In practice, the Palestinian National Authority does not allocate a budget to support the media, with the exception of the Palestinian Radio and Television Authority and the WAFA News Agency. However some of the employees on the new Hayat Newspaper belong to the public sector, although they are subordinate to the investment fund. In some cases reliance is placed on support to gain political loyalty.<sup>697</sup>

The media does not handle cases of corruption in a professional manner and expose them to the public. However there was improvement during 2012 in increasing the number of radio and television programmes in the area of publishing information and enhancing the values of integrity. A number of officials were invited to speak on various issues.<sup>698</sup>

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693 \_\_\_\_\_, Report on Corruption and Combating It of 2012, the Coalition for Accountability and Integrity, AMAN, Page 58.

694 Interview with Mr Musa Al Rimawi, Director General of the Palestinian Centre for Media Development and Freedoms, MADA, on 23/7/2013.

695 Ghasoub Ala Al-Deen, previous source.

696 Interview with Mr Musa Al Rimawi, previous source.

697 Interview with the journalist Muntasir Hamadan, Coordinator for the Al-Salaama Professionalism Project in the Union of Journalists, on 8/9/2013.

698 \_\_\_\_\_, Report on Corruption and Combating It of 2012, the Coalition for Accountability and Integrity, AMAN, Page 58

## GOVERNANCE: TRANSPARENCY

### LAW

To what extent are there provisions to ensure transparency in the activities of the media?

Score: 25 / 100

The law does not require the printed media, television and radio broadcasting companies to reveal their ownership.<sup>699</sup> There are no clear rules for the media in general regarding the disclosure of information on their employee, regarding the policies for selecting reports and editorial policies.<sup>700</sup> This is subject to the organisation's own evaluation and decision on what to reveal or conceal.<sup>701</sup>

Most media establishments operating in the West Bank and Gaza Strip are owned by small or family companies and the matter of editorial policy and selecting reports is subject to an individual decision governed by the person with power, such as the editor-in-chief in the case of public joint stock companies, or the political party.<sup>702</sup>

### PRACTICE

To what extent is there transparency in the media in practice?

Score: 25 / 100

The transparency of the media relies upon the nature of the work it carries out, the body that funds it and the decision-makers within it.<sup>703</sup> In Palestine there are three types of ownership of the media in operation; private, government and party political. However there is no public ownership responsible to the Legislative Council. Ownership and funding are two basic factors in editorial policies and this is a right for the public.<sup>704</sup>

Generally the media, television and the radio do not reveal the details of their ownership, with the exception of the printed media, because it is subordinate to political factions and within the context that the Palestinian political parties do not reveal their finances and ownership because of the special circumstances in Palestine and the struggle against occupation.<sup>705</sup> Likewise the media in general does not reveal information on its employees, regarding the policies for selecting reports and editorial policies.<sup>706</sup>

The MAAN News Agency, which is an internet news agency, has disclosed its ownership twice. The first was during 2010, and the second during 2012. A number of media outlets have begun to rely on foreign support contrary to the provisions of the Law on Printed Materials and Publications of 1995.<sup>707</sup>

One of the problems faced by media establishments is a lack of clarity of the mission of the media. This is caused by the absence of editorial policies within the establishments and the decision-making centres that determine those in charge of the media. This affects neutrality within the media and bias towards the decision making centres is more significant than in reporting on public issues. Hence there is concentration on official news related to the decision making centres.<sup>708</sup>

699 Interview with Mr Ihab Al Ghusain, Head of the Government Information Office in Gaza, on 7/7/2013.

700 Interview with Mr Fathi Sabah, Chairman of the Board of Directors of the Palestinian Telecommunications and Development Institute, on 27/6/2013.

701 Interview with Mr Khalid Abu Akr, previous source.

702 Interview with Mr Fathi Sabah, previous source.

703 Interview with Mr Fathi Sabah, previous source.

704 Interview with Dr Abdul Nasir Al Najjar, Union of Journalists, on 23/7/2013.

705 Interview with Mr Tital Awkal, journalistic writer and former Director General of Planning in the Ministry of Information, on 25/6/2013.

706 Interview with Mr Fathi Sabah, previous source.

707 Interview with the journalist Muntasir Hamadan, previous source.

708 Interview with the journalist Muntasir Hamadan, previous source.

## GOVERNANCE: ACCOUNTABILITY

### LAW

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

Score: 50 / 100

There are no legal provisions to guarantee the accountability of the media for their activities. It all depends on the prevailing custom and traditions of the media. The law does not require the media to submit reports to the authorities.<sup>709</sup> The government regulators have authority to issue licences and to apply to the judiciary for them to be revoked if the media violates the provisions of the law, such as failing to pay the fees for frequencies and transmission. However they have no authority to supervise media establishments.

In the event that the print press publishes incorrect news or an article containing incorrect information, the law grants the person to whom the news article relates the right to reply to the news or article or to demand its correction. The editor-in-chief is required to publish the reply or correction free of charge in the issue that follows the date on which the reply is received in the same location and with the same font as that in which the news or article was published in the newspaper or magazine.<sup>710</sup>

Also in the event that journalistic printed matter publishes incorrect news or an article containing information related to a public service, the editor-in-chief responsible must publish free of charge the written reply or correction he receives from the body concerned in the issue that follows the date on which the reply or correction is received in the same location and with the same font as that in which the news or article appeared in the newspaper or magazine.<sup>711</sup> The response should be made according to the Law for Printed Matter and Publication within the same area and location.<sup>712</sup>

Criminal prosecution of journalists takes place pursuant to the Jordanian Criminal Law (16/1960) in the West Bank, and the Criminal Law of 1936 in the Gaza Strip. Administrative follow-up is conducted by the Ministry of Information, and the Ministry of Telecommunications and Information Technology with respect to violations related to the annual fees and requirements of licences. The Professional Ethics Committee in the Journalists' Union follows up on complaints made against journalists regarding professional issues. Its rulings however do not have an obligatory nature.<sup>713</sup>

709 Previous source.

710 See: Article 25 of the Law for Printed Matter and Publication, previous source.

711 See: Article 26 of the Law for Printed Matter and Publication, previous source.

712 Interview with the journalist Muntasir Hamadan, previous source.

713 Interview with the journalist Muntasir Hamadan, previous source.

## PRACTICE

To what extent can media outlets be held accountable in practice?

Score: 50 / 100

Government regulators do not operate efficiently, especially in the context of the split in the Journalists' Union into a section in the West Bank and another in the Gaza Strip.<sup>714</sup> There are no platforms such as blogs and chat rooms to enable public interaction with correspondents and editors.<sup>715</sup> There is a readers' section in the Al-Hayat Newspaper<sup>716</sup>.

Media establishments, individually, do not provide mechanisms for receiving and handling complaints received from the outside. These issues are handled through superficial routine mechanisms that are not effective in reality,<sup>717</sup> although complaints may be submitted to the Public Prosecution against journalists. In this context a verbal agreement has been reached in 2012 between the Public Prosecution and the Journalists' Union that journalists will not be detained in cases related to the profession without a ruling from the court, for fear of arbitrary action in the use of this power against journalists.<sup>718</sup> Usually the errors are corrected if a complaint is made, but in practice there is a lack of follow-up on these cases by the media.<sup>719</sup>

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714 Interview with Mr Fathi Sabah, previous source.

715 Interview with Dr Abdul Nasir Al Najjar, previous source.

716 Interview with the journalist Muntasir Hamadan, previous source.

717 Interview with Mr Fathi Sabah, previous source.

718 Interview with the journalist Muntasir Hamadan, previous source.

719 Interview with Dr Abdul Nasir Al Najjar, previous source.

## GOVERNANCE: INTEGRITY

### LAW

To what extent are there provisions in place to ensure the integrity of media employees?

**Score: 50 / 100**

The code of conduct for journalists, which relies on the journalists work ethics , has been adopted and published on the website of the Journalists' Union. It is applicable to everyone working in the press, but does not provide a body responsible for hearing violations of the code and nor does it include mechanisms for disclosure of gifts and benefits offered to journalists.<sup>720</sup> Compliance is ethical and moral, not compulsory. However those wishing to join the Journalists' Union are required to sign it.<sup>721</sup> A further code of ethics and principles of conduct for internet-based journalists was adopted in 2013. The Journalists' Union Professional Ethics Committee can issue a binding ruling on the parties subject to both codes, subject to recourse to the courts if internal mechanisms fail, due to cooperation between the judiciary and the Journalists' Union. There are no codes of conduct in the various broadcast media establishments and hence committees for conduct or monitoring professional ethics have not been established.<sup>722</sup>

### PRACTICE

To what extent is the integrity of media employees ensured in practice?

**Score: 25 / 100**

The code of conduct has not been widely disseminated.<sup>723</sup> However the Journalists' Union Professional Ethics Committee considers complaints submitted to the union with respect to professional ethics. It has yet to constitute a panel or committee to follow up the code of conduct for the press however and has not provided guidance on professional ethics.

Receiving gifts and benefits are still common among Palestinian journalists.<sup>724</sup> Attempts to influence journalists through gifts in kind or benefits, such as invitations to attend conferences or foreign travel and covering their costs, also occur<sup>725</sup> without being declared or registered in a special register in the media establishment or with the Journalists' Union.

The use of a multiplicity of sources when obtaining information is still weak in journalistic work,<sup>726</sup> in that journalists resort sometimes to stating, "it has not been possible to check from an independent source" or "it was not possible to reach the person concerned."

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720 See: The website of the Union of Palestinian Journalists: [http://pjs.ps/index.php?option=com\\_content&view=article&id=147](http://pjs.ps/index.php?option=com_content&view=article&id=147).

721 Interview with Dr Abdul Nasir Al Najjar, previous source.

722 Interview with the journalist Naila Khaleel, on 21/9/2013.

723 Previous source.

724 Previous source.

725 Interview with the journalist Muntasir Hamadan, previous source.

726 Interview with the journalist Naila Khaleel, previous source.

## ROLE: INVESTIGATE AND EXPOSE CASES OF CORRUPTION PRACTICE

To what extent is the media active and successful in investigating and exposing cases of corruption?

Score: 25 / 100

The Palestinian media is weak in investigating and disclosing cases of corruption and pursuing those who commit them. This is within the context of an absence of awareness in general of the importance of pursuing corruption in all its forms.<sup>727</sup> However there are some media outlets that have begun to concentrate in some of their programmes on accountability investigations and cases related to corruption, and on community accountability.<sup>728</sup>

Investigations have received support from civil society organisations and the private sector to strengthen the role of investigations to change and influence. However they suffer from a lack of investigative sections in media establishments and the absence of specialist programmes for this.<sup>729</sup> The continued weakness in investigative reports in dealing with cases of corruption is either caused by the lack of the necessary information for this or fear of the consequences arising from it.<sup>730</sup>

Journalistic investigation is still absent or hidden in the Palestinian press. It generally comes with the initiative and effort of an individual journalist. However media establishments conceal this from their agendas and concerns.<sup>731</sup>

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<sup>727</sup> Interview with Mr Fathi Sabah, previous source.

<sup>728</sup> Interview with the journalist Muntasir Hamadan, previous source.

<sup>729</sup> Interview with the journalist Muntasir Hamadan, previous source.

<sup>730</sup> Report on Corruption and Combating It of 2012, Coalition for Accountability and Integrity - AMAN, Page 59.

<sup>731</sup> Maisa Al-Ahmad, The Absence of Journalistic Investigations and the Excuse of Resources, Palestinian Media Watch, PMW, a magazine issued by the Palestinian Centre for Media Development and Freedoms, MADA, published on the following website: [http://www.madacenter.org/upload\\_files/mag/169\\_mesaapdf.pdf](http://www.madacenter.org/upload_files/mag/169_mesaapdf.pdf)

## ROLE: INFORM PUBLIC ON CORRUPTION AND ITS IMPACT

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

**Score: 25 / 100**

Anti-corruption awareness raising is in general absent from the media establishments. However the civil society organisations perform this role and support programmes related to corruption.<sup>732</sup> Reliance is placed on programmes related to foreign aid. Furthermore the media excuses itself from its role in promoting social awareness on the grounds that these programmes require considerable expenditure<sup>733</sup>.

AMAN has taken the initiative in collaboration with the Journalists' Union to issue an irregular publication under the title 'Al-Kasshaf - The Spotlight', which publishes a set of press investigations into cases of corruption to thoroughly investigate information.<sup>734</sup>

The absence of investigations in the Palestinian media is caused by an absence in the Palestinian media of special sections for investigation. Personal interests and public relations play a role in keeping the Palestinian media away from investigations, having only a few investigations and monitoring the subjecting of journalists to threats and accusations, such that some have been compelled to remain in their houses for periods,<sup>735</sup> as a result of a number of social and political investigations they prepared.

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<sup>732</sup> Interview with Mr Musa Al Rimawi, previous source.

<sup>733</sup> Interview with the journalist Muntasir Hamadan, previous source.

<sup>734</sup> Interview with the journalist Muntasir Hamadan, previous source. See: [www.aman-palestine.org](http://www.aman-palestine.org).

<sup>735</sup> Maisa Al-Ahmad, previous source.

## ROLE: INFORM PUBLIC ON GOVERNANCE ISSUES

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

**Score: 50 / 100**

The media is active and successful in informing the public of the activities of the government and other actors in governance, providing news coverage dependent upon public relations. The information is objective to some extent in issues it covers and events are covered as they are, especially as this coverage does not include all the issues raised, and hence the coverage is incomplete.

It is not easy for the public to obtain an unbiased narrative of the normal activities of the government through the media,<sup>736</sup> due to a lack of access to information in general. Citizens are not able to access information easily or with simple procedures.<sup>737</sup> The media mostly publishes what the government provides it with, with the government highly controlling what it publishes. There is no analysis or in-depth investigation of the issues or decisions taken.<sup>738</sup> During 2012 there was an improvement in the increase in the number of local radio and television programmes that work on publishing information and enhancing the values of integrity, with a number of officials interviewed on various topics.<sup>739</sup>

<sup>736</sup> Interview with Mr Tilal Awkal, previous source.

<sup>737</sup> Interview with Mr Musa Al Rimawi, previous source.

<sup>738</sup> Interview with the journalist Muntasir Hamadan, previous source.

<sup>739</sup> , Report on Corruption and Combating It, 2012, Previous Source, Page 58.

**CIVIL SOCIETY**  
**67 / 100**

## SUMMARY

Legal rules grant protection to civil society organisations, which have legal personality and financial independence upon registration. It is not permitted to seize funds, close or inspect the headquarters, offices or branches of a civil society organisation, except after a decision by an authorized legal body. Civil society organisations have in a reasonable space for carrying out their role in advocating for rights or criticising the government. This space depends on the general political atmosphere.

Most civil society organisations submit administrative and financial reports about their activities and received funds to relevant governmental bodies and to donors. However only few number of civil society organizations do not regularly publish information about their activities and budgets, and this raises criticism and accusations of corruption.

Many civil society organisations suffer from inefficiency of the general assembly and board, with the executive management dominating the work of the organisation and deciding general policy without effective supervision from the board. The commitment to the civil society code of conduct is still weak. Civil society organisations' work to enhance the national integrity system is poor. Civil society organisations have however succeeded in pressuring the government to take positive steps as a result of different campaigns and activities regarding public policy, and have contributed to various reform efforts and initiatives. This includes successfully lobbying for the establishment of the anti-corruption commission.

### Structure and organisation

Palestinian civil society organisations have developed historically in a manner different from the development of civil society organisations in other Arab societies. They arose within the context of the absence of a state, national independence and citizenship,<sup>740</sup> and have played an important and pivotal role in serving Palestinian society and strengthening the resistance of citizens under the Israeli occupation. Their activity has predominantly focussed on services, assistance and help to the public to face the policy of occupation, which aims to annex and marginalise Palestinian society and the economy. These organisations have suffered from restrictions and hindrance created by the occupation.<sup>741</sup>

After the Palestinian Authority was established, work continued under inherited laws that had been in force from 1967<sup>742</sup> to 2000. The Charitable Associations and Civil Society Organisations Laws were issued to regulate the procedures for registration of civil society organisations and the relationship between civil society organisations and the PNA. The CSO Law's implementing regulation was issued by a decision of the Council of Ministers, (9/2003), and the Associations Law was amended by decree issuing Law 6 of 2011.

The number of civil society organisations had doubled under the umbrella of the PNA and CSOs have undertaken varied and new tasks and roles, such as monitoring the institutions of the PNA and acting to establish rules for the professions, for democracy and for plurality. They have influenced various legislative, economic and other Palestinian policies and entered into integrated and conflicting relationships with the policies of the PNA on the one hand and in the struggle and confrontation of the Israeli occupation on the other.

Civil society has faced various difficulties within the framework of the PNA, in particular after the political division in 2007. The political authorities in both the West Bank and the Gaza Strip have exerted pressure on associations that were loyal to the opposition to take a stance of loyalty to the ruling authority. The ruling authority intervened in both the West Bank and the Gaza Strip in the affairs of the associations, such as appointing management boards for some civil society associations, contrary to law.<sup>743</sup>

<sup>740</sup> Jayan Francisco Costanini & others, Analytical Survey Study of Organisations in the Civil Society in the Occupied Palestinian Territories (Final Report), May 2011, The project was conducted with finance from the European Union, Page 7.

<sup>741</sup> Ribhi Qatamish, Registration of Charitable and People's Associations, A Study in the Legal and Administrative Procedures, Ramallah, Project for Strengthening Democracy and the Civil Society, TAMKEEN, 2003, Page 11.

<sup>742</sup> Presidential Decree number 1 of 1995 stipulated the continuation of work under the laws, regulations and orders that were in force before 5/6/1967 in the Palestinian territories.

<sup>743</sup> Jayan Francisco Costanini, previous source, Page 23.

There are 5000 people's organisations on the West Bank, and approximately 870 charitable associations and people's organisations in the Gaza Strip.

OVERALL PILLAR SCORE: 67 / 100			
Category	Index	Law	Practice
<i>Capacity</i> 75 / 100	Resources	100	50
	Independence	100	50
<i>Governance</i> 50 / 100	Transparency	-	50
	Accountability	-	50
	Integrity	-	50
<i>Role</i> 75 / 100	Hold government accountable	75	
	Policy reform	75	

## CAPACITY: RESOURCES

### LAW

To what extent does the legal framework provide an environment conducive to civil society?

Score: 100 / 100

The Basic Law guarantees the rights of Palestinians to form trade unions, federations, leagues and civil society organisations.<sup>744</sup> The Civil Society and Charitable Associations Laws confirmed this right to engage in social, cultural and professional activity in freedom, including the formation and management of civil society organisations and charitable associations.<sup>745</sup> This means that the formation of civil society organisations is a right that is protected by the law and binds the executive from restricting or hindering the enjoyment of this right without legal justification.<sup>746</sup>

The law specifies the foundations that must exist in a charitable or civil society organisation for it to be legal. These are: not less than seven natural persons on formation of the association, not less than two or more associations for a merger or coalition, and focused on legitimate objectives that are in the public interest without seeking to make a profit to be divided among the members or to achieve a personal benefit. The law requires registration of the associations in the Ministry of the Interior to enable them to engage in their activities.<sup>747</sup> Speed and ease in registration depends on the conditions to form an association and must include submitting a written application signed by at least three of the founding members designated to perform the registration and to sign on behalf of the association. Three copies of the internal regulations must be attached, signed by members of the founding committee.<sup>748</sup> A sum of 20 Jordanian dinars must be paid as fees for the licence, equivalent to approximately USD 30,<sup>749</sup> and the Minister of the Interior must issue a decision regarding completion of the application within two months of the date on which it is submitted. In the event that additional information is submitted, or there is missing information in the application for registration, the period will begin from the date on which they are submitted. If the period of two months ends without a decision being taken, the association will be deemed to have been registered by law. If registration is refused by a decision of the Minister of the Interior, the decision must state the reasons and a challenge may be made to the court with jurisdiction within 30 days of the date of notification.<sup>750</sup>

The law exempts civil society organisations from taxes and customs duties on movable and immovable property necessary for the implementation of the objectives recorded in their constitutions on the condition that they do not dispose of them within a period of less than five years for purposes that violate their objectives. If they do, they must pay the taxes and customs duties for them.<sup>751</sup>

Associations and organisations may only be dissolved or their registration revoked: through a decision of the general assembly; if the association does not start its work within one year of the date of its registration, unless there are circumstances of force majeure that prevent it from doing so; and if there is a violation of its constitution or internal regulations that is not corrected within 3 months from when it is issued a warning. In all these circumstances, a challenge may be made against decisions issued by the Ministry of the Interior, as the Basic Law prohibits immunity for administrative decisions.<sup>752</sup>

744 See: Article 26 of the Basic Law.

745 See: Article 1 of the Law for Peoples and Charitable Associations of 2000.

746 Ribhi Qatamish, Registration of Charitable and People's Associations, A Study in the Legal and Administrative Procedures, previous source, Page 13.

747 The previous source. Article 7 of the Law for People's and Charitable Associations states, "... Associations may not engage in their activities before registration."

748 Interview with Mr Abdul Nasir Al Sairafi, Director General of the Department for Charitable Associations and People's Organisations in the Ministry of the Interior, on 12/8/2013.

749 The application fees for the licensing of people's associations is not stipulated in law.

750 See: Article 4 of the Law for Peoples and Charitable Associations, number 1 of 2000.

751 See: Article 14 of the Law for Peoples and Charitable Associations, number 1 of 2000.

752 See: Article 30 of the Basic Law.

## PRACTICE

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

Score: 50 / 100

Civil society organisations rely heavily on foreign funding. Local funding is extremely limited and it is rare for there to be self-funding resources, such as profits from services, projects and rents. Most organisations have been recently established and rely on a single donor to implement a single programme. Funding is a point of weakness in civil society organisations in general, although well established and older organisations have upon a number of funders and programmes.<sup>753</sup> This fundamental reliance on foreign funding leads increases sub-ordination to donors and competition between organisations and associations to obtain financial resources and funding. This weakens cooperation and coordination between civil society organisations<sup>754</sup> and weakens them in general.

Many organisations have competent and trained staff,<sup>755</sup> although others lack this. Foreign CSOs compete with local civil society to attract competent staff with experience.<sup>756</sup>

Civil society organisations vary in the strength of their volunteer base and members, due to differences in the nature of the organisations. There are organisations with a professional character, a limited number of members and their activities are seasonal. This is contrasted with organisations that have a public base. In all cases voluntary work has declined in general,<sup>757</sup> and there are a number of organisations that have no genuine public representation.<sup>758</sup>

In the Gaza Strip, of the 870 civil society organisations, 40% have no financial and human resources. 87% of these organisations receive grants and aid from international associations as the primary source of funding for their projects and activities.<sup>759</sup> Some civil society organisations rely on local sources of funding, such as Islamic associations and establishments.<sup>760</sup> This results from the absence of government funding and also the low level of support provided by the private sector to encourage and develop public work.

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753 Interview with Mr Shaawan Jabareen and Dr Allam Jarrar, previous source.

754 Javan Francisco Costanini, previous source, Page 31.

755 Previous source, Page 8.

756 Interview with Mr Shaawan Jabareen and Dr Allam Jarrar, previous source.

757 Previous source.

758 Javan Francisco Costanini, previous source, Page 31.

759 Interview with Mr Samir Musa, Lawyer for the Al Dameer [= Conscience] Institute for Human Rights, on 26/6/2013.

760 Interview with Mr Abdul Majid Al Aaloul, Director of the National Programme for Indicators of Performance in the Ministry of the Interior, on 1/7/2013.

## CAPACITY: INDEPENDENCE

### LAW

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

**Score: 100 / 100**

The law treats Palestinians equally and prohibits discrimination between them on the basis of ethnic origin, sex, religion, disability or political opinion.<sup>761</sup> It grants Palestinians the right to form trade unions, federations and associations regardless of religion or political ideology.<sup>762</sup> In relation to objectives, the law states however that the objectives of associations must be legitimate and seek to achieve objectives that are in the public interest. Even though the term 'public interest' has a wide and extensive meaning that is not specific, it 'in totality means a set of basic requirements and services needed by members of the group or that concern the majority of society.'<sup>763</sup>

Civil society organisations (charitable associations and civil society organisations) have legal personality and independent financial status as soon as they are registered.<sup>764</sup> It is not permitted for their funds to be seized or their headquarters, centres or branches to be closed or searched without a competent court ruling.<sup>765</sup> Their relationship with the relevant ministries is on the basis of cooperation and integration to achieve the public interest.<sup>766</sup> The law restricts state interference in the work of civil society organisations to: violations by the organisations of their constitutions;<sup>767</sup> monitoring their work, through a written decision stating the reasons from the Minister of the Interior to check that their funds have been expended on the purposes specified in accordance with the law and their constitution;<sup>768</sup> and the appointment of an interim committee from among the members of the association if the board of the association resigns and did not manage the association. The interim committee can only be temporary until elections are conducted.<sup>769</sup> It can appoint a liquidator for a fee if the association is liquidated.<sup>770</sup> The law does not require that there are representatives of the state or the government on the boards of associations, because the law requires the election of members of the boards by the general meeting of the association. Moreover the law does not require civil society organisations to hold their meetings and conduct their elections in the presence of representatives of official government bodies. Attendance of representatives of the government at meetings of civil society is generally based on an invitation and wish of the organisation itself.<sup>771</sup>

761 See: Article 9 of the Basic Law.

762 See: Article 26 of the Basic Law.

763 Ribhi Qatamish, previous source, Page 4.

764 See: Article 7 of the Law for Charitable Associations and People's Organisations.

765 See: Article 41 of the Law for Charitable Associations and People's Organisations.

766 See: Article 10 of the Law for Charitable Associations and People's Organisations.

767 See: Article 37 of the Law for Charitable Associations and People's Organisations.

768 See: Article 5 of the Law for Charitable Associations and People's Organisations.

769 See: Article 22 of the Law for Charitable Associations and People's Organisations

770 See: Article 2 of the Decree Issuing Law Number 6 of 2011 Amending the Law for Charitable Associations in People's Organisations, number 1 of 2000.

771 Interview with Mr Abdul Nasir Al-Sairafi, previous source.

## Practice

To what extent can civil society exist and function without undue external interference?

**Score: 50 / 100**

Civil society performs its activities in freedom and without interference or harassment.<sup>772</sup> However there are those who indicate that this depends upon the nature of the activity and the region. Issues such as human rights face restrictions and procedures that limit civil society organisations' freedom of operation. There is also greater freedom in the regions in which there is a concentrated presence of the media, and vice versa.<sup>773</sup> Prosecution or prevention of activities in the civil society because of an activity or stance with respect to various issues is not prevalent; even though it the government has used prosecution of other legal violations in the association in the past against organisations.<sup>774</sup>

There is reasonable freedom for civil society organisations to play their role in supporting rights or criticising the government. The size of this freedom relies on the general political climate,<sup>775</sup> on the matter being dealt with and the region within which the association engages in its role. In distant regions in which there is no media, government interference increases, especially interference from the security services in the work of these associations.<sup>776</sup>

The scope of civil society freedom is affected by the internal Palestinian circumstances arising from the political division of Palestine. In this context the report of the Independent Commission for Human Rights for 2012 notes that the Ministry of the Interior interferes in the management of associations by appointing interim committees, even though the board is still operating, and there has been no failure to hold a meeting of the board caused by resignation or death. This is contrary to the law. Examples of this are the Women's Federation Association in Nabulus.<sup>777</sup> A number of civil society organisations have been closed in the West Bank and in Gaza Strip for political games, in order to search for a reason to justify the action, despite being superficial, though this does not apply to all closed organisations.

The government lacks seriousness in conducting investigations of assault of civil society activists, despite improvement that has occurred in the Ministry of the Interior in handling complaints in a more organised and serious manner.<sup>778</sup>

The government in the Gaza Strip interferes in numerous cases in many ways or for many reasons, with most Palestinian associations encountering interference in their affairs. Decision 48 of 2010, for example, issued by the Minister of the Interior in Gaza prevented 'those refraining from work' from volunteering in civil society organisations, working for a wage or without a wage, which constituted interference in most associations.<sup>779</sup>

There are numerous examples in the Gaza Strip of government officials threatening, harassing or attacking civil society activists. These include for example threats of closure of the United Nations Development Programme.<sup>780</sup> The arrest and detention of activists in the civil society as a result of their activities is prevalent.<sup>781</sup> At the same time the government does not normally initiate appropriate and unbiased investigations in the event that there are assaults against civil society activists, and there is no culture of holding officials to account for their conduct in violation of the law, as a general rule.<sup>782</sup>

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772 Interview with Mr Abdul Nasir Al-Sairafi, previous source.

773 Interview with Dr Allam Jarrar, previous source.

774 Interview with Mr Shaawan Jabareen, previous source. See also The Independent Commission for Human Rights (Grievances Office) the Reality of Associations in the Palestinian Authority during 2009, Page 17.

775 Interview with Mr Shaawan Jabareen, Al-Haq Institute, on 20/8/2013.

776 Interview with Dr Allam Jarrar, Network of People's Organisations, on 18/8/2013.

777 \_\_\_\_\_, The State of Human Rights in the Territories of the Palestinian National Authority, 18th Annual Report, 2012, Ramallah, the Independent Commission on Human Rights (Grievances Office), 2013, Page 113.

778 Interview with Dr Allam Jarrar, previous source.

779 Interview with Mr Samir Musa, previous source.

780 Interview with Mr Ibrahim Abu Shamala, Deputy Director of the Programme for the Sovereignty of Law and the Attainment of Justice in the UNDP, on 25/6/2013.

781 Interview with Mr Ibrahim Abu Shamala, previous source.

782 Interview with Mr Ibrahim Abu Shamala, previous source.

## GOVERNANCE: TRANSPERENCY

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### PRACTICE

To what extent is there transparency in CSOs?

**Score: 50 / 100**

Most civil society organisations submit management and financial reports that primarily revolve around the activities of the organisation and its funding, to the relevant government departments and donors. Some of these organisations publish information related to their activities and budgets to the public on a periodic and regular basis, while others<sup>783</sup> do no more than provide the Ministry of the Interior and the relevant ministry with the reports stipulated in the Law for People's Organisations and Charitable Associations. Many civil society organisations announce the structure of their boards of management in the media and many of them have websites that contain information about the association, its formation, its activities, its board, and the means of contacting it. It should be noted that the weakness of civil society in publishing reports and releasing information to the public is one of the reasons for criticisms and accusations of corruption against civil society.<sup>784</sup>

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<sup>783</sup> Interview with Mr Abdul Nasir Al-Sairafi, previous source.

<sup>784</sup> Jayan Francisco Costanini, previous source, Page 52.

## GOVERNANCE: ACCOUNTABILITY

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### PRACTICE

To what extent are CSOs answerable to their constituencies?

**Score: 50 / 100**

Civil society organisations are accountable to a number of external and internal bodies. The external bodies consist of the Ministry of the Interior, the relevant ministries, the Office for Financial and Administrative Monitoring and the funding body. The body for internal monitoring is that the board, which is subject to internal accountability at the general assembly.

Boards supervise of the activities of civil society and their executives. Some boards of are effective and perform the role entrusted to them in law, whereas others are extremely weak in doing so.<sup>785</sup> However many civil society organisations suffer from a lack of effectiveness of the general assembly and board, with the executive of the organisation controlling its work and determining its general policies without effective monitoring by the board. The media plays a role in monitoring and holding work to account.

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<sup>785</sup> Interview with Dr Allam Jarrar and Mr Shaawan Jabareen, previous source.

## GOVERNANCE: INTEGRITY

### PRACTICE

To what extent is the integrity of CSOs ensured in practice?

**Score: 50 / 100**

A code of conduct for NGOs has been prepared by AMAN and signed by a large number of civil society organisations. However compliance with the code is not perfect,<sup>786</sup> and has not reached an acceptable level. This has a number of causes, the most important of which is the absence of an executive mechanism for the code across the NGO sector and a lack of a specific body concerned with following up on the application and signature of the code.<sup>787</sup>

The results of the opinion poll conducted by AMAN in 2012 revealed that the NGO sector comes in fifth place of the sectors most subject to corruption, with 5% of those surveyed in the West Bank and Gaza Strip agreeing.<sup>788</sup> 47% of those surveyed indicated that the use of intermediaries, nepotism and favouritism in appointments to positions of employment were the most significant forms of corruption in the NGO sector (42% in the West Bank and 54% in the Gaza Strip).<sup>789</sup>

During 2012 civil society organisations made efforts to strengthen integrity in their work. However these efforts are still modest. Some have held training sessions and arranged workshops dealing with and related in many aspects to issues of integrity, transparency and combating corruption. Within the context of strengthening good governance in the work of civil society organisations, during 2012 AMAN and the NGO Development Center took action to develop the institutional structures for management, finance, monitoring and internal auditing of a considerable number of NGOs in the West Bank and Gaza Strip, within the context of seeking to enhance effective management capabilities and the management of resources of institutions in an open and transparent manner, that is subject to accountability and responsive to the needs of citizens.<sup>790</sup>

In the Ministry of the Interior in the Gaza Strip, a national programme was developed to assess performance indicators of charitable associations and NGOs, with the aim of developing the performance of NGOs and strengthening their integrity. However it is not possible to report on successes in developing the indicators for integrity.<sup>791</sup>

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786 Interview with Dr Allam Jarrar, previous source.

787 AMAN. Report on Corruption for 2010, Page 40.

788 See \_\_\_\_\_, Opinion Poll, May 2013, Ramallah, the Coalition for Accountability and Integrity - AMAN, Page 6.

789 The previous source, Page 8.

790 Report on Corruption and Combating It of 2012, previous source, Page 56.

791 Interview with Mr Abdul Majid Al-Aaloul, previous source.

## ROLE: HOLD GOVERNMENT ACCOUNTABLE

To what extent is civil society active and successful in holding government accountable for its actions?

**Score: 75 / 100**

In 2000, civil society activists and a number of NGOs took the initiative, in response to the need in Palestine to resist the state of widespread corruption that had accompanied the rise of the PNA, to establish an alliance whose objective was to combat corruption in Palestinian society, that became known as the Coalition for Accountability and Integrity – AMAN..

Among the successful examples of the involvement of NGOs in the Gaza Strip and their impact on the government is the participation of the Al-Dameer Human Rights Institute in the Committee for Public Freedoms arising from the Agreement for National Conciliation,<sup>792</sup> and the project for the rule of law through deepening the role of monitoring the justice sector by civil society and the network of legal aid and assistance for the marginalized groups.<sup>793</sup>

A large number of civil society organisations hold sessions for accountability or observe the work of the public sector and issue reports and/or publications in the field of human rights, the rule of law, good governance, the integrity of the judiciary, budget transparency and equality and anti-discrimination. Among the examples of these are: conducting an annual hearing session with the Minister of Finance about the budget, issuing annual reports on corruption and combating it to the legal institutions like the Palestinian Center on Human Rights, issued by AMAN, and assessments related to integrity and accountability, in addition to TV programs such as 'sand clock' that is produced by Watan TV in cooperation with AMAN.<sup>794</sup>

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792 Interview with Mr Samir Musa, previous source.

793 Interview with Mr Ibrahim Abu Shamala, previous source.

794 See Wattan TV website <http://www.wattan.tv>

## ROLE: POLICY REFORM

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

**Score: 75 / 100**

Civil society organisation that specialise in good governance and improving the performance of the PNA and local bodies are a relatively small sector. It includes a number of leading organisation such as: the Coalition for Accountability and Integrity - AMAN, BISAN Centre for Research and Development, the Palestinian Institute for the Study of Democracy, MUWATIN and the Palestinian Academic Society for the Study of International Affairs PASSIA. These organisations operate using various methods, including participation directly in monitoring performance and services and undertaking campaigns for transparency and integrity, such as AMAN. Other organisations undertake research on policies and other activities with the object of directly influencing the decision-makers. The work of good governance organisations is concentrated in the West Bank in comparison with a relative weakness of their activities in the Gaza Strip in general, as the only institution operating there is AMAN.<sup>795</sup>

AMAN focuses on raising awareness among citizens of the dangers of corruption and the need to place it on the agenda of the Palestinian people, in addition to creating political will among decision-makers to become involved in countering corruption. The annual integrity prize was launched to encourage a culture among citizens to the dangers of corruption, to take action to combat it and to report it, by honouring people who have the courage to reveal facts and who believe that combating corruption is a national effort. This is a set of prizes in the areas of the public sector, the private sector, local government, the media and the best research in the area of combating corruption and enhancing integrity. AMAN launched an Advocacy and Legal Advice Centre to provide support and advice to victims, witnesses of corruption and those who report it, and to activate the accountability of officials by receiving complaints on a free telephone line and receiving those who come to the centre and listening to their complaints, documenting them and taking action to provide support to them. Official Palestinian establishments are responding to the centre, expressing their concern, and following up on complaints. This has contributed to enhancing the regime for integrity. AMAN has also prepared a number of codes of conduct that are partly or fully adopted by official government establishments. Additionally it holds an annual conference in which it announces an annual report on “Corruption and combating it’ in which it sets out efforts for combating corruption and phenomena of weaknesses related to the misuse of public assets.

Civil society organisations have presented a number of working papers, contributed through various efforts and initiatives for reform and exerted pressure on the Palestinian Authority to establish a Commission for Combating Corruption. Following its establishment, it reviewed the files of a number of corrupt officials during the last quarter of 2010. Some of them have been sent for trial. Moreover some civil society organisation, including AMAN, participated in work to conserve public assets following a national campaign that it led, in cooperation with the Ministry of Telecommunications.<sup>796</sup> This campaign spread awareness of the importance of safeguarding public assets, and in particular the use of government vehicles for private purposes.<sup>797</sup>

<sup>795</sup> Jayan Francisco Costanini, previous source, Page 57.

<sup>796</sup> AMAN, Report on Corruption, 2010, previous source, Page 39.

<sup>797</sup> AMAN, Report on Corruption, 2010, previous source, Page 40.

**PRIVATE SECTOR**  
**44 / 100**

## SUMMARY

Despite considerable efforts made by the Palestinian National Authority to expand the role of the Palestinian private sector, the business development environment has been affected by the Israeli occupation's restrictions on the movement of trade and individuals, in addition to the antiquated state of the Companies and Commerce Laws and weak structures in the necessary regulatory institutions for the private sector. This has impacted governance in the private sector. Instructions issued by the Capital Market Board have imposed international standards for the audit of accounts and require referral of audit reports to responsibility bodies, in particular the shareholders, in addition to periodic disclosure by joint stock companies of their position in the Stock Exchange. A code for private sector governance has been issued in collaboration with all relevant parties, and work has begun to publish, circulate and raise awareness of it. However the application of codes of conduct has still not been taken up with the necessary seriousness within the plans and programmes of companies, whether because of objective factors arising from the nature of the structure of the Palestinian national economy, that relies upon small and extremely small family firms, or due to the absence of binding legislative provisions for the application of certain rules for governance, deriving fundamentally from the antiquated state of the Companies Laws.

Business societies and Chambers of Commerce have not put corruption directly on their agenda in regards to their relations with the government. Private sector corporate officials do not consider themselves responsible for anti-corruption efforts - this vision should be changed. Despite the spread of corporate social responsibility as a concept, there are no special initiatives supporting anti-corruption actions, or tangible examples of open demands by businessmen associations urging the government to combat corruption, due to the private sector not seeing themselves as part of the efforts to combat corruption.

The private sector plays a principal role in economic development. It contributes to the largest part of gross domestic product. This is in addition to employing a large part of the Palestinian workforce. Within its desire to provide a helpful and competitive environment to encourage the activity of the private sector and enhance its role in development, the Palestinian National Authority, since it arose in 1994, has adopted a free market policy based on freedom of trade in commodities and services and openness of the financial markets to foreign investment.

OVERALL PILLAR SCORE: 44 / 100			
Category	Index	Law	Practice
<i>Capacity</i> 44 / 100	Resources	50	50
	Independence	25	50
<i>Governance</i> 50 / 100	Transparency	50	50
	Accountability	50	50
	Integrity	50	50
<i>Role</i> 25 / 100	Anti-Corruption policy engagement	25	
	Support for/engagement with civil society	25	

## CAPACITY: RESOURCES

### LAW

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

**Score: 50 / 100**

The legislative framework provides a minimum of protection for the private sector within the framework of the antiquated Companies and Commerce Laws. The amendments that have been made have come within special laws, such as the Securities and Banks Law. However the government has failed to develop the Companies and Commerce Laws to bring them in line with the development that has occurred in the commercial business sector and the requirements for its growth. This has affected the development of the formation and management of private firms towards transparency and accountability.

The Companies Law currently in force in the West Bank has many deficiencies resulting from its antiquated nature and the lack of amendments to keep it abreast with the development of the business sector internationally in general and in the sphere of governance in particular. The issue of company liquidation lacks clarity in the Companies Law and there is a conflict with other laws that have been issued, such as the Palestinian Insurance Law (2005). There is also an absence of new developments, such as new financial instruments and derivatives.<sup>798</sup> Likewise there are many articles in the law that are in conflict with the principles of governance, such as allowing the existence of an independent member on the Board of Directors, in that Article 168 of the 1964 Companies Law stipulates that a nominee for membership of the Board of Directors must own a particular minimum number of shares in the company. Furthermore it is permissible to combine the positions of chair of the board of directors and chief executive officer under the current law.

Neither the Companies nor the Commercial Law sets a specific number of steps for starting a business. However every law lays down a number of obligatory procedures that must be followed in implementing regulations, rules and instructions. These steps begin with registration of the company, followed by obtaining a licence from the municipality and then the Civil Defence (health and safety). After that is opening of a bank account, then the Ministry of Labour, then the optional associations such as federations and trade unions, such as the Contractors Union.<sup>799</sup> The 2013 World Bank *Doing Business* report indicates that there are 11 procedures to establish a company,<sup>800</sup> depending on the nature of the firm/establishment and the government bodies with jurisdiction from which licences must be obtained, such as health, communications and telecommunications. Laws and regulations for each sector specify the details of each step and requirements to obtain approvals for every step for starting a commercial operation.

Antiquated laws are applied in Palestine, such as the 1953 Patents Law, the 1924 Patents and Fees Law, the 1938 Commercial Transactions Law, the 1924 Copyright Law, which contains the 1911 Copyright and Authorship Law. These set out the procedures for registration of trademarks, protection, examination of specifications and penalties for a breach of the law.<sup>801</sup> However this legal framework regulating the business sector, because of its antiquated nature, does not offer provisions that provide adequate protection for shareholders or protect against fraud.<sup>802</sup>

In the Gaza Strip the Companies Law (7/2012) was issued and provides an environment that enables the

798 Interview with Dr Bashar Abu Zaarour, Director General of the General Department for Studies and Development in the Palestinian Capital Market Board, on 14/8/2013.

799 Interview with Dr Imad Abu Shaaban, and Academic Specialising in Tax Calculation, on 1/7/2013.

800 See: <http://arabic.doingbusiness.org/data/exploreconomies/west-bank-and-gaza>.

801 Basim Mahkoul & Nasr Atyani, A Critical Review of the Draft Laws for the Protection of Industrial Property Rights and Copyright and Proximity Rights, Ramallah, Palestinian Institute for Political and Economic Research (MAS), 2013, Pages 15-18.

802 Coalition for Accountability and Integrity - AMAN, National integrity system, Palestine 2009, Ramallah, Page 119.

formation and management of the operations of private commercial firms and rules for the management of debts and dissolution of companies in the commercial business sector.

## PRACTICE

To what extent are individual businesses able in practice to form and operate effectively?

Score: 50 / 100

Starting a business in Palestine takes approximately twice the number of days required in other countries in the Middle East and North Africa, and four times as long as countries in the Organisation for Economic Cooperation and Development. This results from the multiplicity of procedures and licensing bodies, and calls for procedures for starting a business to be simplified by adopting a unified point of contact or creating a mechanism for coordination between the establishments of the PNA to reduce the obstacles faced in starting a business.

Registration of private business establishments, such as companies, in the Ministry of the National Economy, in accordance with the various classifications specified in the Companies Law, does not take long in the event that the founding members have obtained all the licences necessary from the authorities concerned in the other sectors.<sup>803</sup> In a 2013 report on engaging in business activities,<sup>804</sup> Palestine ranked low on ease of engaging in business activities, coming 135<sup>th</sup> out of 185 countries. In the indicator for starting a business, Palestine was in 179<sup>th</sup> place. The report notes that starting business in Palestine takes on average 48 days. This is more than twice the time required in the Middle East and North Africa region (23 days) and four times the time required in the Organisation for Economic Cooperation and Development (12 days).<sup>805</sup> This is caused by the multiplicity of licensing bodies in the PNA and the absence of both a unified point of contact for licensing and a lack of coordination between the bodies with jurisdiction.

The guide to services in the Ministry of the Economy indicates the fees for registration are specified for each type of company. Fees are reasonable<sup>806</sup> (approx. USD160 for checking the name of the company and publishing the certificate of registration, in addition to 0.01% of the value of the capital for joint stock companies).<sup>807</sup>

The absence of a law for electronic transactions and a law for electronic signatures, especially as work in the Stock Exchange is conducted electronically and/or by telephone, impacts on the collection of debts, and the process of liquidating companies faces numerous problems, especially as the Palestinian courts do not recognise electronic data and rely solely on written data.<sup>808</sup> Palestine was in last place (185<sup>th</sup>) in the indicator for settlement of cases of insolvency among the countries ranked for the ease of engaging in commercial business report, and was low (93<sup>rd</sup>) in the indicator for execution of contracts.<sup>809</sup> This is due to the absence of a law for the settlement of debts, which impacts the mechanisms for liquidation and insolvency, as well as the fact that the Arbitration Law has not been implemented effectively. Additionally the slowness in resolving disputes before the courts, negatively impacts the management of the business sector.<sup>810</sup>

The development of the administration of businesses requires the development of rules regulating the

803 Interview with Mr Nazeeh Rajab, Director General of Registration of Companies in the Ministry for the National Economy, 15/8/2013.

804 The Report on Engaging in Business of 2013, shows the total placing of countries on the list of "Ease of Engaging in Business Activities" that includes 185 countries. See: <http://arabic.doingbusiness.org/rankings>.

805 See: <http://arabic.doingbusiness.org/data/exploreeconomies/west-bank-and-gaza>.

806 Interview with Mr Nazeeh Rajab, previous source.

807 Guide to Services to the Public, Ministry of the National Economy, Page 50, <http://www.mne.gov.ps/pdf/daleel.pdf>.

808 Interview with Dr Bashar Abu Zaarour, previous source.

809 See: <http://arabic.doingbusiness.org/data/exploreeconomies/west-bank-and-gaza>.

810 Interview with Dr Nasr Abdul Kareem, Professor of Finance in the Berzeit University, on 22/8/2013.

administration of business to bring them into line with the development of commercial business itself, such as the issue of a law for electronic transactions and electronic signatures and a law for the settlement of debts, as well as encouraging recourse to the Arbitration Law to avoid the slowness of judicial processes.

## CAPACITY: INDEPENDENCE

### LAW

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

**Score: 25 / 100**

The legal system provides a role for government officials in the start and operation of a private commercial business, for example, in the process of registration of companies, granting of licences, registration of trademarks, and providing protection and traditional trade.

However the mechanisms for complaints regarding commercial businesses that seek justice and compensation in the event of interference without right by third parties<sup>811</sup> is only available within the framework of complaints submitted to the Commission for Combating Corruption, within the framework of 'misuse of authority contrary to the law.'<sup>812</sup> There is also no mechanism for the settlement of disputes.<sup>813</sup>

In the Gaza Strip the Civil Violations Law (36/1944) is applied. This permits commercial businesses to seek compensation in the event of interference without right by third parties.<sup>814</sup> Likewise the new Civil Law applies only in the Gaza Strip (4/2012).

### PRACTICE

To what extent is the business sector free from unwarranted external interference in its work in practice?

**Score: 50 / 100**

There is no published information on corruption in the private sector, or on the volume of bribes and other issues. This is because the private sector does not publish any information on these issues, and the media does not perform an adequate investigative role to expose corruption in the private sector.

A number of areas of private sector work have suffered from interference from the time the PNA was created, due to a lack of restrictions on employees in the public sector from participating in and transferring directly to the private sector. A number of old cases of corruption are still being pursued by the Commission for Combating Corruption for this reason, due to interference by the PNA or its officials in the market, especially in the matter of services and commodities, that have been monopolised by private companies.

The annual report of the Commission for Combating Corruption for 2012 did not clarify whether the complaints related to bribery and exploitation of a position of employment registered with the Commission were submitted by the private sector or within the framework of interference in the work of the private sector.<sup>815</sup>

There is widespread conflict of interest. There is a wide grey area in which there are suspicions of corruption by granting privileges, tenders and intangible influence to business people, such that influential business people are able to obtain priority, especially in the area of the recovery of proceeds for their companies or debts payable by the government. Furthermore there is a widespread interchange of interests between business people and politicians in business people occupying political positions without rules and clear practices for the period separating the transfer process.<sup>816</sup> However no complaints have been received by the Advocacy and Legal Advice Centre at AMAN<sup>817</sup> or with the monitoring bodies.<sup>818</sup>

811 Interview with Dr Nasr Abdul Kareem, previous source.

812 See: Article 1 of the Law for Combating Corruption, number 1 of 2005. <http://www.pacc.pna.ps/ar/index.php?p=main&id=11>.

813 Interview with Dr Bashar Abu Zaarour, previous source.

814 Please refer to Article 60 of the Law for Civil Violations, number 36 of 1944.

815 See the Annual Report of 2012 of the Commission for Combating Corruption, Page 9.

816 Interview with Dr Nasr Abdul Kareem, previous source.

817 <http://www.aman-palestine.org/ar/alaac>.

818 Interview with Mrs Abeer Muslih, Director of the Research Unit and the Coalition for Accountability and Integrity, AMAN, on 20/8/2013.

## GOVERNANCE: TRANSPARENCY

### LAW

To what extent are there provisions to ensure transparency in the activities of the business sector?

**Score: 50 / 100**

In accordance with the Companies Law and instructions of the Palestinian Monetary Authority, Capital Market Board, the Auditing Profession Law and the code of governance in the private sector, there are standards for the auditing of accounts and referral of reports to the bodies with jurisdiction, especially shareholders. This is in relation to large public joint stock companies. However the Palestinian economy is dominated by the existence of family and small firms - the proportion of large companies and firms does not exceed 1%.<sup>819</sup>

The Companies Law requires that the annual accounts of companies are subject to audit by a recognised legal and external auditor and that they should be published at specified times during the year in local newspapers. It also requires that the report of the external auditor of accounts is included in the annual report of the company distributed to the shareholders at the general meeting. Companies listed on the Stock Exchange are also subject to instructions for disclosure issued by the Capital Market Board, whether periodic declarations related to the publication of quarter year reports or non-periodic declarations such as commentary by informed observers, as well as when there are fundamental changes.<sup>820</sup>

The Auditing Profession Law does not specify the accounting criteria to be applied in Palestine. However traditionally companies' offices conduct the audit of accounts on the basis of international criteria. Instructions issued by the Capital Market Board adopt the International Financial Reporting Standards for companies listed on the Stock Exchange. The same is true for the licensing of insurance and securities companies.<sup>821</sup> The Palestinian Association of Auditors has issued a statement encouraging all sectors to apply international standards for the preparation of financial reports issued by the International Federation of Accountants (IFAC) and has issued a circular to its auditor members insisting on the need to adopt international audit standards of the International Federation of Accountants also for carrying out audits in all sectors.<sup>822</sup>

The Banks Law grants the Palestinian Monetary Authority the right to inspect banks and to instruct 'an inspector or inspection team to inspect any bank at any time to examine its books, registers, computer equipment and financial statements.'<sup>823</sup> This is in addition to the audit of accounts by other monitoring authorities, such as the Controller of Companies under the Companies Law and the Capital Market Authority in the case of a company listed on the Stock Exchange.

819 Muhammad Nasr, Muhammad Khaleefa & Obeida Salah, The Effects of the Draft Law for Companies on the Performance of the Private Sector in Palestine, the Palestinian Institute for Research into Economic Policies (MAS), 2008, Page 14.

820 [http://www.pcma.ps/securitiesSector/Instructions\\_Docs/Sec\\_Disclosures\\_Instructions.pdf](http://www.pcma.ps/securitiesSector/Instructions_Docs/Sec_Disclosures_Instructions.pdf).

821 Interview with Dr Bashar Abu Zaarour, previous source.

822 Jamal Mulhim, Executive Director of the Tilal Abu Ghazala Audit Firm, an email dated 6/10/2013.

823 See the Law for Banks, Decree Issuing Law number 9 of 2010 Regarding Banks, <http://muqtafi.birzeit.edu/pg/getleg.asp?id=16165>.

## PRACTICE

To what extent is there transparency in the business sector in practice?

Score: 50 / 100

Public joint stock companies, subject to the supervision of the Palestinian Capital Market Authority, provide general information and data, such as the names of the directors, contact details and annual reports for the public, whether on their websites or on the website of the Capital Market Authority or Stock Exchange.<sup>824</sup> Compliance of public joint stock companies in providing financial data (disclosure) at the appointed time is approximately 97%.<sup>825</sup> The Capital Market Board and the Monetary Authority review annual and auditors' reports before publishing them and they express their observations on them if there are any recorded reservations.<sup>826</sup>

The results of the study *Principal Features of the Governance of Public Joint Stock Companies Listed on the Palestinian Stock Exchange* indicate that 37 companies (of a total of 47 listed on the Stock Exchange) have disclosed corporate social responsibility activities in their annual reports for 2011 or on their websites, although only 21 declared the policies they have adopted in relation to social responsibility.<sup>827</sup> During 2013 the annual reports recorded that 38 companies out of a total of 47 companies listed on the Stock Exchange adhered to the minimum level of disclosure in line with legal requirements. 11 companies however provided extended disclosure. Six established a shareholder relationship unit and report monthly to them, with two companies providing reports on sustainability.<sup>828</sup>

The Centre for Transfer and Deposit in the Palestine Stock Exchange publishes the distribution of ownership in public joint stock companies. 68% of shareholders in the companies listed on the Stock Exchange own less than 1,000 shares and only 6% of the shareholders own more than 10,000 shares.<sup>829</sup> Companies in the private sector do not disclose information or procedures they take to combat corruption.

PNA institutions do not encourage companies to disclose information relevant to corruption; on the contrary they deal with it as a confidentiality issue,<sup>830</sup> due to a fear of affecting the investment environment on the one hand and a lack of legal texts that clarify the authorized bodies to investigate cases of corruption in private sector on the other.

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824 Interview with Dr Nasr Abdul Kareem, previous source.

825 Interview with Dr Bashar Abu Zaarour, previous source. See also the press release of Palestine Stock Market of 19/2/2014, which mentioned that 96% of listed companies had disclosed during the legal period about their unaudited beginning and concluding financial data for the fiscal year 2013. <http://www.pex.ps/PSEWebsite/Default.aspx>.

826 Previous source.

827 The Capital Market Board, *Principal Features of the Governance of Public Joint Stock Companies Registered on the Palestinian Stock Exchange*, Ramallah, 2012, Page 40.

828 Intervention by Mr Ahmad Uwaida in the Workshop on the Annual Reports of Listed Companies, Requirements for Compliance to the Principles of Governance, Palestinian Institute for Governance, and the Capital Market Board, Best Eastern Hotel, on 21/8/2013.

829 Previous source, Page 42.

830 Interview with Dr. Nasser Abdelkarim, As above

# GOVERNANCE: ACCOUNTABILITY

## LAW

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

**Score: 50 / 100**

Some aspects of company governance are included in the laws regulating the work of companies, which were established in previous eras. The Companies Law currently in operation in the West Bank was issued in 1964. The Companies Law in force in the Gaza Strip was issued in 1928. The antiquated nature of these laws has led to inappropriate mechanisms in the work of economic establishments on the one hand and in governance requirements on the other.<sup>831</sup> Some legislation regulating the private sector has been issued in recent years however, such as the Monetary Authority Law, the Securities Law, the Banks Law, the Engaging in the Profession of Auditing Law, the Insurance Law and the Combating Money Laundering Law, which contain a number of provisions that can be included within the rules for governance.

The code of rules for the governance of companies in Palestine, issued by the National Committee for Governance in 2009, fills the legal vacuum of the absence of a number of rules for governance in the legislation. It is applied and develops rules for governance in public companies or companies listed on the Stock Exchange.<sup>832</sup>

Public joint stock companies are accountable to their owners and/or members of the Board of Directors and shareholders, as well as to the Controller of Companies and Capital Market Board. Banks are subject to strict monitoring by the Palestinian Monetary Authority, pursuant to the Banks Law and the Combating Money Laundering Law. Likewise there are numerous supervisory bodies for the private sector, such as the Ministry of the National Economy, the Monetary Authority (for the Banking Sector), the Capital Market Board (for the Securities and Insurance Sector), which also supervises the Stock Exchange, under the Palestinian Capital Market Board Law.

831 Muhammad Khaleefa, The Law for Companies, Requirements for Modernisation in the Field of Governance, Journal of Governance in Palestine, Issue 1, March 2013, Page 11.

832 It should be noted that the register of the rules for the governance of companies in Palestine includes three types of rules as follows: (1) Rules based on explicit legislative provisions whose nature is obligatory. (2) Rules that are in accord with international practice in the field of the governance of companies that are not in conflict with any explicit legislative provision. (3) Rules that are in accord with international practices in the field of the governance of companies, but which are in conflict with legislative provisions. It was recommended as essential to amend the legislation. See the register of the governance of companies in Palestine, Page 15. <http://www.hawkama.ps/SitePages/Hawkama.aspx>.

## PRACTICE

To what extent is there effective corporate governance in companies in practice?

**Score: 50 / 100**

The monitoring bodies (the Capital Market Board, the Monetary Authority and the Controller of Companies) monitor the level of compliance of public joint stock companies to the obligatory rules recorded in the laws, as well as regulations and instructions issued by them, varying between rules for disclosure, financial data, and deadlines.<sup>833</sup>

The data indicates a significant improvement in disclosure by companies listed on the Stock Exchange and their compliance with deadlines in comparison with the years prior to 2010.<sup>834</sup> However compliance needs to be improved to achieve the availability of information to everyone and to grant the same opportunity to small investors to obtain information at an appropriate time.<sup>835</sup> The performance of monitoring bodies within the scope of optional instructions is still weak in practice however for numerous reasons. These include the level of acceptance and understanding by the companies of the culture and benefits of governance.<sup>836</sup> Likewise the obligatory rules and rules for guidance of the code of governance are still not applied in practice, either to public joint stock companies that are not listed in the Stock Exchange, or to private companies. This reduces the environment of integrity, transparency and accountability in the work of these companies.

A number of supervisory and monitoring bodies suffer from a shortage of trained human resources, for example the Ministry of the National Economy, in particular with respect to the monitoring of companies.<sup>837</sup> There are trained staff in the Capital Market Board, however reliance for its budget on a proportion of the commissions from trading and values of insurance policies, that have declined because of the economic circumstances and the downturn in economic performance, has led to a decline in the resources of the Board.<sup>838</sup> There is no incentives system to be applied to the companies that adhere to standards.<sup>839</sup>

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833 Discussion with an official, Mr Mahir Al-Masri, Chairman of the Capital Market Board, Magazine of Governance in Palestine, Issue 1, March 2013, Page 2.

834 Interview with Dr Bashar Abu Zaarour, previous source.

835 Interview with Dr Nasr Abdul Kareem, previous source.

836 Discussion with an official, Mr Mahir Al-Masri, Chairman of the Capital Market Board, previous source, Page 3.

837 Interview with Mr Nazeeh Rajab, previous source.

838 Interview with Dr Bashar Abu Zaarour, previous source.

839 Dialogue with a senior official, Mr. Maher Masri, head of the Palestinian Stock Market, As above, p.2.

## GOVERNANCE: INTEGRITY

### LAW

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

**Score: 50 / 100**

The set of rules for governance recorded in the code of rules for the governance of companies in Palestine includes obligatory rules related to combating corruption in the commercial business sector. Public joint stock companies listed on the Stock Exchange have to comply with these rules. However some rules for governance are still not obligatory and the nature of the national economy that relies upon medium-sized, small and extremely small companies and firms, which in most cases are of an individual or family nature, prevents the guarantee of integrity in the business sector.

Monitoring bodies and representative establishments for the private sector have issued a number of codes and rules for ethical conduct in the private sector. A code for the conduct of employees in the private sector was ratified in 2007<sup>840</sup> on the initiative of AMAN and the Palestinian Centre for Trade, Paltrade, in cooperation with members of the Coordination Council for Institutions in the Private Sector. The code includes principles regarding bribery, gifts, conflict of interest, protecting the company's assets, tenders, safeguarding public funds, intellectual property rights and copyright. The code also contains general rules for the conduct of employees in companies, the safeguarding of the resources of companies, neutrality in a position of employment and preventing conflict of interest.

The code of rules for the governance of companies in Palestine<sup>841</sup> was issued in 2009 by the national committee on governance. Among the most significant of these is the importance of developing a website for companies on which all information, reports and documents are published, and that there should be a declaration of corporate social responsibility at least once a year in the annual report for shareholders, employees and those who deal with the company, as well as the company's social and environmental policies being clearly declared. It also states that the Board of Directors should include review of the relationship of the company with those who have interests on the agendas of its meetings during the year. It is important that the objects, functions, powers and responsibilities of the internal audit department are specified in a decision of the Board of Directors, that is circulated within the company and that this department operates in accordance with an annual plan prepared for this purpose. The Board of Directors should officially assess the performance of the general manager and significant officials on an annual basis. It is also important that neither the Chairman of the Board of Directors nor any member of the Board of Directors performs executive functions within the company to ensure independence and for the purposes of accountability.

Instructions and rules for professional conduct in insurance companies<sup>842</sup> were issued in 2007 pursuant to the Insurance Law (20/2005). Its application is legally obligatory for insurance companies. These rules deal with general conduct, to the extent that companies adhere to professionalism in competition with other companies and do not defame them or insult them. It states that companies should engage in their work in good faith, with justice and professional competence and companies should not discriminate among persons insured with them in relation to the prices or conditions for insurance or the features of the insurance cover.

840 [www.aman-palestine.org](http://www.aman-palestine.org).

841 <http://www.hawkama.ps/SitePages/Hawkama.aspx>.

842 [http://www.pcma.ps/IA/Instructions\\_Docs/Ins\\_CompEthicalRules\\_Instructions.pdf](http://www.pcma.ps/IA/Instructions_Docs/Ins_CompEthicalRules_Instructions.pdf).

A guide to principles and best practice for the governance of banks in Palestine<sup>843</sup> was issued by the Palestinian Monetary Authority in 2009. This contains nine fundamental principles related to the following: membership of the Board of Directors of the bank, the structure and role of the Board of Directors, compliance and internal and external auditing, disclosure and transparency, risk management, remuneration and compensation, the role and rights of shareholders, the role and rights of other parties with interests, and ethics and behaviour at work. The guide divides the principles into two groups: the first includes the obligatory requirements derived from laws and instructions and the second are the additional guidance derived from best practice in the field of governance. Furthermore banks must adopt and encourage the highest ethical standards and standards of conduct, such as the board of directors of the bank approving and issuing a guide to policies of morals and ethics at work. This should be distributed to employees and they should be provided with the necessary training when required.

There are no legislative provisions that explicitly prohibit bribery while engaging in commercial business outside the territory of the state, or genuine penalties in the event that bribery takes place in the private sector, except in the event that the other party is in the public sector, in which case s/he is subject to the provisions of the criminal law in force. However Palestinian law does not include conditions for bidders for government contracts to have an ethical programme or mechanisms for compliance. The Combating Money Laundering Law requires banks to have a compliance officer in the context of combating money laundering.

## PRACTICE

To what extent is the integrity of those working in the business sector ensured in practice?

**Score: 50 / 100**

Applying the code of conduct has not been dealt with the necessary seriousness within the plans and programmes of companies, either because of objective factors arising from the nature of the infrastructure of the Palestinian national economy, that relies upon small and extremely small firms, or because of the absence of binding legislative provisions requiring the application of certain rules for governance, that has derived from the antiquated nature of the Companies Law.

The annual report on corruption issued by AMAN states, 'in spite of the adoption of the code of principles for the governance of companies in Palestine, it is noted that many public joint stock companies do not apply many of the clauses in the code in their work programmes. Furthermore there is weakness in monitoring by the Capital Market Board of this aspect because of the nature of the provisions recorded in the code.'<sup>844</sup> Furthermore many public joint stock companies have no code of conduct for employees, even though the representative institutions for the private sector signed the code of conduct for employees in the private sector of 2007. Indeed companies have been satisfied with what is recorded in the company's internal regulations, which set out the duties of employees under the duties and conduct of employees chapter.<sup>845</sup> The exceptions are the Palestinian Telecommunications Company and the Bank of Palestine Ltd., which have prepared codes of conduct for their employees.<sup>846</sup>

It is noted that bribery, in the sense of money being offered by businessmen to employees in the public sector, is not widespread,<sup>847</sup> in that cases of bribery have not been disclosed.<sup>848</sup> However more widespread is what is called an exchange of benefits and interests between business people and politicians in the country as a result of the possibility of a rotation in positions between the two sectors, that allows senior business people the power of moral influence.<sup>849</sup>

843 [http://www.hawkama.ps/Pages/Banks\\_Gov\\_Page.aspx](http://www.hawkama.ps/Pages/Banks_Gov_Page.aspx).

844 See the Report on Corruption and Combating It, Palestine 2012, the Coalition for Accountability and Integrity - AMAN, Ramallah, 2013, Page 59.

845 Muhammad Khaleefa, The State of Compliance in Applying Registers of Conduct, the Coalition for Accountability and Integrity - AMAN, Ramallah, 2011, Page 13.

846 Interview with Dr Bashar Abu Zaarour, previous source.

847 Interview with Dr Nasr Abdul Kareem, previous source.

848 Interview with Dr Bashar Abu Zaarour, previous source.

849 Interview with Dr Nasr Abdul Kareem, previous source.

Evaluation of the effectiveness of professional code officials (compliance officers) and their ability to perform their work is unclear due to the recentness of the code. Furthermore this only exists in the banks.<sup>850</sup> There are no clear policies to protect those who expose corruption, nor are there mechanisms and procedures for monitoring that companies put in place mechanisms to prevent bribery. Internal monitoring in companies does not specifically target the issue of bribery.<sup>851</sup> There is no blacklist of companies that are involved in or have been involved in corrupt practices and money laundering operations.

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<sup>850</sup> Interview with Dr Bashar Abu Zaarour, previous source.

<sup>851</sup> Previous source.

## ROLE: ANTI-CORRUPTION POLICY ENGAGEMENT

To what extent is the business sector active in engaging the domestic government on anti-corruption?

**Score: 25 / 100**

During their meetings with the government, business persons' associations and chambers of commerce concentrate largely on improving the investment environment, on needs related to the private sector and on obstacles they face in the legal and institutional framework, but do not put the issues of corruption directly on the agenda.<sup>852</sup> However at the same time the Association of Businesspersons, representing a large sector of business in addition to specific associations, for example the Industries Association, and others do participate in many activities related to spreading a culture of integrity and transparency. Organisations in the private sector represent a link between non-government institutions and the state on the one hand and the private sector on the other hand, as the relationship of the private sector with the government is restricted to issues related to this sector.<sup>853</sup>

There are no tangible examples of business persons' associations demanding openly that the government should combat corruption,<sup>854</sup> despite their demand for numerous reforms in the PNA during recent years, including enhancing accountability and transparency, the most significant of which was the initiative for reform through the Charter of the Palestinian Private Sector for Reform.<sup>855</sup> The Palestinian private sector presented a paper expressing its point of view on reform of the political and economic system in summer 2003.

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852 Interview with Dr Nasr Abdul Kareem, previous source.

853 Interview with Mrs Abeer Muslih, previous source.

854 Interview with Dr Imad Al-Baz, Director General for Legal Affairs in the Ministry of the Economy in Gaza, on 30/6/2013.

855 The Position of the Palestinian Private Sector in Facing the Current Crisis and Investigation of Reforms in the Political and Economic Structure of Palestine, Figureer of the Palestinian Private Sector for Reform, Magazine of Development Affairs, Al-Quds, number 27, Summer 2003, Pages 77-85.

## ROLE: SUPPORT FOR/ENGAGEMENT WITH CIVIL SOCIETY

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

**Score: 25 / 100**

The most important joint initiative between the private sector and civil society regarding combating corruption is the preparation of a code of principles for the governance of companies in Palestine in 2009, and the preparation and adoption of a code for the conduct of employees in the private sector in 2007. This was an initiative of the Coalition for Accountability and Integrity – AMAN. An award for integrity (a certificate of integrity for Palestinian public joint stock companies) was launched in 2008.<sup>856</sup> There are additionally a number of examples of the private sector and private sector bodies providing financial support to civil society initiatives, such as the Palestinian Telecommunication Company and Palestine Bank in the fields of education, health, combating poverty and charitable works in general. The concept of civil responsibility has begun to expand in the private sector. However there are still no initiatives with respect to support for processes to combat corruption, as companies in the private sector consider that they are not part of the efforts to combat corruption.<sup>857</sup>

This opinion held by companies in the private sector, that they are not responsible for efforts to combat corruption, requires action to change it. The private sector is a fundamental part of society and it has responsibility to prevent the spread of corruption and to combat it. This requires cooperation with all parties concerned in efforts to combat corruption in society.

On an official level, the Commission for Combating Corruption does not consider the pursuit of corruption in the private sector to be one of its functions as there are no provisions in the Law for Combating Corruption of 2010 on this. However the Public Prosecution (the Public Prosecution for Economic Crimes) follows up crimes in the private sector.

856 Interview with Mrs Abeer Muslih, previous source.

857 Interview with Dr Nasr Abdul Kareem, previous source.

## **VIII. Results & Recommendations**

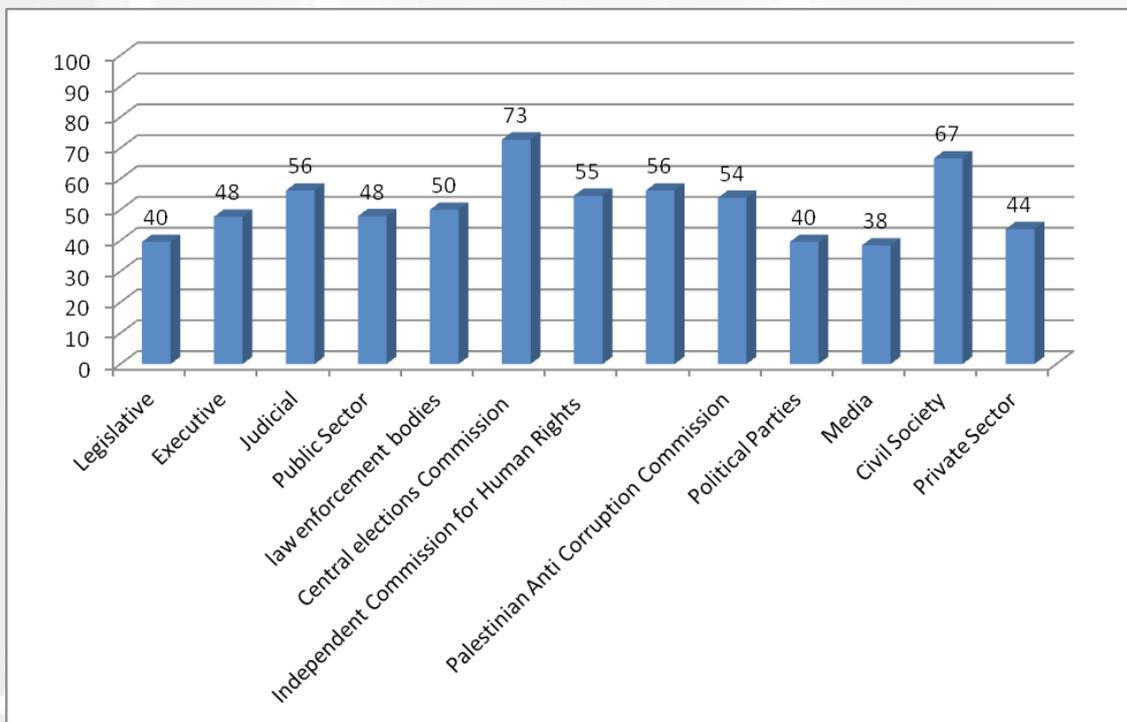
The NIS is characterised by the strength of two sectors; the **Central Elections Commission** and **Civil Society**, while the **Judiciary**, **State Audit and Administrative Control Bureau**, the **Independent Commission for Human Rights**, and **Anti-Corruption Commission** enjoy a relative strength as they have resources and relative independence, without being a tangible motive force in enhancing the NIS. Their performance is however weakened as a result of the weak points in other pillars, mainly the **Legislature** and the **Political Parties**. The critical weakness in the core of NIS are the **Media** and the **Legislature**, while it is difficult to measure the influence of the **Private Sector** because of its refrain from influencing the NIS.

The legal framework is still limited despite the important development of issuing the anti-corruption law in 2010, as the report indicates that there is no difference between most of the legal sections of the NIS pillars, as a result of the lack of rules of to regulate integrity and transparency, which has affected noticeably the good governance dimension. There are also some weak points and large gaps between law and practice in many pillars, particularly in the legislature, judiciary, law enforcement agencies, state audit and administrative control bureau and civil society.

### Pillars of the NIS

The results of the National Integrity System assessment indicate that the Central Elections Commission obtained the highest score - 73, followed by Civil Society with 67, while the Media obtained only a low mark of 38. This is caused by the weakness in the role of the media in combating corruption: in investigating corrupt practices and in informing the public of corruption and its effects, in addition to the weakness of integrity in practice in the work of journalists and the media. The following figure shows the results of the NIS assessment.

Figure 4: Pillar scores



The scores for the remaining pillars show that they come between receiving a low score and the beginning of a change to the national integrity system. Five pillars (the legislature, the executive, the public sector, political parties and the private sector) obtained scores between 42 and 48. Five other pillars obtained marks varying from 50 to 56 (the judiciary with 56, law enforcement agencies with 50, the Independent Commission for Human Rights with 55, the State Audit and Administrative Control Bureau with 56 and the Palestinian Anti Corruption Commission with 54).

## Strengths and weaknesses in the 13 pillars

### Legislative Council

The continuing political split between the West Bank and Gaza Strip since mid-2007 had negatively affected the supervisory role of the legislative council. Despite the presence of good regulations to prevent conflict of interest, the rules and mechanisms to ensure the integrity of the work of the legislative council members is still limited. This is due to the lack of: a code of conduct for members of parliament; rules on gifts and hospitality; and specific post-employment restriction and rules on disclosing contacts with lobbies.

### Executive

As a popular demand, the executive gives particular importance to combating corruption, while government accountability before the legislative council is limited due to the obstruction of the legislative council's work. The Council of Ministers has the necessary financial, human, and technical resources to conduct its work, but lacks a system to classify the concept and nature of the government files and an access to information law. Members of the government have submitted asset declarations, but these are not publically disclosed, and there are no rules to regulate the disclosure of gifts and to regulate the transfer to work in the private sector after the end of a political position in government.

### Judiciary

A conservative culture prevailing in the Supreme Judicial Council prevents the publication and availability of information related to the work of the Council, including disciplinary procedures taken against judges, withdrawal of judges from hearing cases in which there is a conflict of interest, the publication of the annual report on its website, and judicial asset declarations. Both the Judicial Authority Law and the Code of Conduct for Judges include integrity rules for the judiciary, but they continue to be incomplete without establishing rules for receipt of gifts, asset declarations and post-employment restrictions. Both security and civil bodies prevent or postpone the enforcement of court decisions.

### Public Sector

The code of conduct for civil service employees was approved very recently and was published on the civil service bureau website, but was not circulated to the employees and no awareness or training in it has occurred. It will continue to be incomplete without establishing rules for receipt of gifts, asset declarations and post-employment restrictions. The majority of governmental institutions and ministries have websites and databases, publishing some information, such as tenders and vacant positions, however there are discrepancies in the extent of adherence to enabling citizens to access information.

### Law Enforcement

Whether the public prosecution is subordinate to the judiciary or to the executive has not been determined in practice. This impacts the nature of its work with respect to its authority and independence. Likewise inspection of members of the public prosecution has still not been carried out. Assets of members of the public prosecution and law enforcement bodies such as police are not being disclosed. There are also no post-employment restrictions for law enforcement staff. Accountability mechanisms and investigations are still limited in practice. No information is available about measures taken in the public prosecution and police to prevent conflict of interest, receipt of gifts, or policies to promote and enhance integrity.

## Central Election Commission.

The election commission has qualified human resources with experience and has the required facilities to enable it to conduct its tasks efficiently. The commission is committed to publishing all of its decisions and issues relevant to the election process, the minutes of its meeting, its activities and the dates of elections, all on its website. Although the commission is audited by an external audit firm, it is not a subject for the monitority of the State Audit and Administrative Control Bureau.

Neither the law nor the code of conduct of commission members include post-employment restrictions or rules on receipt of gifts, and it lacks a code of conduct for the employees at the commission, in addition to not requiring asset declarations by the commission members and employees.

## Independent Commission for Human Rights (Ombudsman Office)

The commission has enough resources to carry on its activities, as its budget comes to a large extent from donors. It presents its reports to the President of the PNA, the prime minister and the head of the Legislative Council, but the commission is not accountable to any one of them. The commission has the respect of civil society organisations, political parties and the Palestinian public. The commission publishes its action plan, budget and work, but does not publish decisions taken by its council of commissioners, the executive bodies and on some internal issues. There are no legal provisions that regulate public access to information.

No code of conduct has been adopted that regulates the rules of work, conflict of interest, and gifts and hospitality. There are also no clear rules for asset disclosure of the commissioner general or the members of its commissioners' council or employees, and they do not declare their assets in practice.

## State Audit and Administrative Control Bureau

The State Audit and Administrative Control Bureau has reasonable legal provisions to protect its independence, but misunderstanding of its independence by the bureau's officials or by the executive on occasion weakens the efficiency and role of the bureau in enhancing the national integrity system.

The bureau publishes annual reports and occasionally summaries of them, as well as quarterly reports on its website, but the bureau's staff consider themselves unauthorised to disclose information. The bureau had issued a professional conduct code that includes rules of conflict of interests and gifts, but the code is not fully implemented. The bureau's recommendations are not mandatory for targeted institutions.

## Anti-Corruption Commission

The Anti-Corruption Commission has reasonable legal provisions to protect its employees, granting them immunity and protection from legal prosecution in regard to carrying out their duties as specified in law. It is granted a wide authority to enable it in carrying out its tasks to combat corruption through preventive procedures. The Commission has approved, in cooperation with relevant bodies, the national strategy for combating corruption, it conducts corruption cases and does some awareness raising, in cooperation with governmental and non-governmental institutions to implement the strategy.

The information that the commission makes available is still limited. The commission does not have its own code of conduct that includes rules on conflict of interest or on gifts. No rules were put in place to regulate the process of asset declarations for the head of the commission and employees. There are no specific post-employment restrictions and the law does not state restrictions on political and other activities of the head of the commission in order to ensure Independence and neutrality.

## Political Parties

Current laws do not require parties to adhere to democratic procedures to elect their leadership and representatives in government. Some parties and factions rely on external support offered by some Arab states to address difficulties that negatively affect them, while small parties suffer from financial unsustainability and a lack of diversity of funding sources. At the same time, there is no integrated legal system to govern financial accountability of political parties or to disclose information about governmental assistance or private funding in well-defined and regular periods. Public opinion polls show a negative impression of citizens regarding corruption in parties and in regard to their role in combating corruption.

## Media

Laws in force offer an environment for pluralism in media outlets and media accessibility by the private sector and civil society organisations. Defamation laws are very strict and can impose imprisonment. Although there was improvement in the number of radio and TV programmes in 2012 in the field of publishing information, enhancing the values of integrity, and discussing topics with a number of officials, media outlets still do not tackle corruption in a professional way and present them to the public. The absence of investigative reports in the Palestinian media is due to lack of sections specialised in investigative journalism. Media censorship negatively affects the sector, leading to self-censoring by Palestinian journalists.

A journalist code of conduct based on professional press ethics was adopted, and was published on the webpage of the Journalists' Union, which all journalists must join. The code however does not include a body responsible examine violations of the code or specific mechanisms for disclosing gifts and privileges that are given to journalists.

## Civil Society

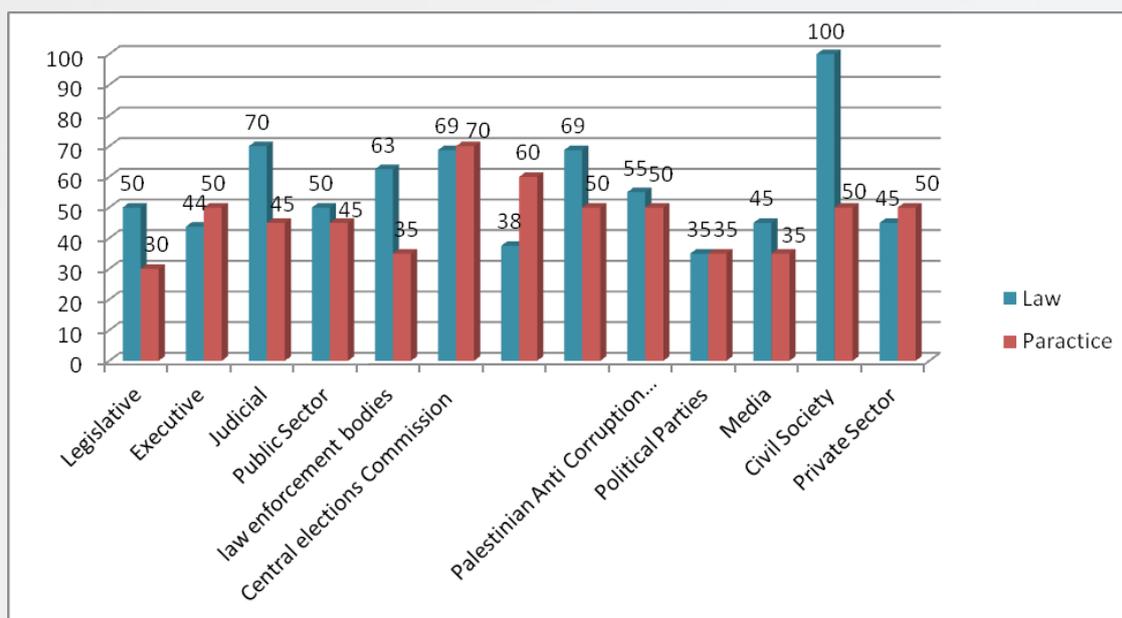
There are legal rules that grant protection to civil society organisations, and they can conduct their activities with reasonable freedom. The majority of civil society organisations adhere to submit administrative and financial reports about their activities and receive funds from relevant governmental bodies and donors. Many civil society organisations suffer from inefficiency in the general assembly and board, with the executive management dominating the work of the organization and developing the general policy without effective supervision from the board. Commitment to the civil society code of conduct is still weak. The contribution of civil society to enhance the national integrity system is still modest; however they have contributed to various reform efforts and initiatives, including lobbying for the establishment of the anti-corruption commission.

## Private Sector

The implementation of codes of conduct has not been taken with the necessary seriousness within the plans and programmes of companies, whether because of objective factors arising from the nature of the Palestinian national economy, that relies upon small and extremely small family firms, or because of the absence of binding legislative provisions for the application of certain rules for governance that derives fundamentally from the antiquated Companies Law.

Despite the rise of corporate social responsibility in the private sector as a concept, business persons' societies and chambers of commerce have not put corruption directly on their agenda in regard to their relations with the government. Private sector employees do not consider themselves responsible for anti-corruption efforts, this vision should be changed.

Figure 5: Scores of pillars by law and practice



The above figure illustrates differences in legal rules that govern NIS pillars; the civil society, judiciary, election commission and law enforcement pillars received relatively high scores, while the political parties and the independent commission for human rights received low scores.

In practice, civil society and the election commission received relatively high scores, while the legislative council, law enforcement agencies, political parties and the media received low scores that ranging between 30 and 35.

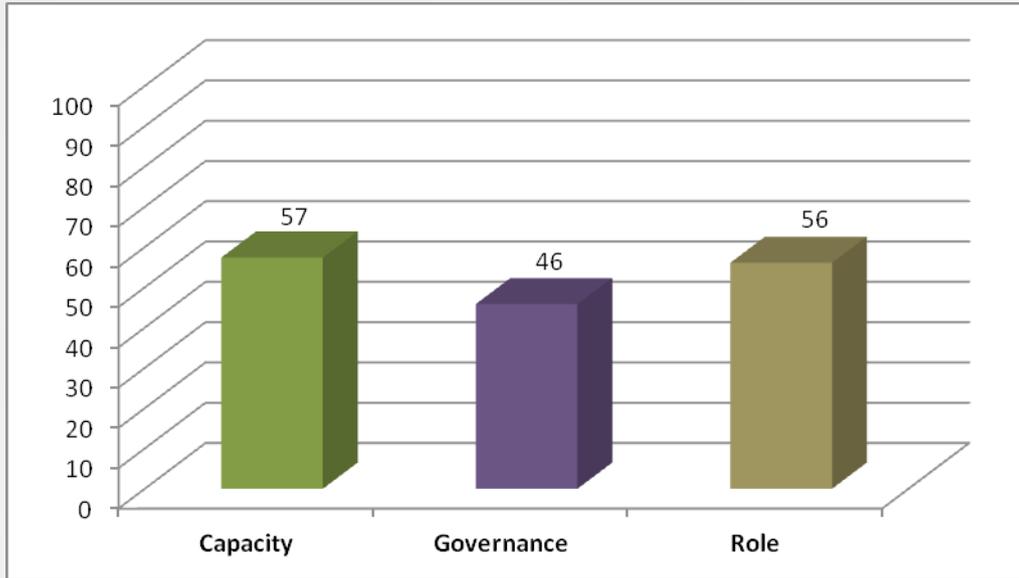
The difference between law and practice scores (100 vs. 50) in the civil society pillar indicates that civil society organisations have not reflected the legal potential in effective practice to protect the NIS and combat corruption.

### NIS dimensions (capacity, governance and role)

The capacities dimension of the NIS capacities received a slightly higher score than other dimensions, although it is still weak compared to the requirements of moving towards and developing the independence of supervisory institutions. This can be attributed basically to the lack of a clear understanding of the concept of independence and its requirements by the PNA and its institutions, constituting a clear weak element that must be overcome.

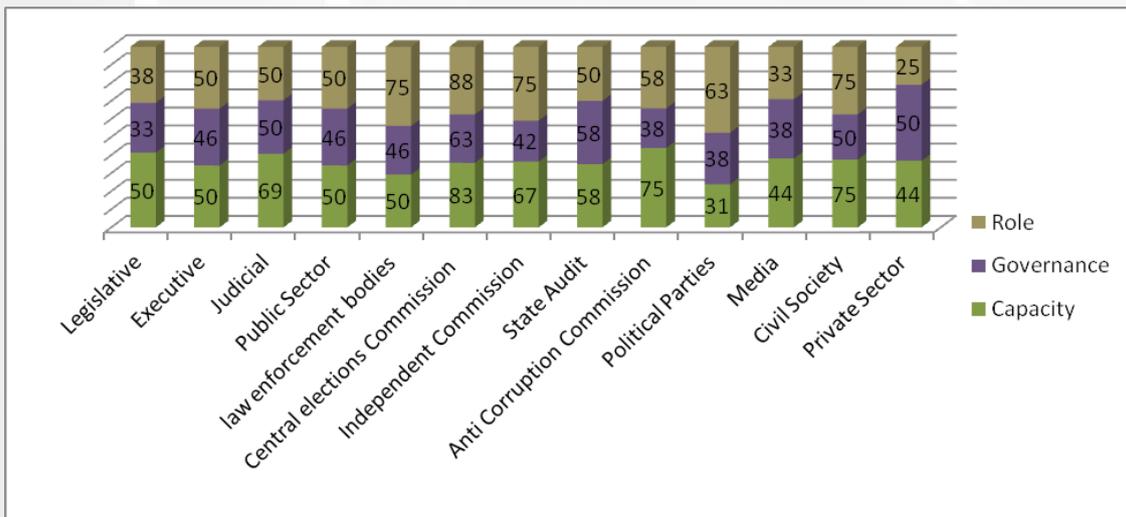
The following figure reveals that the dimension of governance (measuring transparency, accountability, and integrity mechanisms) obtained the lowest marks of the three dimensions of the integrity system. This requires that the components of governance in all the NIS pillars should be looked at seriously especially governance in the national integrity system of prevention that are needed to make them work actively and effectively.

Figure 6: Average scores of NIS dimensions and their classification



The scores of the role of NIS pillars indicate a clear weakness in the role of each of the private sector, media, and the legislative council in combating corruption or enhancing the NIS. The weakness of the legislative council is due to the political split that obstructed its work. While the private sector refrains from activating its role in supporting anti-corruption activities due to its concern in improving investment conditions over its role in resisting corruption. The weakness of the media is due to two factors; the first is structural related to ownership of media outlets themselves and the lack of development of investigation units, the second is about journalists fear of prosecution by PNA agencies.

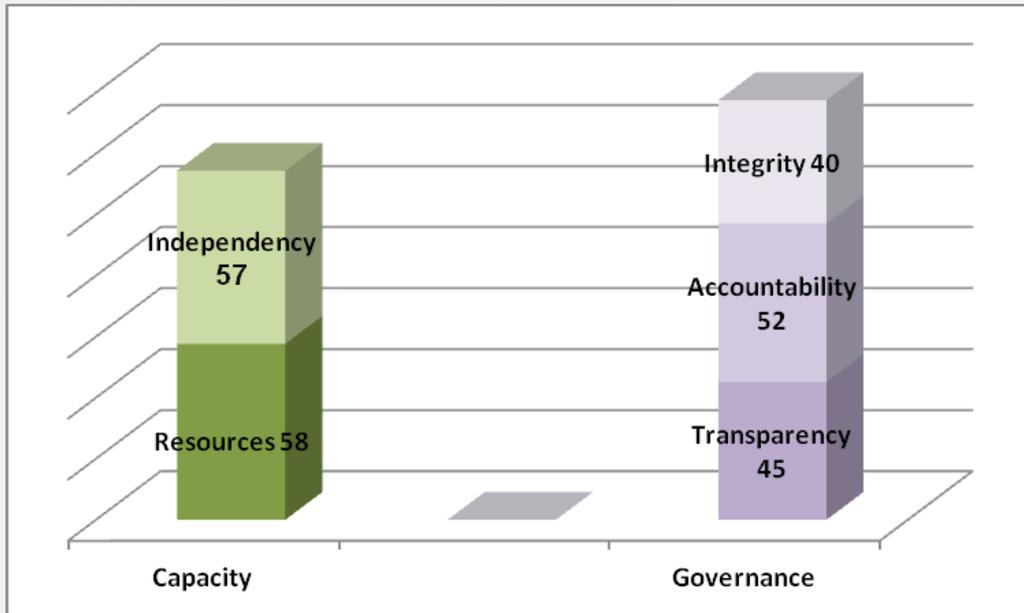
Figure 7: Average score of the three dimensions by pillar



The results of capacity dimension shows that the Central Elections Commission, the Commission for Combating Corruption, civil society, the judiciary, and the Independent Commission on Human Rights all obtained high scores in comparison with the other pillars. Significant among them is the Central Elections Commission, which is granted the necessary resources through state finance. It also has the independence

necessary to prevent interference in its work. The same factors apply to all the civil society institutions and the Independent Commission on Human Rights. The score for the Commission for Combating Corruption expresses the desire of the PNA to combat corruption through the provision of a legal framework that supports the independence of the Commission and clear financial support that exceeds its requirements. Political parties received a low mark in comparison with the other 12 NIS pillars.

Figure 8: Average scores for capacity and governance

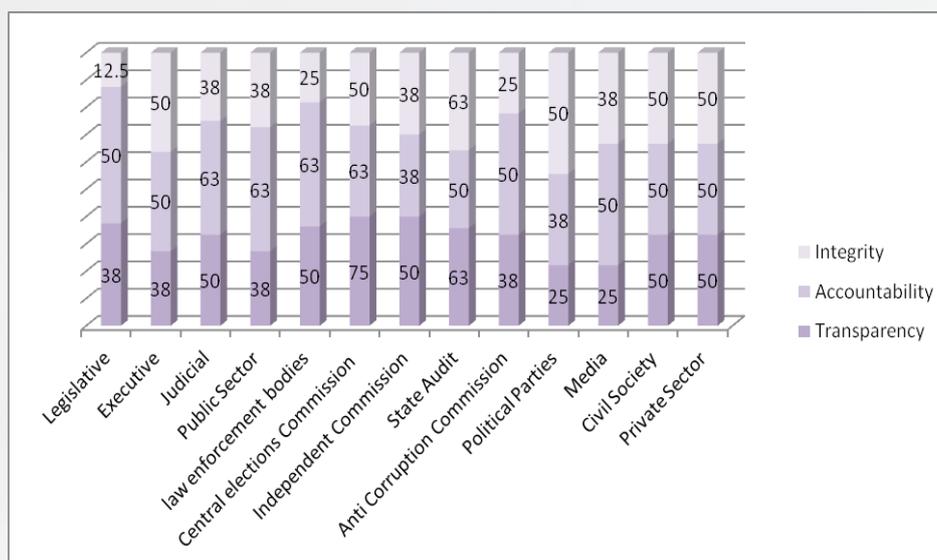


It can be seen that the weakness is clear in the scores obtained for the indicators for integrity mechanisms, whether these relate to the law or practice (44 and 38 respectively), due to the absence of a code for conduct for members or employees in a number of the pillars, such as the Council of Ministers, the Legislative Council, the Commission for Combating Corruption, law enforcement agencies, the Independent Commission for Human Rights and the media, the absence of rules related to a declaration of interests and gifts, the absence of post-employment restrictions on politicians and public sector officials moving to the private sector, and the lack of exposure or registration of cases where ethical rules are breached in the institutions of the Palestinian National Authority.

The scores related to the integrity dimension indicate the presence of problems in all NIS pillars, with four pillars scoring 63; the judiciary, public sector, law enforcement agencies and the central election commission, and seven pillars scoring 50. Both political parties and the independent commission for human rights had low scores: the low score for political parties is due to not submitting reports to official agencies except a list of expenditures during the presidential and election campaigns, for those that participated. The low score for the independent commission for human rights in accountability is due to the lack of legal rules that specify mechanisms for questioning before the legislative council or the president.

All NIS pillars scored 50 or less in transparency, except the central elections commission and the state audit and administrative control bureau (63). The media score was 25, the lowest of the 13 NIS pillars. The scores of each of the legislative council, the executive, the public sector, the anti-corruption commission, and the political parties indicate the weakness of transparency in their work and publicising it to public.

Figure 9: average scores for the dimension of governance by pillar



The Legislative Council, the law enforcement agencies, the Commission for Combating Corruption and the Independent Commission for Human Rights obtained very low marks in the dimension for integrity due to the absence of a code of conduct for employees in each of them and the absence of rules related to the disclosure of gifts. In the indicators that relate to practice very low marks were obtained by the Legislative Council, the judiciary, the public sector, law enforcement agencies, the Commission for Combating Corruption and the media.

All the pillars of the national integrity system obtained a mark of 50 or less in the dimension for transparency, with the exception of the Central Elections Commission and the Office for Financial and Administrative Monitoring (63 marks). The mark for the media (25 marks) was the lowest mark obtained for any of the 13 pillars of the regime for integrity. The marks obtained by the Legislative Council, the Executive Authority, the Public Sector, the Commission for Combating Corruption and the political parties indicate that they are weak in transparency in their work and informing the public.

The Independent Commission for Human Rights and the political parties obtained low marks for accountability. This is caused by a lack of accountability of the commission to the Legislative Council and the absence regular holding general conferences for the main political parties and absence of clarity in the electoral process of some of them.

The results related to NIS indicate a need to introduce fundamental reforms into many sectors and public bodies responsible for providing services or administering public assets, in order to achieve a national integrity system that is capable of providing impunity for corruption and the minimisation of the risk of corruption in any of NIS pillars. These reforms must include reform of the legal framework, the institutional framework and the political framework. This is in addition to the development of systems and mechanisms for regulating the relationship between the core authorities (the legislative, executive and judicial) and activating mechanisms for monitoring ratified within the framework of the PNA. Speed is essential in organising the non-ministerial official bodies and ensuring that they are subject to mechanisms for monitoring and accountability. The concept of independence of non-government public institutions needsto be clarified.

The government's adherence to submitting the public budget of the PNA on a periodic basis, periodic reports regarding implementation of the budget, and the final annual account to the Legislative Council are fundamental conditions for the support of the national integrity system and enhance vertical and horizontal monitoring.

Continuity in insisting on transparency and integrity in the central elections commission, prominent during the elections organised by the commission, is of major importance in the coming phase, especially with ongoing discussions around organising presidential elections and elections to the legislature, to eliminate the existing state of Palestinian division.

Finally strengthening the role of the investigative media and development of media personnel for this must be taken into consideration, to enable them to perform their function and a governance regulation for the private sector must be implemented.

## PRIORITIES AND RECOMMENDATIONS

The study concludes with a number of priorities that must be taken into account to construct a national integrity system in Palestine.

In the forefront of these priorities, **the first priority** is to encourage political will of those in power within the PNA, security officials forces and Palestinian political parties to adopt the principles of transparency, integrity and combating the corruption that is prevalent in public work. In this field it is essential to build on what the PNA has achieved in international recognition and in raising its status within the United Nations organisation to a 'non-member observer state,' enabling it to officially sign the United Nations Convention Against Corruption and undertake its implementation, together with the extension of participation in the implementation of the national plan for combating corruption within the National Authority.

**The second priority** consists of completing and strengthening the effectiveness of the internal and external monitoring institutions within the Palestinian National Authority, strengthening the independence and effectiveness of the State Audit and Administrative Control Bureau and revitalising the Legislative Council in its position as the primary institution responsible for monitoring and holding to account the executive, as this institution has been absent for more than six years.

**The third priority** is the importance of strengthening the independence of the Palestinian judicial system, providing it with the infrastructure and professional staff it requires, and strengthening the confidence of the Palestinian public in the judiciary as the fundamental body for achieving justice, by respecting judicial rulings and all parties taking action to implement them, as well as paying special attention to strengthening the work of the public prosecution.

**The fourth priority** consists of completing the construction of the administrative and financial organ of the PNA on the basis of integrity and transparency, through control of the system of appointments and promotions in the senior ranks of the civil service, especially in the positions of the senior and special ranks, and putting an end to appointments on the basis of; political membership, intermediaries, nepotism and favouritism, as well as the completion of the procedures for reform of the financial system putting an end to the misuse and squandering of public funds, and the perception of them as a concession or personal possession of government officials.

**The fifth priority** is that there is a need for action to build a system of values that rejects the use of intermediaries and nepotism, and raises the level of awareness of citizens in safeguarding public property.

**The sixth priority** is to promote the adoption of codes of conduct and ethics, and to implement them within the NIS pillars, as well as implementing registrations of interests through interest declarations of politicians and senior employees of the PNA published periodically or as required. This would include gifts, hospitality, travel and privileges they obtain, in addition to highlighting real or possible conflicts of interest at employment and when a case arises by virtue of their position. Rules for the post-employment movement of state employees to the private sector also need to be put in place.

Finally **the seventh priority** is a need for action to complete the amendment of legislation to bring it into line with the United Nations Convention Against Corruption, especially the access to information law.

## Recommendations

In the light of the priorities concluded by the study, it recommends the following as requirements for strengthening and making the Palestinian national integrity system more effective.

1. Ending the political division between the West Bank and Gaza Strip and unifying the work of Palestinian institutions, which has special importance in strengthening the national integrity system and ending the possibility of evading public accountability, through elections.
2. Reconstituting the Palestinian Legislative Council in its position as the most significant of the pillars for monitoring, holding institutions to account and as a fundamental foundation in the national integrity system.
3. The Palestinian Council of Ministers should put into place a comprehensive national plan to combat corruption and enhance integrity in the work of government institutions, in line with the national strategy for combating corruption led by the Commission for Combating Corruption in its supervisory and enforcement role.
4. The Palestinian legislature should bring all Palestinian legislation into line with the United Nations Convention Against Corruption, whether with respect to the criminalisation of all forms of corruption or increasing the severity of the penalties imposed for these crimes, or of specific legislation and regulations for avoidance of conflict of interest and disclosure mechanisms for the public sector and to implement the right to information.
5. The Council of Ministers should speed up in completing the draft law on the right to access information and submit it to the PNA president to issue it in accordance with the provisions of Article 43 of the Palestinian Basic Law.
6. The Council of Ministers should start circulating a code of conduct and ethics of public office among the government departments and employees, make it known, publish the values included within it, provide training on its implementation, and issue special instructions for the disclosure of gifts and hospitality provided to employees
7. Action should be taken to issue a code for the conduct of members of the Council of Ministers, members of the Legislative Council and employees of security and police agencies, especially in the national security, preventive security and the police.
8. The Council of Ministers and the Legislative Council should issue clear instructions regulating the work of ministers, senior state employees and members of the Legislative Council in the private sector after leaving the public sector.
9. The Council of Ministers and the Legislative Council should determine the regulatory procedures controlling the acceptance of gifts and hospitality offered to ministers, members of the Legislative Council and senior officials in public sector.
10. The Anti-Corruption Commission and the Council of Ministers should transform the submission of asset declarations of certain categories, particularly for politicians, the PNA president, prime minister, ministers and those in their status, as well as members of parliament, from being a secret process to an open process through the disclosure of assets in a register of interests, in accordance with specified mechanisms and deadlines such that the media and citizens are able to study them. They should also implement necessary disclosure processes and their recording in the register of interests when these people obtain additional gifts or benefits from the government or hospitality from institutions in the private sector or lobby groups, as well as the possibility of a conflicts of interest arising when a discussion takes place of issues put before them.

11. The anti-corruption prosecution (the anti-corruption commission) should speed up its process of completing investigations that are before them and refer the cases to the Court for Corruption Cases. Cases already in Palestinian public opinion should be completed.
12. Establish a committee in the public sector composed of public personalities with credibility, knowledge and experience in governance affairs, to consider the appointments of nominees for senior positions in the public sector and consider complaints related to appointments in the public sector.
13. The Anti-Corruption Commission should issue the special regulation, as stated in the Law for Combating Corruption, to protect those who report corruption and protect them from counter claims, personal harm and harm in their employment.
14. The PNA president should maintain the strong image in which the Palestinian Central Elections Commission has so far appeared, together with its role as an instrument of integrity in conducting the general elections, and diligence should be taken to ensure that it is not influenced by members of the executive, on the consideration that this constitutes an assurance for public confidence and the various political forces of its role and the integrity of the results arising from any electoral activity it supervises.
15. The Council of Ministers should enhance the role of the State Audit and Administrative Control Bureau with a guarantee of its independence and support with the resources and professional staff essential for the performance of its functions.
16. The Council of Ministers should follow-up the annual and special reports of the State Audit and Administrative Control Bureau, in light of the observations and recommendations contained within them, to correct errors and put an end to cases of wasting public funds and strengthening the establishment of the national integrity system.
17. Board members in civil society organisations should enhance the role of civil society in supporting the values of integrity, the systems of accountability and principles of transparency within Palestinian society. Grassroots organisations should assist in creating awareness of the importance of these values and principles on the one hand, and the risks arising from the phenomena of corruption on the other hand, in addition to the development and implementation of what is recorded in the codes of conduct, and action in accordance with them on the part of employees in these organisations.
18. General assemblies and boards in civil society organisations should activate their role in monitoring the work of their institutions, and not leaving the executive in these institutions to dominate decisions and disposal of its resources without effective monitoring.
19. The Council of Ministers should enable the media to have freedom to obtain information related to cases of corruption; in order for it to perform the role entrusted to it in the field of combating corruption, and should encourage media establishments and editors in chief of newspapers to produce investigative reports to disclose cases of corruption.

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2. Interview with Mr Nabeel Awda, Director General for Financial Affairs in the Legislative Council, on 13/5/2013.
3. Interview with Dr Nafidh Al-Madhoun, Secretary General of the Legislative Council, on 10/6/2013.
4. Interview with Mr Abdul Raheem Taha, Director General of the Office of Complaints in the Legislative Council, 16/5/2013.
5. Interview with Dr Azmi Al-Shuaibi, Commissioner for the Coalition for Accountability and Integrity - AMAN, who is a former member of the Legislative Council, on 5/6/2013.
6. Interview with Dr Ahmad Abu Diya, Director General of Committees in the Legislative Council, on 17/6/2013.
7. Interview with Dr Tariq Al-Dirawi, Director of the Legal Department in the Legislative Council (Conscientious employee), on 11/6/2013.
8. Interview with Mr Muhammad Abu Ata, Assistant Undersecretary for Financial and Administrative Affairs in the Council of Ministers on 28/8/2013.
9. Interview with a source in the Secretariat of the Council of Ministers who requested anonymity, on 9/8/2013.
10. Interview with Dr Naeem Abu Al-Hims, the Former Secretary General of the Council of Ministers, on 26/8/2013.
11. Interview with Mr Shadha Qarshouli, Director General for Quality of Government Performance in the Council of Ministers.
12. Interview with Mr Nafeen Salama Ghayyadha, Director of the Department for the Implementation of Government Decisions in the Council of Ministers, 13/8/2013.
13. Interview with Mr Usama Saad, Director General for Legal Affairs in the Council of Ministers in Gaza, 18/7/2013.
14. Interview with Dr Adnan Al Hajjar, Deputy Director of the Mizan Centre for Human Rights in the Gaza Strip, 15/7/2013.
15. Interview with Mr Nasir Al Rayyis, Consultant to the Centre for Applied Justice for International Law,

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16. Interview with Mr Jumail Sirhan, Director of the Independent Commission for Human Rights in Gaza, on 18/6/2013.
17. Interview with Mr Salama Baseesu, Deputy President of the Association of Lawyers, on 9/6/2013.
18. Interview with Judge Ashraf Nasrallah, Judge in the Court of First Instance, on 16/6/2013.
19. Interview with Judge Mahmoud Jamous, Secretary General of the Supreme Judicial Council, on 18/7/2013.
20. Interview with Mr Imad Hammad, Chairman of the Branch Committee of the Union of Employees in the Council of Ministers, on 13/8/2013.
21. Interview with Mr Mumin Khalaf Abdul Wahid, Director of the Office of the Head of the General Personnel Council in Gaza, 29/6/2013.
22. Interview with Mr Shaawan Jabareen, Director of the Al-Haq Institute, on 20/8/2013.
23. Interview with Dr Muhammad Abu Zaid, Lecturer in the University of Birzeit, on 21/8/2013.
24. Interview with Mr Nasir Al Khateeb, Director of the Tender Board in the Public Supplies Department in the Ministry of Finance on 28/8/2013.
25. Interview with Dr Adnan Al Hajjar, Deputy Director of the Mizan Centre for Human Rights on 15/7/2013.
26. Interview with a police commander in Gaza who requested anonymity, on 3/7/2013.
27. Interview with Mr Ashraf Uraiqat, Assistant Public Prosecutor on the West Bank, 18/8/2013
28. Interview with Mahmoud Al-Khaleeli, in charge of the Finance Department in the Public Prosecution on the West Bank, 18/8/2013.
29. Interview with Dr Khalid Al-Sabateen, Head of the Office of the Director General of Police, 17/8/2013.
30. Interview with Mr Ihab Al Dairyoui, Head of the Public Prosecution for General Jurisdiction in Gaza, 27/6/2013.
31. Interview with a police commander in Gaza who requested anonymity, on 3/7/2013.
32. Telephone interview with Mr Wail Lafi, Head of the Planning Department in the Public Prosecution, 18/8/2013.
33. Interview with Mr Zain Al-Deen Baseesu, Attorney in the Technical Office in the Public Prosecution, on 3/7/2013.
34. Interview with Mr Nasir Al-Rayyis, the Legal Consultant to the Al-Haq Institute, 17/8/2013.
35. Interview with Mr Rasha Amarina, Director General of the Legal Department in the Commission for Combating Corruption on 1/8/2013.
36. Interview with Mr Abdul Ghani Al Uwaiwi, Prosecutor General in the West Bank on 14/8/2013.
37. Interview with Colonel Jamal Al-Deen, Police Commander in the Province of Gaza on 23/6/2013.
38. Interview with Mr Arif Jaffal, Director General of the Arab World Observatory for Democracy and Elections (Al-Mirsad) on 23/6/2013.
39. Interview with Dr Ammar Al-Duwaik, the Former Executive Director of the Central Elections Commission on 8/7/2013.
40. Interview with Mr Hisham Kuhail, the Executive Director of the Central Elections Commission, on 10/7/2013.

41. Interview with Mr Muhammad Zakarina, In Charge of the Functions of the Director for Administrative Affairs in the Elections Commission, on 8/7/2013.
42. Interview with Mr Musa Abu Duhaim, Director of the West Bank Programme in the Independent Commission for Human Rights, on 2/6/2013.
43. Interview with Mr Majid Al-Aroui, a media worker and specialist in human rights, on 15/5/2013.
44. Interview with Dr Azmi Al-Shuaibi, Commissioner for the Coalition for Accountability and Integrity - AMAN, on 5/6/2013.
45. Interview with Mr Ghandi Al-Rabi, Director of the Department for Monitoring Legislation and Public Policies, on 4/6/2013.
46. Interview with Mr Muawiya Asaad, Finance Director in the State Audit and Administrative Control Bureau, on 16/9/2013.
47. Interview with Mr Jaffal Jaffal, Legal Consultant in the State Audit and Administrative Control Bureau, on 16/9/2013.
48. Interview with Dr Azmi Al-Shuaibi, Coalition for Accountability and Integrity - AMAN, on 21/9/2013.
49. Interview with Mr Ismail Mahfoudh, Head of the State Audit and Administrative Control Bureau in Gaza, on 2/7/2013.
50. Interview with an official of the State Audit and Administrative Control Bureau in Gaza (subordinate to the Palestinian Authority in Ramallah) who requested anonymity, on 6/7/2013.
51. Interview with Dr Azmi Al-Shuaibi, Commissioner for the Coalition for Accountability and Integrity - AMAN, on 13/7/2013.
52. Interview with Mr Rasha Amarina, Director General of the Legal Department in the Commission for Combating Corruption on 1/8/2013.
53. Interview with Mrs Khalda Jarrar, Deputy in the Legislative Council for the Popular Front for the Liberation of Palestine, on 30/5/2013.
54. Interview with Dr Ayman Daraghima, Deputy in the Legislative Council for the Hamas Movement, June 2013.
55. Interview with Mr Ahmad Halas, a leader in the Fatah Movement, on 1/7/2013.
56. Interview with Mr Jumail Al-Majdalawi, member of the Legislative Council for the Popular Front, on 25/6/2013.
57. Interview with Mr Muheeb Awwad, Deputy in the Legislative Council for the Fatah Movement, on 5/6/2013.
58. Interview with Dr Ammar Duwaik, the Former Executive Director of the Central Elections Commission on 8/7/2013.
59. Interview with Mr Salti Rimouni, Director General of the Department for Political Affairs in the Ministry of the Interior, on 25/6/2013.
60. Interview with Mr Anees Abu Al-Sibaa, Head of the Political Parties Section and Candidates in the Central Elections Commission, on 26/6/2013.
61. Interview with Mr Khalid Abu Akr, Manager of the Amin Media Network, on 22/7/2013.
62. Interview with Mr Musa Al Rimawi, Director General of the Palestinian Centre for Media Development and Freedoms, MADA, on 23/7/2013.

63. Interview with the journalist Muntasir Hamadan, Coordinator for the Al-Salaama Professionalism Project in the Union of Journalists, on 8/9/2013.
64. Interview with Mr Ihab Al Ghusain, Head of the Government Information Office in Gaza, on 7/7/2013.
65. Interview with Mr Fathi Sabah, Chairman of the Board of Directors of the Palestinian Telecommunications and Development Institute, on 27/6/2013.
66. Interview with Dr Abdul Nasir Al Najjar, President of the Union of Journalists, on 23/7/2013.
67. Interview with Mr Tilal Awkal, journalistic writer and former Director General of Planning in the Ministry of Information, on 25/6/2013.
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76. Interview with Mr Nazeeh Rajab, Director General of Registration of Companies in the Ministry for the National Economy, 15/8/2013.
77. Interview with Dr Imad Abu Shaaban, and Academic Specialising in Tax Calculation, on 1/7/2013.
78. Interview with Dr Nasr Abdul Kareem, Professor of Finance in Birzeit University, on 22/8/2013.
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الائتلاف من أجل النزاهة والمساءلة (أمان)  
رام الله: عمارة الريماوي ط1، شارع الإرسال – رام الله،  
هاتف: 022989506/ 022974949  
فاكس: 022974948  
ص.ب: 69647، القدس: 95908  
غزة: عمارة الحشام، شارع الحلبي- متفرع من شارع ديغول  
هاتف: 082884767 فاكس: 082884766  
الموقع الإلكتروني: [www.aman-palestine.org](http://www.aman-palestine.org)  
البريد الإلكتروني: [info@aman-palestine.org](mailto:info@aman-palestine.org)