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NATIONAL INTEGRITY SYSTEM STUDY

PALESTINE 2009

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The Coalition for Accountability and Integrity – AMAN has made every effort to verify the accuracy of the information contained in this report.

All information was believed to be correct as of September 2009. Nevertheless, the Coalition for Accountability and Integrity – AMAN and Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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I INTRODUCTORY INFORMATION

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We also wish to extend our thanks to all of the individuals and institutions that enriched this study with their suggestions and recommendations during the focus group workshops, which were comprised of representatives from the executive, legislative and judicial branches of the Palestinian National Authority, non-governmental organisations, civil society organisations and political parties, as well as independent academics and scholars.

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Research team and focus group participants

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Foreword

The existence of an effective national integrity system that addresses the potential risks of corruption at all levels is a prerequisite for good governance. Creating such a system requires broadening the accountability base within government so power is not concentrated amongst a few positions, and so each individual who occupies a public position is liable for his/her own performance and both monitors, and is monitored by, others in the system. Developing a national integrity system involves moving away from the top-down model of control, which is prevalent in authoritarian one-party governments and dictatorships, to a model characterised by horizontal checks and balances, and plurality of oversight mechanisms. Institutions with the capacity to monitor and intervene in cases of abuse of authority – such as parliaments, public watchdog organisations, free press, courts, public auditors, civil society organisations and trade unions – are needed. Such a system for safeguarding the integrity of government requires a broad vision to protect all structures against corruption, through reform of both legislation and institutional culture. To accomplish this, a phased approach is needed that engages the participation of the community, civil society organisations, the private sector, the media and religious institutions. Such a holistic reform program would address all aspects of governance, including the institutional framework (governmental apparatus and administration), and work toward legislation to protect civil liberties and address corruption in government as well as policies and planning that reflect the needs and desires of all sectors of society.

The implementation of a national integrity system is a major challenge for emerging states. Although the Palestinian National Authority (PNA) does not possess all the characteristics of a state, it can be considered an emerging governance system. The PNA, as is the case with governments in other nations under similar conditions, has not yet developed the institutional capacity to fulfill all of its functions and lacks the expertise needed to fully develop the systems needed to ensure integrity in government. Moreover, the PNA functions in a context in which most of its territory is under military occupation by Israel, and in which Israel has full control of the borders and border-crossings as well as much of the land and other resources under the PNA's jurisdiction.

This study examines the systems currently in place to ensure accountability in public, private and non-governmental Palestinian institutions. This constitutes part of a larger study sponsored by Transparency International (TI) to explore and evaluate the experience of different nations, including a number of Arab states in the region – Egypt, Lebanon and Morocco – in terms of systems of integrity.

The National Integrity System (NIS) assessment approach developed by Transparency International provides the basis of the methodology used throughout all of the country studies. This model sees the legislative, judicial and executive powers of government as key pillars to uphold integrity, transparency and accountability in a society, along with other major actors and institutions such as security apparatuses, political parties, electoral commissions, supreme audit and control bodies, civil services, anti-corruption institutions, local government, international parties, the private sector, the media, NGOs and other civil society organisations.

This study assesses each of these sectors in terms of their structure, resources, role in safeguarding integrity and transparency, protocols for addressing grievances, relationship with other sectors and their role in promoting and monitoring accountability in society. The assessment explores the legal, institutional, policy and practical dimensions of integrity, transparency and accountability in each instance.

AMAN was requested to conduct the study on the PNA within the larger TI research project. Dr. Ahmad Abu Dayyeh, Dr. Mohammad Abu Zaid and Dr. Abdul Rahman Tamimi were appointed to form a specialised research team. Ra'ida Qandeel served as a research assistant, Jamileh Abed as coordinator and Dr. Azmi Al-Shu'aybi, Commissioner for Combating Corruption at AMAN, supervised the study. The team drew upon existing documents and studies conducted by AMAN as well as interviews with officials representing targeted institutions, using the National Integrity System (NIS) methodology provided by Transparency International's Secretariat to determine the status of existing systems to support integrity.

AMAN has conducted a number of other studies exploring the issue of combating corruption and examining the key pillars that support integrity at the institutional level in Palestine. These include: *A survey of national integrity system reconstruction* (2007, supervised by TIRI); *Integrity, transparency and accountability – a manual for combating corruption* (2007); *The reality of pension in Palestine* (2007); *The financial performance of the PNA: Government tenders* (2008); and *The problem of separation of powers in the Palestinian political system - The executive power: The presidency and the Cabinet* (2007).

II

ABOUT THE NIS STUDIES

What Is the NIS?

The National Integrity System encompasses the key institutions, sectors or specific activities (the 'pillars') that contribute to integrity, transparency and accountability in a society. When it functions properly, the NIS combats corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. Strengthening the NIS is about promoting better governance across all aspects of society.

The concept of the NIS has been developed and promoted by Transparency International as part of TI's holistic approach to combating 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. The NIS studies are based on an assessment of the quality of institutions relevant to the overall anti-corruption system.

Why Conduct NIS Studies?

The purpose of each NIS study is to assess the National Integrity System, in theory (law and regulatory provisions) and practice (how well it works). The studies provide both benchmarks for measuring further developments and a basis for comparison among a range of countries. Their findings can also serve as a pointer for areas requiring priority action or can form the basis from which stakeholders may assess existing anti-corruption initiatives. NIS studies help explain, for example, which pillars have been more successful and why, whether they are mutually supportive and what factors support or inhibit their effectiveness. They studies also assess where the emphasis should be placed on improving the system and what factors are required to support the overall development of the integrity system.

The studies create a sound empirical basis that adds to our understanding of strong or weak performers. Within a region, in which several countries may function with similar economic, political or social frameworks, the results of the study can create a sense of peer pressure for reform as well as an opportunity for learning from those countries that are in similar stages of development. For Transparency International, NIS country studies are an important measurement tool. They complement TI's global indices and surveys, such as the Corruption Perceptions Index, Bribe Payers Index and Global Corruption Barometer, as well as national surveys, by exploring the specific practices and constraints within countries and providing qualitative empirical results about the rules and practices that govern integrity systems. More than 70 such studies have been completed as of September 2009.

TI believes that it is necessary to understand the provision for and capacity of the integrity pillars, as well as their interaction and practices, to be able to diagnose corruption risks and develop strategies to counter those risks. The NIS country studies are a unique product of Transparency International, as they reflect the systemic approach TI takes to curbing corruption and the independence of analysis that can be offered by the world's leading anti-corruption NGO.

Methodology

The NIS studies offer a qualitative assessment of the integrity system in a country or region. They are based on both objective and subjective sources of data, which differ in quantity in each country or region evaluated. The studies therefore require both desk research and field research.

At least one focus group is convened as part of the country study. Focus group participants include anti-corruption and governance experts drawn from government (including donors, where relevant), the private sector, the professions (e.g. lawyers, accountants and engineers), media and civil society. The aim of the focus groups is for a broad base of stakeholders to evaluate the integrity system and to comment on the draft country study. The results of the meeting then inform further revision of the country study. In addition, each NIS study is reviewed by an external expert referee.

III

EXECUTIVE SUMMARY

The Palestinian situation is unique. Although the Palestinian National Authority (PNA) has signed numerous agreements with Israel, it does not enjoy sovereignty over the territories it administers, i.e. the West Bank and Gaza Strip. This presents major challenges in terms of developing the institutions and legal framework for an effective functioning of the PNA. Moreover, Palestinian-Israeli agreements have not brought an end to the decades-long conflict, which compromises the political stability needed in order to formulate national priorities, strategies and plans. Conflict within Palestinian society – in particular the political division that currently exists between the West Bank and Gaza Strip – has also had a negative impact on the development of national institutions and legislation in the Palestinian Territories. The result is that combating corruption has taken a back seat to the issue of national division, which continues to dominate the agenda.

The political will of PNA officials and representatives of Palestinian political parties and other political entities is an important precondition to developing a functioning integrity system. The election of Palestinian President Mahmoud Abbas in 2005 played an important role in lifting the protection of some officials accused of corruption. Similarly, Hamas' victory in the 2006 legislative elections, with the party running on a platform of reform and clean government, provided an important opportunity to tackle corruption. However, the political rift that developed between Hamas and Fateh, and the refusal of major players in the international community to accept the elected governments, have aggravated the internal political rift while having a grave impact on the process of reform that was initiated in 2002, as well as on the Palestinian political system as a whole.

Nevertheless, when Palestinian President Mahmoud Abbas formed a caretaker government headed by Dr. Salam Fayyad in the wake of Hamas' takeover of the Gaza Strip, the quality of the public administration in the West Bank did improve to some extent. The caretaker government introduced a reform package characterised by stronger support for the judiciary and reform of the security services. It was in this context that in 2008 the PNA, representatives of various political parties and organisations, civil society and the private sector committed themselves to drafting and implementing a comprehensive national plan for combating corruption and promoting integrity and transparency in the public domain.

The present study of Palestine's National Integrity System finds that fundamental reform of a number of public institutions responsible for service delivery and management of public funds is needed in order for the government to have an effective national integrity system. Reform is needed of the legal framework, as well as of the institutional framework and policies. The systems and mechanisms that regulate the relationship between the legislative, executive and judicial powers must be developed. In addition, efforts are needed to reform the civil service. Asset management of the pension fund must become more transparent, with better mechanisms for oversight within the PNA. Similarly, the mechanisms for handling foreign aid and grants must be reviewed. In addition, regulations governing public institutions must be streamlined to ensure they are effectively monitored. And the efforts begun to reform the security services and ensure they respect and act fully under the authority of the government and the oversight of the legislature must continue.

A commitment on the part of the government to report regularly on the budget and spending, as well as to issue special reports as needed and present a year-end report to the Palestinian Legislative Council (PLC) constitute basic conditions for supporting integrity in government and strengthening the vertical and horizontal lines of control. The transparency and integrity demonstrated by the Central Elections Commission (CEC) during the 2006 legislative elections provide a strong foundation for the days ahead, particularly in light of the fact that legislative and presidential elections are under consideration as a strategy to resolve the current political rift between Hamas and Fateh. Finally, there is a need to strengthen the role of investigative media. A corporate governance system must be put in place. Local government must demonstrate integrity and transparency in its appointments, service provision and handling of tenders and procurements.

IV

PRIORITIES AND RECOMMENDATIONS

The following priorities have emerged from the study that must be taken into consideration in order to build a functioning national integrity system in Palestine:

- The political will of PNA officials and the leaders of Palestinian parties and forces must be mobilised to embrace the principles of transparency and integrity, and to combat corruption in the public domain. The presidency, Cabinet and a number of representatives of political parties and forces have led the way by expressing their willingness to adopt a comprehensive national anti-corruption plan for the PNA.
- Bodies within the PNA responsible for external and internal monitoring and control must be strengthened. The most important of these are the Illicit Gains Commission and the Anti-Corruption Commission. The State Audit and Administrative Control Bureau needs greater independence in order to function more effectively. The PLC, which has not functioned for two years, must resume activity; it is the primary mechanism for control over and accountability by the executive branch.
- Efforts to ensure the independence of the Palestinian judiciary must be strengthened. This includes strengthening measures to limit interference by the executive branch in judicial work, putting in place the regulations and by-laws that have been drafted to regulate its functions, and providing support to the staff and infrastructure of the judiciary. In addition, public confidence in the judiciary must be built by all institutions within the PNA by consistently upholding and enforcing rulings handed down by the courts. The role of prosecution must be developed. Reform of the security apparatuses – particularly the police – must take place in parallel with reform of the judiciary to ensure integrity in law enforcement. The capacity of the special units assigned to investigate cases involving corruption must be built.
- The administrative and financial systems of the PNA, which are still developing, must be grounded in the principles of integrity and transparency. To ensure this, mechanisms are needed to govern the process of appointment and promotion in the civil service – especially for senior positions – so appointments cannot be made on the basis of partisan affiliation, favouritism or nepotism. Financial reform must eliminate the squandering and misuse of public funds, putting an end to the culture of government officials treating public money as a privilege or their private property.
- The value system and culture of the administration must be reformed so favouritism and nepotism are rejected. Public awareness of the use of public funds must be raised.
- The process of amending Palestinian law to conform to the UN Convention against Corruption (UNCAC) must be completed.

To address these priorities in order to develop the national integrity system of the PNA, the following steps are recommended:

- Build on the readiness of the Cabinet and other parties to support a comprehensive national plan to combat corruption and enhance public accountability and transparency. Provide support to the national task team responsible for formulating the plan and supervising its implementation.
- All laws dealing with corruption must be amended by the legislature to conform to the UNCAC in terms of dealing with penalties, conflict of interest, access to information, granting of privileges and establishing the Anti-Corruption Commission.

- The anti-corruption organs of the PNA (which are still being developed) must be made functional, particularly the Illicit Gains Commission and the Anti-Corruption Commission. The PLC must resume its duties and provide the checks and balances needed for it to function as a central pillar in promoting and upholding the integrity of the government.
- Develop the financial management systems of the PNA and empower the role of the public accountant. Integrate financial management throughout the PNA into a unified system that will prevent any one office or official from manipulating items of the state budget and squandering or appropriating public funds for personal use. Such a system must also ensure that financial management complies with the timeframes specified in the State Budget Law for submitting a proposed budget and year-end report to the PLC.
- Development plans and loan agreements must be submitted to the PLC for approval in accordance with existing legislation and policy.
- Address the existing problems in the government tendering and procurement process by aligning relevant legislation, preventing conflicts of interests within public tender committees and providing protection to those who report violations.
- Strengthen the accountability of security services to government and the oversight of the legislature and political leaders over these services. Ensure that security budgets are drafted according to the protocols laid out in the State Budget Law, and develop an integrated legal framework to regulate these services, specifying the duties and powers of each apparatus.
- Support the authority of the judiciary, ensure its independence and continue to invest in its development. Prohibit interference of any kind by the executive branch or security services.
- Ensure that the high levels of respect which the Central Elections Commission has enjoyed since its creation for its integrity in managing general elections is maintained. Ensure the executive branch does not influence the Central Elections Commission and thereby jeopardise the trust of the public and political parties in its role and integrity, and undermine confidence in election results.
- Strengthen the role of the State Audit and Administrative Control Bureau, ensure its independence and provide it with the necessary human and other resources to perform its duties.
- Support civil society organisations in the significant role they play in the development process, particularly in fostering values of integrity, accountability and transparency in Palestinian society. Empower grassroots organisations to raise awareness in their communities of the importance of these values and of the dangers inherent in corruption. Assist these organisations in developing and implementing codes of conduct for their staff that are grounded in these values.
- Local government bodies must operate with greater transparency by committing to produce audited budgets and annual financial reports, comply with established protocol for tenders, and comply with the code of conduct laid out for local councils and their staff.

V

BACKGROUND OF PALESTINE

The declaration of the establishment of the state of Israel on Palestinian territory in 1948 constitutes the pivotal event of the Palestinian-Israeli conflict. Palestine was divided into three parts: Israel took roughly 78 per cent of the Palestinian homeland, with the West Bank fragmented to the east, under the rule of the Hashemite Kingdom of Jordan, and the Gaza Strip fragmented to the west of Israel, falling under Egyptian rule. In 1967 Israel occupied the West Bank and Gaza Strip and imposed a military administration over these territories.

The Palestine Liberation Organization (PLO) was established in 1964 to organise Palestinian resistance. It continued to play this role, refusing to recognise Israel, until the Declaration of Principles, also known as the Oslo Accords, was signed in 1993. This agreement included the recognition of the state of Israel and the recognition of the PLO as the representative of the Palestinian people. Hence, the peaceful approach of negotiations was adopted, with a five-year interim period planned in order to arrive at a solution to the conflict. The Declaration of Principles was followed by a series of other agreements that organised the transfer of some powers and authority from the Israeli military government, which had administered the Occupied Palestinian Territories, to the Palestinian National Authority (PNA). In 1994, the PLO entered the West Bank and Gaza Strip and established this interim Palestinian government.

Overview of the PNA

Political conditions

Following the inception of the PNA upon signing of the Oslo Accords, the new authority began to restructure existing institutions and establish new institutions and commissions. The first Palestinian government, at the time named the Authority Council in accordance with the Declaration of Principles and subsequent agreements, was formed in 1994 in the absence of a parliament or any kind of legislative authority.

The fledgling authority experienced the difficulties typical of a revolutionary movement transitioning to a state structure grounded in constitutional authority. In addition, 27 years of Israeli occupation had left a devastating legacy in all areas of Palestinian life in the West Bank and Gaza.

In January 1996 the first legislative elections were held and the first Palestinian Legislative Council (PLC) was formed. The elected PLC put in place a number of laws, most notably the Palestinian Basic Law, which has served as a provisional constitution to regulate the functions of the PNA in the West Bank and Gaza. The Second Intifada erupted on 28 September 2000, with the failure of negotiations between the PNA and Israel at Camp David, and the decision by Israeli Prime Minister Ariel Sharon to enter the compound of Al-Aqsa Mosque in Jerusalem, provoking a reaction from worshippers that resulted in many casualties. More than 4,000 Palestinians died and 48,000 were wounded at the hands of the Israeli army during the Intifada, which peaked during Israel's invasion and reoccupation of the West Bank in 2002.

Palestinian President Yasser Arafat died in November 2004. Sixty days after his death, in January 2005, presidential elections were conducted in accordance with the provisions of the Basic Law and the Election Law. Following the amendment of the Election Law to provide for 50 per cent of legislative seats to be won through direct election by constituencies and 50 per cent through proportionate representation by electoral lists, the second legislative elections were held in January 2006. While Mahmoud Abbas, a Fateh candidate, won the presidential elections, Hamas won the majority of seats in the legislative elections. This resulted in a conflict between Fateh and Hamas, the two major Palestinian factions, over roles and powers within the PNA and its institutions. The situation was further exacerbated in 2006 when Israel arrested a large number of legislators, most of whom Hamas members. The absence of these legislators caused Hamas to effectively lose its absolute majority in the legislature. This resulted in total paralysis of the PLC and halted all legislative activity.

The reaction of the international community toward the Palestinian elections has had a detrimental impact on the Palestinian political system as a whole, including the efforts toward reform which, though slow, have been in progress since 2002. The chief international parties, represented by the Quartet (US, Russia, the UN and European Union), refused to deal with the government formed by Hamas following its victory in the elections. Aid to the Palestinian Territory was halted and a financial blockade was imposed on the newly-formed Hamas government. A violent armed conflict over authority erupted in Gaza, resulting in the military takeover by Hamas of the PNA and its institutions in the Gaza Strip in June 2007.

The resulting state of political polarisation between the Fateh government in the West Bank and the Hamas government in the Gaza Strip has had a negative impact on all national institutions, and has prompted the creation of dual institutional structures and legal frameworks in the West Bank and Gaza. Following its military takeover of Gaza, Hamas expanded its governmental functions, refusing to recognise the government appointed by the president and headed by Dr. Salam Fayyad, whose authority was restricted to the West Bank. Hamas also formed a Higher Justice Council in parallel with the Higher Judicial Council that oversees the judiciary in the West Bank and has made thousands of appointments to government agencies and security services.

Israel's policies regarding its occupation of the Palestinian Territory, including the ongoing building and expansion of illegal Jewish settlements in the West Bank and repeated military incursions into the territory governed by the PNA, create a climate of constant tension, violence and political instability within the Palestinian Territory. These policies culminated in a brutal assault against Palestinians in the Gaza Strip at the end of 2008, which inflicted massive damage to PNA and other infrastructure and resulted in a staggering number of casualties among civilians.

Socioeconomic conditions

The socioeconomic conditions in the areas under the PNA's jurisdiction are directly impacted by the prevailing political conditions. Political instability and conflict, ongoing confrontations with the Israeli military, the stalemate between the two Palestinian governments, the continuing international boycott of the elected Palestinian government and the full blockade that has been imposed on the Gaza Strip have all had a detrimental effect on socioeconomic indicators.

The existing grievances of Palestinians have been fueled further by the complete failure of the peace process, which has again reached an impasse; the deteriorating performance of the PNA and its willingness to make appointments based on partisan affiliation; and the increase of monopolies and concentration of capital. All of this has taken place within the context of Israel's continuing aggression towards the Palestinian people and domination of the emerging Palestinian National Authority. The initial respect the PNA enjoyed from the public has dwindled, as Palestinians have witnessed that it has brought no substantive change to their situation, and that they remain under occupation. This disillusionment fueled the al-Aqsa Intifada that began in September 2000. Israel's brutal response included a massive military invasion of all PNA areas in 2002, during which the Israeli army demolished most structures belonging to the government and security services, including prisons, and destroyed a large part of the infrastructure, including rendering inoperable the only airport in the Palestinian Territory and the seaport project in Gaza. This had a devastating impact on the socioeconomic conditions under which Palestinians lived. The frequent closure of border-crossings, which are under exclusive Israeli control; Israel's erection of hundreds of military checkpoints inside the Palestinian Territory; and the continued construction of the Apartheid Wall has strangled the Palestinian economy and impeded potential for growth, resulting in plunging economic performance indicators.

When the PNA formed a new government in the West Bank with no representation of Hamas, following Hamas' takeover of Gaza, the international community

halted its boycott of the PNA and resumed financial aid. This brought some improvement in the economic indicators of the West Bank. On the other hand, Israel and the international community escalated their siege of Gaza to the extent that it became extremely difficult for the population of Gaza to access resources to meet their most basic needs. This resulted in economic collapse and increasing unemployment and poverty rates to unprecedented levels, with more than 80 per cent of Gazans relying on humanitarian aid from international organisations.

VI

CORRUPTION PROFILE

The history of the PLO as an underground resistance movement dominated the process of transformation from a revolutionary movement to a civil authority, as the PNA and its various bodies took on the tasks of administration and governance. A revolutionary and clandestine culture prevailed, characterised by a lack of transparency, accountability and public access to information. Furthermore, the head of the executive power effectively dominated other powers within the PNA. The situation was further aggravated by the weak role of the opposition in the process of democratic transformation, as Palestinian factions colluded to employ favouritism and factionalism in appointments and distribution of aid. PNA institutions were typically weak, particularly bodies responsible for internal and external oversight and control, at a time when it was critical for these bodies to function effectively. The influx of international donor funds increased the potential for corruption.

This defect in the separation of powers within the political system resulted in poor enforcement of law and produced a political culture of tolerating corruption and an unwillingness to hold those guilty of corruption accountable during the administration of the late President Yasser Arafat. Out-dated legislation, which does not address the various forms of corruption or prescribes light penalties for corruption, has exacerbated the problem. While civil society could have played a role in limiting corruption within the PNA, it was itself plagued by nepotism and political allegiances. The official media of the PNA lacked independence and professionalism. Other media, particularly the press, also lacked the independence, professionalism and competence needed to investigate issues seriously. They typically censored their reporting out of fear of retaliation by the PNA and its security apparatuses to such an extent that they were ineffective in exposing or curbing corruption.

Combating corruption within the prevailing culture

To a large extent, Palestine shares the socioeconomic environment and cultural heritage of the Arab region and the greater Middle East. In these societies, favouritism and nepotism frequently undermine the integrity of government because culturally there is no clear distinction between providing legitimate assistance and crossing the line into corruption in the form of nepotism and favouritism. In Palestine, the family, tribe or political faction constitutes the most important affiliation in the lives of citizens, often holding higher priority over belonging to the society or the state. In such a social and political context, a public employee is faced with the need to build ownership on the part of the tribe or political faction through providing it with services, in contravention of the law and greater good of the public.

Integrity and accountability in the curricula of schools and universities

Instilling values of integrity and accountability, as well as a resistance to corruption, requires the concerted efforts of schools, families and the community. The education curriculum of the PNA does not give adequate attention to developing students' understanding of accountability in government systems and the various contributing factors and forms of corruption or means of combating it. Courses in public administration, law and political studies at Palestinian universities are typically weak in this regard as well. The risks and harmful consequences of favouritism and nepotism are not adequately addressed, nor is the concept of public monies belonging inviolably to the public to no lesser an extent than private funds being the inviolable property of individuals. Influential religious institutions have also failed to play an active role in addressing these issues.

Weak political will to combat corruption

The Palestinian political system developed during the years of exile, in which its leaders were influenced by totalitarian and authoritarian Arab regimes. In addition, the PNA came into being as an interim authority in a context in which it was

laden with political obligations in its administration of territory that was not fully liberated from occupation. These factors contributed to Palestinian political leadership overlooking the importance of instilling professionalism in state institutions and upholding the rule of law. Instead, priority was placed on the political program and consolidating the authority of the ruling party. The era of President Arafat was characterised by the almost total hegemony of the president over the various executive institutions and bodies, as well as over the other branches of government, as well as the use of PNA appointments and resources to secure and enhance the president's status. While the administration of President Mahmoud Abbas did not provide corrupt individuals with political cover, political developments such as the rift between Fateh and Hamas, and the international economic blockade of the PNA dominated the national agenda. The result is that the president did not afford the necessary attention to reform and to combating corruption.

It is possible to distinguish between two levels of corruption in the Palestinian context. The first stems from the set of social values that fosters favouritism and nepotism in the public domain, particularly in public appointments and service provision, and results in a culture lenient in its view of the use of public money and the distribution of in-kind and cash aid. This phenomenon affects government and non-governmental sectors alike. The second is the spread of corruption related to misuse of public money, bribery and conflict of interest.

VII

ANTI-CORRUPTION ACTIVITIES

Attention at the national level to the issue of corruption in Palestine dates back to 1997, when controversy was sparked over the credibility and accuracy of the Audit Bureau's report of 1996. The PLC demanded the report be reviewed by a special PLC committee. Consequently, the Cabinet resigned in mid-1998 and a new Cabinet was formed. After 2002, government interest in reform and combating corruption increased in response to demands for reform by the Palestinian public as well as the international community. In an address by then-President Arafat to the PLC, he requested its assistance in addressing reform issues. A program of reform was submitted the following day. The Basic Law was passed a month later, and a reform plan called the 100-Day Plan was approved the following month. The preamble of the plan indicated it was drafted in response to the president's address to the PLC. It included a set of binding obligations and programs for the government. The components of the plan that addressed reform included the following:

- The need to conduct presidential, legislative and local elections within six to eight months upon the plan entering into force, and for trade unions and civil society institutions that had not conducted elections in accordance with the law to prepare to do so in order to align themselves with the principles of democracy, transparency and accountability.
- The need to restructure ministries and public institutions to fully support the principles of separation of powers, independence of the judiciary and the rule of law.
- The need to restructure and mobilise the Ministry of Interior to provide oversight to the police, preventive security and civil defence.
- The need to establish an investment fund grounded in the principle of a single treasury, and that is carefully monitored and audited, to handle the commercial and investment operations of the PNA.
- The need to increase the effectiveness of the judiciary by ensuring adequate numbers of judges, courts and prosecutors, and adequate prison facilities, by monitoring compliance with the Judicial Authority Law of 2002, drafting the legislation needed to enforce the Basic Law, and establishing a judicial inspection department and a governmental case management administration to handle cases to which the PNA is party.
- The need to prohibit the involvement of the security services in civil matters that fall under the jurisdiction of ministries.

Successive Palestinian governments have taken steps toward reform with the aim of addressing and preventing corruption. The 2004-2005 Palestinian Reform Program was approved by the Cabinet in its 43rd session on 27 September 2004. The program included reforms in finance (which achieved the greatest success), economy, the judiciary and rule of law, public administration and civil service, security, general and local elections, and education. The Illicit Gains Law, which regulates the monetary acquisitions of senior PNA officials, was passed.

The present caretaker government, which was formed in 2007, has taken a number of steps toward organisational and financial reform, most notably the Palestinian Mid-Term Reform and Development Plan (PRDP) 2008-2010. This plan was based on national policies adopted by the Cabinet and relates to the medium and long-term objectives of the PNA. The plan links programs and activities to the budget in a unified strategy. In compliance with the UNCAC, the president issued the Anti-Money Laundering Decision by Law of 2007. The National Higher Anti-Money Laundering Commission was formed in compliance with this law.

Although several local opinion polls have indicated corruption within the PNA is a major concern of the public, the PNA has not taken substantive measures to prosecute corrupt high-ranking officials. Until 2005 a limited number of cases had been referred to the public prosecutor. The first PLC initiated some limited efforts to discharge its duties in this regard, most notably investigating the following issues:

- A corruption case against the deputy minister of economy, who was paid USD

7 million to establish the quasi-governmental company Al-Sharq Al-Awsat Pipe Company.

- Accusations that a number of Palestinian companies owned by senior PNA officials had purchased cement from Egypt and sold it to Israeli companies to evade taxation.
- A deal for the Bus Companies Union to purchase buses for bus owners, with partial Dutch funding, in which some officials were accused of using their positions for personal gain and a PNA official was accused of accepting a bribe.
- The misuse of funds by the management of the International Bank of Palestine, a public shareholding company.

The public prosecutor announced in February 2006 its investigation of 40 cases involving corruption, mostly by PNA officials, concerning the embezzlement of around USD 700 million. A number of public figures and former officials from across the PNA structure were implicated.¹

The case of the former president of the Petroleum Commission, who received a prison sentence in 2008, was among the most recent and significant corruption cases handled by the Palestinian courts.

AMAN, in cooperation with other civil society organisations, developed a draft framework for a comprehensive national plan to combat corruption that was submitted to the Cabinet. The Cabinet approved the plan at its 18 August 2008 meeting and appointed a team to prepare a national plan to promote and safeguard transparency and integrity in government. The team was comprised of the Minister of Planning and representatives of the ministries of Finance, the Interior, Education and Higher Education, Health and Justice, as well as the Public Prosecution, Cabinet Bureau, State Audit and Administrative Control Bureau, General Coordinator of the Legislative Plan and the Capital Markets Authority. AMAN represented civil society organisations. The team prepared a detailed plan and national strategy for implementation, which is still pending final approval by the Cabinet. The national team was also tasked with implementing the UNCAC self-evaluation questionnaire.²

The National Plan against Corruption aims to achieve the following goals:

- Complement existing legislation that explicitly or implicitly addresses corruption.
- Complement efforts to build and mobilise institutions, units and other public control and monitoring bodies.
- Work to adopt anti-corruption policies in a number of institutions, particularly departments dealing with customer service.
- Support the judiciary, including the public prosecution, and enhance its capacity to enforce the rule of law.
- Raise the awareness of the Palestinian public regarding the hallmarks of corruption, including favouritism and nepotism, the environment that enables it, and its destructive consequences.

Partners to the plan include:

From government:

- Office of the President
- Cabinet
- Ministry of Finance, Ministry of Justice, State Audit and Administrative Control Bureau, General Personnel Council, Palestine Monetary Authority, Capital Markets Authority
- PLC legislators who have stated their commitment to fight corruption
- The Higher Judicial Council and the public prosecutor
- Local government³

¹ www.aawsat.com/details.asp?section=4&article=347262&issueno=9934

² AMAN Publications, *the National Anti-Corruption Campaign*

³ *Ibid.*

From civil society:

- Non-governmental organisations
- Private companies
- Political parties
- The media

VIII

NATIONAL INTEGRITY SYSTEM

1. EXECUTIVE

There have been two phases in the history of the executive branch of the PNA. From its inception in 1994 until 2003, there was no position of prime minister. The president was elected directly by the people and was not accountable to the PLC. However, the Basic Law was amended in 2003 to create the position of prime minister accountable to the PLC. The 2003 Amended Basic Law allocated powers to the prime minister and president, with the executive branch comprised of the presidency and the Cabinet. This study has investigated the status of each executive structure and assessed them both together as the executive branch in terms of the NIS methodology.

The executive branch is comprised of the following institutions:

- The presidency
- The Cabinet, representing the following ministries: Interior and National Security, Justice, Local Government, Finance, Endowments (Awqaf) and Religious Affairs, National Economy, Energy and Natural Resources, Planning, Public Works and Housing, Agriculture, Education and Higher Education, Health, Women's Affairs, Prisoners' and Ex-Prisoners' Affairs, Social Affairs, Labor, Media, Tourism and Antiquities, Youth and Sports, Culture, Transportation, Telecommunications and Information Technology, and Foreign Affairs.

In addition to the ministries, dozens of public commissions and authorities exist, some of which have been annexed by various ministries or the Cabinet by decision of the Cabinet, such as the Investment Promotion Agency (PIPA), the Central Bureau of Statistics (PCBS), and the Broadcasting Corporation (PBC). Others are presently not subject to any real form of control or accountability.

The presidency

Resources and Structure

The budget of the presidency, which is included in the general budget of the PNA, totaled USD 42.5 million in 2008, with the total PNA budget reaching USD 3 billion (representing public revenues, grants and assistance). The budget is regulated by the State Budget Law and must be approved by the PLC. It is also audited by the State Audit and Administrative Control Bureau.

The Office of the President is staffed by the secretary general of the Office of the President, the president's personal representative, the national security advisor and the chief of the Office of the President. It has a number of departments, including the Protocol Department, Public Relations and the Office of the Governorate Coordinator. Of the security services, Presidential Security and General Intelligence report to the Office of the President. In addition, dozens of advisors work for the presidency, providing expertise on politics, the economy, culture, refugees, agriculture, health, education, finance, trade unions, the media, religion, social issues and military affairs. In 2005 a Legal Advisor to the President was appointed. The newly established Legal Department reviews legislation submitted by the PLC to the president and drafts presidential decrees. In 2008 a comprehensive review of the organisational structure and operations of the presidency was conducted. Recommendations were made for developing a system to regulate the functions of the presidency and its relations with other government institutions.

Problems⁴

Problems with the institutional structure of the Office of the President include:

- The number of employees at the Office of the President, as well as the number of services and institutions that report to the president, appear to be unnecessarily high.
- No formal regulations exist to ensure transparency in the work of the Office of

⁴ Ahmad Abu Dayyeh, 'The Dilemma of the Separation of Powers in the Palestinian Political System', AMAN Reports Series No 3, 2006.

the President. Procedures and systems to ensure the accountability of commissions that report to the Office of the President are not clearly defined.

- While the Basic Law outlines the powers of the president and the prime minister, in practice these powers overlap and are not clearly demarcated. Protocols do not exist to govern the relationship of the presidency to the legislative and judicial branches and to the commissions that report to the Office of the President.

The following examples illustrate these issues.

- **Relationship between the president and the prime minister.** The law does not provide a clear protocol for the president's selection of the prime minister or indicate the extent to which the prime minister is bound to comply with positions taken by the president on specific issues in the prime minister's letter of appointment. For example, the Basic Law does not obligate the president to consult with political blocs within the legislature regarding the selection of the prime minister and appointment of the government. It also does not specify the extent to which the prime minister is bound to comply with the president's directives.
- **The president's supervision of security apparatuses.** The role of the president in supervising particular security apparatuses in his capacity as commander general reduces the accountability of the commanders of these security services, who do not consider themselves accountable to the PLC since they report to the president. This problem has been resolved by the president delegating some of his powers to the Cabinet.
- **The president's role in appointing judges.** The role of the president in the appointment of judges is unclear in terms of the extent to which he is permitted to influence their selection. There have been cases of officials in the Office of the President interfering in these appointments, which compromises the independence of the judiciary and potentially weakens its integrity in reviewing decisions made by the executive branch.
- **The president's role in appointing senior officials within the PNA.** The Basic Law grants the president the authority to appoint some heads of public commissions pending PLC approval, such as the President of the State Audit and Administrative Control Bureau and senior PNA employees. The president is permitted to appoint the manager of the Palestine Monetary Authority without PLC approval. No formal mechanism exists to govern how recommendations by the Cabinet to the president on these matters are handled, with the result being there is little transparency in the appointment process. Favouritism and nepotism abound.

The Civil Service Law of 1998 and its amendments do not provide protocols for the appointment of the special category of employees stipulated in Article 9, which includes employees with the rank of minister. It does specify a procedure for candidates nominated by the Cabinet for A1-A4 positions to be appointed by the president. Article 9 of the Civil Service Law provides latitude for the appointment of advisors with the rank of minister without checks and balances, due to conflict over the division of authority and responsibility between the president and the prime minister. This has resulted in the creation of government posts that are not accountable to the PLC and the squandering of public funds.

The territory of the PNA is divided into 16 governorates. Each governor represents the authority and executive powers of the president in the governorate under his/her jurisdiction. The governors report directly to the Office of the President rather than to the Ministry of Interior. This has weakened their accountability to the PLC and significantly undermined the authority of the Ministry of Interior while giving governors greater autonomy. This has resulted in the governorate administration functioning, to some extent, in parallel with other government institutions within the governorates. It has also undermined transparency in the selection of governors, who typically are appointed on the basis of party allegiances.

The Cabinet

Resources and structure

The budget of the Cabinet forms part of the overall budget of the PNA, which totaled USD 6.6 million in 2008. The Basic Law was amended in 2003 to establish the Cabinet as a body separate from the presidency. The council drafted bylaws and set up support units, and since its creation it has met regularly following a set agenda. It has annexed several public institutions to relevant ministries in an attempt to hold these institutions accountable to the PLC through the Cabinet.

The Cabinet is responsible for formulating and implementing public policy driven by a program approved by the PLC. It drafts the state budget, monitors compliance with legislation and oversees the performance of ministries. The ministers take the constitutional oath along with the president and the prime minister is accountable to both the PLC and the president with respect to the council's performance and his own. The ministers are accountable to the prime minister. The Cabinet is comprised of the prime minister, the secretary general of the Cabinet and 24 ministers who administer most of the affairs of the executive branch.

Problems

Lack of participation in formulation of public policy

The lack of clear national policies and strategies has strengthened the individual roles of ministers and heads of public institutions and commissions, resulting in a lack of consistency in government work in general. This has been manifested in health policy, state land administration, management and supervision of energy, water, natural resources and social services. This has created an enabling environment for corruption as the PNA has developed. Monopolies were permitted and concessions were granted to particular companies in the private sector during 1994 for a prolonged period of time (notably in the telecommunications sector) due to the absence of legislation, regulations and policies to govern the activity of monopolies, ensure transparency and effectiveness, and protect consumers and public funds.

Institution building

- Despite the existence of some coordinating bodies within the structure of the Cabinet, structuring the relationship of the council to the other branches of government has proven difficult for a number of reasons. The council is a fairly new structure and still lacks expertise. The fact that the PLC, Office of the President and judiciary do not have coordination units presents another obstacle. In addition, there is resistance to the idea of collaborating or unifying positions on some issues. As a result, coordination and communication of information between the Cabinet and these other powers is generally poor.
- The concept of financial and administrative independence of non-ministerial public institutions is not clearly understood. This is due in part to the fact that these institutions generally lack effective bylaws, which compromises their transparency and accountability. The most significant institutions affected by this are the Petroleum Commission, Palestinian Investment Fund (PIF), Palestine Monetary Authority (PMA), Palestinian Investment Promotion Agency (PIPA), Palestinian Standards and Specifications Institute (PSI), Palestinian Central Bureau of Statistics (PCBS), Civil Aviation Authority, Water Authority, Energy Authority, Broadcasting Corporation (PBC) and the Palestinian Economic Council for Development and Reconstruction (PECDAR).
- The government continues to set up public institutions in the absence of legislation to guide their mandate, functions and structure.

The role of the executive branch as a pillar of the national integrity system

Article 2 of the Basic Law states that:

"the people are the source of the power which is exercised by the legislative, executive and judicial branches on the basis of separation of powers..."⁵

⁵ The Amended Basic Law, 2005.

The executive power is exercised by the president with the assistance of the Cabinet and a number of other bodies. The executive branch functions autonomously in terms of drafting the state budget, collecting revenues, overseeing expenditures, drafting and implementing policy, and administering and monitoring service delivery. The executive branch is also responsible for maintaining public order and overseeing a number of security services. In practice, however, there is a great deal of overlap between the authorities of the president and those of the prime minister, as noted earlier, as well as overlap and conflict of roles between the executive and legislative branches. Although the executive branch, as represented by the Cabinet, may not assume any responsibility without a mandate from the PLC,⁶ this principle has been violated more than once. In general, the balance of power tends to be in favour of the executive vis-à-vis the legislative and judicial powers, as the president is not accountable to the legislature. Moreover, the fact that National Security and General Intelligence report directly to the president, as do the diplomatic relations and media offices, provides scope for these bodies to evade accountability to the legislature.

Management of public funds⁷

The Ministry of Finance carries the chief responsibility for management of financial affairs with respect to tax collection, direct and indirect fees, spending, accounting, preparing budgets and drafting regulations for financial activity.

The Ministry of Finance is comprised of five departments: revenues, expenditures, support services, control bodies and specialised units.

The state budget of the PNA:

Procedures for drafting, approval and implementation

There are several laws that regulate the process of drafting, approving and implementing the state budget, most notably the Basic Law, State Budget Law No 7 of 1998, PNA Annual State Budget Law, PNA Financial Procedures and the bylaws of the PLC. According to State Budget Law No 7 of 1998, the Cabinet is required to submit a draft of the budget to the PLC at least two months before the beginning of the new fiscal year. A special session of the PLC is then held to discuss the budget and either approve it as it is, or propose amendments. If the amendments are legally acceptable, the Cabinet must submit a revised budget to the PLC for approval within two weeks.

This process, however, typically breaks down at a number of points:⁸

- **Failure of the Cabinet to submit proposed budgets to the PLC on time and its failure to adopt a participatory approach in the drafting process compromise transparency in revenues and expenditures.**
The three successive administrations that served from March 2006 to July 2007 handled the financial affairs of the PNA without a duly approved budget. Furthermore, since the establishment of the PNA the Cabinet has rarely submitted a draft state budget to the PLC on time.
- **Failure to submit financial reports regularly.**
The Cabinet has routinely failed to comply with Article 52 of the State Budget Law,⁹ which stipulates that it must report quarterly and biannually on the budget to the PLC. There was some improvement in this area in 2008 in terms of monitoring revenues and expenditures and disclosing them on a monthly basis.
- **The year-end report was submitted only once, for 1997, but was submitted in 2000.**

⁶ For further information see: 'The problematic relation between the Three Powers in the Palestinian Mixed Political System', AMAN, presented by Dr. Ahmad Abu Dayyeh, Third AMAN Conference, Ramallah and Gaza, 2007.

⁷ Omar Abdul Razeq, et al, 'Performance Evaluation of the Palestinian Ministry of Finance', Palestinian Economic Policy Research Center (MAS), Ramallah, 2004.

⁸ 'The Financial Performance of the PNA: Revenues and Expenditures 2006-2007', AMAN, Report No 16, February 2008.

⁹ These stipulate the Ministry of Finance must submit quarterly reports on PNA revenues and expenditures to both the Cabinet and the PLC.

The Palestinian Investment Fund

The Palestinian Investment Fund was established by presidential decree in 2000 and renewed by another presidential decree in 2002. Its purpose is to manage and publish data and reports related to the financial investment activities of the PNA. The fund continues to operate without a legislative mandate until the present. Some of the assistance received from international donors, especially in-kind aid, is not managed with full transparency at this point.

Problems related to the financial performance of the PNA

In addition to failing to comply with the law on the points that have been mentioned, the financial performance of the PNA has been characterised by the following problems:

- Reliable information about the financial performance of the PNA was not available during 2006 and 2007, resulting in conflicting and contradicting rumors being circulated regarding the PNA's financial activities. This constitutes a serious obstacle to ensuring genuinely accountable government. Moreover, the ability of the PLC to provide oversight deteriorated remarkably during this period due to the lack of reliable documentation, the PLC's failure to approve the 2006 and 2007 budgets, and the failure of the Cabinet to submit quarterly reports to the PLC on revenues and expenditures by the deadline stipulated in the law. The PLC has provided no oversight to the budget whatsoever since mid-2007 because it has not convened. In 2008 the Ministry of Finance began to report some financial data on its website. However, the paralysis of the PLC means there has been no monitoring or control of the activities reported.
- The central treasury has failed to function effectively due to the disruption of the PNA financial system. In response to the international boycott and economic blockade imposed on the Palestinian government in 2006 and 2007, the PNA began to set up channels for international assistance to reach the PNA that bypassed the Ministry of Finance. This made it virtually impossible to verify the accuracy and legitimacy of financial activity, except for those payments that were formally reported. The new procedures set up for donors prevented year-end reporting on expenditures due to the fact that disbursements were being made through multiple channels (Temporary International Mechanism (TIM), World Bank and Islamic Development Bank). This undermined the government's ability to meet its obligations to the public. The new mechanisms also prevented any form of Palestinian control over the financial aid that was given, as most assistance was managed externally, either by the World Bank or the Temporary International Mechanism. This problem was resolved in 2008, although the financial status of the de facto government in Gaza is unknown to the PNA and is not subject to oversight by any control body.¹⁰ While there has been some general progress in terms of the PNA giving greater attention to the requirement to report on its financial activity, by reporting revenues and expenditures on the website of the Ministry of Finance,, the administrative division between the West Bank and Gaza Strip continues to represent a major obstacle to establishing an effective system to ensure accountability. In addition, it has made it difficult for the activities of PNA ministries in the Gaza Strip to be monitored.
- Lack of clarity exists regarding the Palestinian funds seized by Israel (clearance funds). Israel collects the taxes and custom duties on exports from the West Bank and Gaza because it controls all Palestinian border-crossings. No mechanism exists to track the amounts collected by Israel and report them to Palestinians promptly, as Israel controls most of this information. Israel unilaterally deducts amounts it deems outstanding for health services, the cost of water and electricity, and sometimes compensations not recognised by the PNA. This has weakened the control and audit functions of the PNA over

¹⁰ In response to a letter sent by AMAN to the deposed prime minister, the Ministry of Finance said the circumstances currently do not allow for that.

these funds. Moreover, clear and accurate information regarding these revenues has not been available for some years because of the struggle against occupation and the disruption of official institutions in charge of collection, as well as because of Israel's refusal to release the PNA revenues it has collected for various reasons – for example, when the Hamas government was formed in March 2006.

Accountability of the executive branch

The Basic Law places both organs of the executive branch, the Office of the President and the Cabinet, under the oversight of the president. Nevertheless no legislation currently exists to regulate the functions of the Cabinet, other than its own bylaws. In addition, no legislation or bylaws exist to regulate the activities of the Office of the President or its relationship to the Cabinet and other institutions, except for what is stipulated in the Basic Law.

Similarly, there are no laws that explicitly require the executive power – either the president or the Cabinet – to report regularly to any other body, though requirements are laid out for some other institutions. For example, the Ministry of Finance is required to submit quarterly and year-end reports to the Cabinet and PLC for their approval, in addition to other reports as requested by these bodies. In addition, ministers can be called to report to PLC committees or appear at PLC hearings to provide information about the duties, authority and activities of their ministries.

On a few occasions the Cabinet has resigned under pressure by the PLC because it failed to fulfill its mandate or has been tainted by corruption. Reports published by the Cabinet, ministries, commissions or other public bodies on their activities are sometimes no more than public relations efforts.

AMAN, the Independent Commission for Human Rights and other civil society organisations have responded to this problem by organising public hearings at which ministers and other officials report on their activities.

Review of the administrative decisions of government departments constitutes one of the basic elements of constitutional accountability stipulated by the Basic Law. According to the law, the administrative decisions of government authorities must fall within the bounds of the authority conferred on the decision-maker by law. The individuals or parties affected by administrative decisions may challenge the decisions at the Higher Justice Court. In reality, however, citizens rarely sue for compensation, chiefly because members of the public are not aware that they have access to these procedures.¹¹

The Basic Law states the powers of government come from the people. However, it does not indicate how the public is to be consulted on the work of the executive or other powers. The PLC has not drafted any legislation to provide substance to this issue, and throughout the years of the PNA's existence the people have never been consulted, not even through a referendum, on the performance of the executive branch.

Integrity mechanisms: codes of conduct in public service

AMAN has written a code of conduct for public employees that was signed by the Union of Public Employees, the Teachers' Association and the Union of Health Workers at AMAN's 2006 Annual Conference. However, this code of conduct has not been officially adopted by the government. At present no code of conduct exists for ministers or senior officials within the executive branch.

Preventing conflict of interest

¹¹ Hadeel Qazzaz, et al, 'Survey of National Integrity System Reconstruction', Report Coordinator, AMAN, Palestine, 2007.

Article 80 of the Basic Law addresses conflict of interest. It states:

“Neither the prime minister nor any other minister may purchase or lease any property belonging to the state or to any public entity, or have a financial interest in any contract concluded with any governmental or administrative body; nor may they, during their terms of office, serve as board members for any company, practice commerce or any other profession, or receive a salary or any other financial reward or remuneration from any person in any capacity whatsoever, other than the single salary determined for ministers and the relevant allowances.”

No regulations or protocols have been developed to implement this article or identify who is to oversee this issue and report violations. Article 11(2) of the Illicit Gains Law reiterates what is stated in the Basic Law.

Article 67 of the Civil Service Law¹² states that the obligations of public servants include *“not to abuse their positions and authorities for personal benefits or gains, or accept any gifts or commissions in return for performing the functions of their position.”* However, no regulations are in place to enforce this article or provide for the registration of gifts.

In this context, the Civil Service Law does not apply to ministers because their appointment is political. But some issues related to their duties and constraints are covered by the Basic Law, particularly on conflict of interest, investing in public funds and declaring their financial status. With the exception of Article 82 of the Basic Law, Article 11 of the Illicit Gains Law and Article 67 of the Civil Service Law, there are no detailed procedures or protocols that address directly and comprehensively the issue of conflict of interest and accepting gifts.

Transparency

Financial status of public employees

Article 80 (1) of the Basic Law states:

“The prime minister and each minister shall submit a financial statement for themselves, their spouse and their minor children that details what they own in real estate, movable property, stocks, bonds and cash as well as their debts, whether inside Palestine or abroad, to the President of the National Authority, who shall take the necessary measures to ensure their privacy. Such information shall remain confidential and may not be accessed unless permitted by the High Court when necessary.”

The Illicit Gains Law¹³ also stipulates that financial status statements must be provided by executive officials of the PNA, including the president, prime minister, ministers, senior staff and any other officials identified by the Cabinet. The law, however, does not contain any provision for monitoring changes in officials' assets over time. While the Illicit Gains Law has been enforced, the Illicit Gains Commission, which is mandated by this law, is not yet functional.

In general, though laws to regulate the financial status of government officials exist, greater clarity is needed in terms of procedures to implement them. The key to maintaining integrity in this area, therefore, is compliance by the parties involved as well as effective implementation of the policies and accountability to them. It is also critical that the authorities which are responsible for monitoring and verifying the documentations comply with the law.

Although the establishment of institutions such as the State Audit and Administra-

¹² Article 67 of the Civil Service Law states: “No employee is allowed to abuse his position and authorities for personal benefit or gain, or accept directly or through favoritism any gifts, rewards, grants or commissions in return for performing the functions of their position.” This applies only to staff and not to ministers (“or their equivalent” is an error from a legal perspective, since “their equivalent” are the special category employees who include the heads of non-ministerial public commissions and institutions, and who are different from ministers since they are subject to Article 67 of the Law; the Civil Service Law included them in Article 9, which addressed the classification of employees and considered them part of the civil service), since their appointment is political, and there are no constraints on senior officials after they quit their governmental positions.

¹³ Illicit Gains Law No. 1 of 2005.

tive Control Bureau and the Illicit Gains Commission constitutes progress as far as the agenda of the PNA to build integrity and combat corruption, the executive branch continues to fail to comply with agendas set to build integrity in terms of empowering these institutions to function effectively. This is particularly true of the Illicit Gains Commission. Implementing the law on the ground represents a great challenge, as it applies to every official in the PNA structure at every level of the hierarchy. The lack of regulations and statutes to interpret the law increases the potential for corruption and creates major administrative problems.¹⁴

Despite these conditions, the executive branch has undertaken some serious initiatives toward combating corruption and establishing good governance. The program of the 2008 government, formed by Dr. Salam Fayyad, stated the government is committed to building on a foundation of good governance, and using reform as the methodology and pathway to build government institutions and strengthen the rule of law. The program also stated the government would seek to combat corruption, favouritism and nepotism by employing the principle of equal opportunity in order to select qualified candidates for government appointments rather than acting on the basis of factional loyalties.¹⁵ In addition, the government committed itself to publishing quarterly reports on the website of the Cabinet, while the Ministry of Finance provides access to the budget and quarterly reports on its own website.¹⁶

Documents classified as “public records,” however, still remain undisclosed. Legislation does not yet exist to regulate access to these, and while a commission has been appointed to handle government records it is not yet functional. In addition, no law presently exists that addresses the right of citizens to access information, though draft legislation to this end was submitted to the PLC several years ago.

Complaints / Enforcement Mechanisms

No system was in place to ensure a complaints bureau existed in every public institution until the end of 2008,¹⁷ despite the fact there have some decisions to do so. There has been no change in the perception that the complaints bureau is a mechanism to hold officials accountable for their decisions, rather than a mechanism for registering a complaint or requesting a service.

Neither the Basic Law nor any other law grants immunity from prosecution to ministers or any other representatives of the executive branch. Articles 75 and 76 of the Basic Law provide a protocol for reporting offenses or failure to discharge duties to the judiciary for investigation:

“The president of the National Authority shall have the right to report the prime minister for investigation in the event of criminal activity or failure to perform duties, in accordance with the provisions of the law. The prime minister shall have the right to refer any minister for investigation based on any of the reasons mentioned above in paragraph 1 of Article 76. Any minister who is under investigation shall be suspended from duty immediately upon issue of an indictment. Termination of service shall not preclude the continuation of the investigation or follow-up procedures.”

Nevertheless, since the inception of the PNA, no minister or deputy minister has been investigated or prosecuted on charges of corruption.

Relationship to other pillars of the national integrity system

The executive branch, represented by the president and the Cabinet, is one of the key pillars needed in order to support a climate of integrity in which proce-

¹⁴ Interview with Mohammad Rabi, Legal Advisor to the Cabinet of the Palestinian National Authority, 17 August 2008.

¹⁵ Cabinet, www.palestineCabinet.gov.ps/Default.aspx

¹⁶ Ministry of Finance, www.pnof.ps

¹⁷ The Cabinet drafted a complaints system in 2009 but it has not yet been adopted.

dures are clearly defined and fair, and do not discriminate against anyone. The government is responsible for formulating and implementing effective policies against corruption, mobilising community participation, upholding the rule of law, and administering public property and affairs effectively. It is also responsible for exposing employees guilty of corruption, providing them no political cover and supporting both the prosecution and enforcement of court decisions.¹⁸

In terms of the relationship between the government and civil society organisations, Prime Minister Salam Fayyad's caretaker government signed a memorandum of understanding with AMAN in August 2007 that stressed the government's commitment to implementing a policy to halt corruption by means of activities organised through a national plan in which civil society would participate. The prime minister also expressed the government's commitment to comply with the basic provisions of UNCAC.¹⁹

The government has also committed for the first time to provide resources to the State Audit and Administrative Control Bureau and the Palestinian Independent Commission for Human Rights. It has also improved its relationship with the private sector by partnering in the drafting of the Palestinian Corporate Governance Code.

It is worth noting that Prime Minister Fayyad's government does not engage effectively with institutions in the Gaza Strip affiliated with the PNA since these institutions were deposed by Hamas, with the exception of paying the salaries of PNA employees in the Gaza Strip. In order to be more effective in combating corruption, the executive branch must reestablish a functional relationship with the PLC, which has been marginalised by the executive branch in recent years.

Recommendations on the executive branch

- The powers of the president and Cabinet, and their relationship to other powers must be more clearly defined. Amendment of the Basic Law may be required.
- The administration must commit itself to submitting a draft budget to the PLC either annually or on a regular timetable. This is a legal requirement and lays the foundation for any procedures the PLC may implement to oversee the management, collection and allocation of public funds.
- The Ministry of Finance must commit itself to submit reports and other documentation regarding the financial performance of the PNA to the PLC and the State Audit and Administrative Control Bureau, as well as making these documents available to the public in a timely manner.
- Legislation must be drafted to regulate appointments to senior and special category positions that lays out clear criteria, ensures transparency and clearly defines the roles of the president and Cabinet in the appointment process.
- Public institutions must be audited to determine whether their existence is truly justified and bring them into line with the law. Legislation that regulates the establishment and operation of institutions must provide guidelines to ensure accountability, transparency and integrity in all aspects of establishing and managing these institutions.
- Legislation that addresses conflict of interest and the financial status and integrity of public employees must be complied with. A manual for public servants could be developed that addresses how conflict of interest is to be prevented and how greater integrity in public service could be achieved.
- The Access to Information Law must be put in place without delay.
- Codes of conduct must be drafted for ministers and senior officials. Public employees must be trained in the application of codes of conduct in order to reform the current culture in public service.

¹⁸ AMAN, *Annual Report, 2007*.

¹⁹ *Ibid.*

2. LEGISLATURE

The first Palestinian Legislative Council was elected in 1996. These elections were regulated by the Oslo Accords between Israel and the Palestinians, which specified that the PLC would serve as the legislature of the PNA for a five-year interim period until 1999, when a final peace agreement would be reached. Such an agreement has still not been reached. As a result, the interim period continues to be extended. The first PLC consisted of 88 members elected on the basis of Law No 13 of 1995, according to a majority system of constituencies (16 constituencies: 11 in the West Bank and 5 in the Gaza Strip). The second legislative elections were conducted in January 2006, based on the Election Law No 9 of 2005, which increased the number of seats in the legislature to 132 and instituted a mixed election system, in which 50 per cent of the PLC seats are awarded by majority vote by constituency and the remaining half are awarded on proportional representation of votes cast for closed electoral lists.

Resources and Structure

The current PLC consists of 132 legislators representing the following electoral blocs and lists: Hamas (Change and Reform Bloc), Fateh, Martyr Abu Ali Mustafa List, Third Way List, Alternative “Al-Badil” List and the Independent Palestine List. There are also a number of independent legislators.

The PLC leadership consists of the speaker, two deputy speakers and the secretary. The PLC operates by general sessions and through 14 permanent committees specialising in different issues and comprised of legislators who are neither ministers nor members of the PLC leadership. The PLC also has the authority to form special investigation committees.

The PLC has an administrative support staff of about 500 employees who serve in four departments: Council and Committee Affairs, Legal Affairs and Research, Administrative and Financial Affairs, and Information and Public Relations.

Like other PNA institutions, the PLC drafts its own budget and submits it to the Ministry of Finance. It is approved as part of the general state budget during the special PLC session on the budget.

Although the PLC is subject to budget procedures similar to those governing other bodies of the PNA, the Basic Law has granted it significant authority in the process of approving the PNA budget.²⁰ The PLC allocation within the general budget for the year 2008 amounted to USD 15.7 million.²¹ The PNA budget is published on the website of the Ministry of Finance.

The PLC does not allocate special budgets to its committees. This is even true of the budget committee, which has one regular employee and may be staffed by up to three employees during the review of the PNA budget.

The role of the PLC as a pillar in the national integrity system

As mentioned earlier, the government is required to have the state budget approved by the PLC. This grants the PLC an important control function. This principle was followed from the election of the first PLC until 2006, with the PLC approving most of the PNA state budgets at special sessions, albeit usually after the legal deadline. The PNA state budget includes the budgets of all PNA institutions and bodies, which means all state institutions are bound by PLC approval of their budgets within the framework of the State Budget Law, which gives the PLC control over the budgets of all of these public institutions, including the security apparatuses. In reality, however, the PLC has provided very little control. Despite the commitment of government to allow the PLC to approve its budget, the executive branch, with very few exceptions, has failed to submit year-end reports to the

²⁰ Basic Law (Amended), Article 61

²¹ The state budget of the PNA for the 2008 financial year.

PLC as required by Article 62 of the Basic Law, which states the government is bound to submit a year-end report to the PLC within a year of the end of the fiscal year. This indicates either weakness on the part of the PLC in terms of its ability to fulfill its role, or a lack of commitment on the part of government to comply with this important aspect of the system of accountability within the PNA.

Internally, the PLC has made efforts to ensure integrity throughout its ranks by tackling a number of cases in which PLC members have violated the law, for example by accepting positions in the executive branch²² as advisors to the president or as heads of PNA commissions. The PLC, however, has failed to affect any change in the status quo through these efforts because of the hegemony of the executive branch over the legislature and the absence of a code of conduct for deputies.

In terms of exercising control, the PLC has monitored several corruption cases through fact-finding committees. In 1998 it issued a report on corruption that detailed several violations of the law as well as abuse of power for personal gain by several officials. Although all permanent committees of the PLC are tasked with investigating and reporting corruption, the public control, budget and economic committees have taken the lead. In general, the PLC has not been very successful in addressing the cases presented by its committees, because it has not effectively exercised its authority to hold the government accountable through mechanisms such as a vote of no confidence or conducting hearings. Furthermore, it had no authority to compel the public prosecutor to take on the cases it reports because the public prosecutor is accountable to the president rather than the PLC.

The performance in this regard of the second PLC, elected on 25 January 2006, deteriorated dramatically for several reasons. There was friction between the two major blocs in the legislature – the Reform and Change bloc representing the Hamas majority and the Fateh bloc – from the first session. Israel arrested a large number of legislators, primarily from the Reform and Change bloc, with more than 40 members absent from the PLC at one time. Following the military takeover of the Gaza Strip by Hamas in June 2007, the PLC ceased to be a functional body with the legitimacy to hold the government accountable. Legislators from the Reform and Change bloc, however, continued to convene to discuss draft legislation and interact with the ministers of the de facto Hamas government in Gaza, while a special committee representing the other blocs met periodically to provide some measure of oversight and accountability to the executive branch.

Accountability

The Basic Law, the Law of the Rights and Responsibilities of Members of the PLC, and the bylaws of the PLC constitute the legal framework that regulates the PLC. The PLC is not accountable by law to any other power but is ethically accountable to the people who elected it. There is no law that obligates the PLC to report to any other party or power. It has become a custom, however, for the PLC Presidency Commission to submit reports on the outcomes of the previous session to the PLC itself.

Moreover, Article 15 of the Illicit Gains Law grants the public prosecutor the authority to request that the PLC lift the immunity of any of its members in the case of suspicion of illicit gain, in accordance with procedures stipulated in the bylaws of the PLC. Furthermore, Article 96 of the PLC bylaws grants the public prosecutor the authority to submit a request to the speaker of the PLC to request that immunity be lifted. This request must be accompanied by a memorandum detailing the nature, time and place of the violation and evidence to support the initiation of legal action.

²² Article 98 of the PLC stipulates it is inadmissible for members to take up any post in the executive except for the post of minister.

Integrity Mechanisms

There is no written code of conduct for legislators, nor are there any rules or statutes addressing the issue of gifts and hospitality. But the bylaws of the PLC deal with conflict of interest in terms of stipulating that legislators serving on oversight committees or the PLC Presidency Commission may not also hold a position as a minister. In addition, legislators are prohibited from holding any position in the executive branch with the exception of minister. The Law of the Rights and Responsibilities of Members of the PLC regulates conflicts of interest. Article 3 indicates, with more clarity than the bylaws, that it is inadmissible for a member to use any classified information that he or she has obtained through his/her capacity as a member of the PLC for matters outside of the domain of the PLC. Article 4 prohibits legislators from buying or renting state property, selling or leasing their property to the state, or entering into a contract with the state except through a standard tendering process. In all cases, legislators are prohibited from using their positions to receive special privileges. Article 5 prohibits legislators from representing the government in return for a fee. Article 6 does not allow legislators to make representation on a case to which the PNA is a party. Article 7 prohibits legislators from accepting employment or consulting for any party in return for a fee. Article 8 prohibits legislators from becoming members of any consultative, supervisory or administrative body of a public institution. Article 9 states legislators may not hold any position in the executive branch other than that of minister. And Article 10 prohibits legislators from using their positions to promote any form of private business.²³

Although the PNA is structured on the principle of separation of powers, the PLC has not yet established itself as a serious oversight body in practice.²⁴

Transparency

According to the Basic Law, the Law of the Rights and Responsibilities of Members of the PLC, and bylaws of the PLC, each legislator must submit a declaration of financial status for him/herself, spouse and minor children that details wealth and movable and immovable property within Palestine and abroad, as well as debts. This declaration is confidential and is to remain sealed at the Higher Justice Court. It may not be opened except by court order, within the bounds of the law.

At another level, the PLC does not publish regular reports on its activities that are available to the public. It does not have a newspaper, magazine or regular radio or television program. Its sessions, however, are open to the public, although committee meetings are closed.

Complaints / Enforcement Mechanisms

Articles 100 through 104 of the bylaws of the PLC regulate the process of receiving complaints. Every Palestinian is entitled to submit a petition or complaint to the PLC on any matter related to public affairs, to be signed by the complainant. Group petitions must be signed by formal bodies or legal entities and may not include indecent language.

The complaints office of the PLC was established in the latter part of 2008 in compliance with the bylaws of the PLC. Clear policy regarding the handling of complaints is still lacking. In practical terms complaints are handled by committees of the PLC. Hundreds of complaints have been addressed at each session of the legislature. Some are directed to relevant ministries while others are addressed through reports and recommendations to committees of the PLC.

The Basic Law and bylaws of the PLC provide immunity to PLC members. Legis-

²³ *The Law on the Duties and Rights of PLC Members No. 10 of 2004.*

²⁴ *Hadeel Qazzaz, et al, 'Survey of National Integrity System Reconstruction', Report Coordinator, AMAN, Palestine, 2007.*

lators may be penalised for criminal activity as follows. Firstly, legislators may not be charged on criminal or civil grounds for any information they reveal, opinions they express, votes they cast at public or closed meetings or in the course of their work on committees, or any action they take outside of the PLC in the service of their legislative duties. PLC members enjoy immunity for the duration of the term of the PLC, and even if they are found to be engaging in criminal activity on more than one occasion, no criminal legal action may be taken against them. The PLC must be notified immediately of measures taken against any of its members so it can formulate a response. The PLC Presidency Commission undertakes this task if the legislature is not in session.²⁵ To date, neither the first nor second PLC have ever lifted the immunity of one of its members.

The law has put in place several procedures for lifting immunity. Although immunity is a basic requirement for the protection of legislators, enabling them to express their opinions and tackle corruption, it has often constituted an obstacle to pursuing legal action against members suspected of violating the law.

Relationship to other pillars of the national integrity system

The PLC passes legislation and monitors the work of the government. The PLC has passed several laws dealing with corruption, including the Illicit Gains Law and the Law on the State Audit and Administrative Control Bureau, which provide the foundation for an administrative system based on integrity.

Although the role of the executive branch complements that of the PLC in terms of legislative issues, the relationship between the two bodies has frequently been characterised as competitive rather than cooperative. An observer of actions by the PLC and the executive branch would note that the PLC approves budgets submitted by the executive authority with minimal questioning of priorities and allocations.

Though the PLC, by law, has an oversight function to the executive branch, and though the law provides the PLC with several mechanisms for controlling the administration and holding it accountable, including the right to give it a vote of no confidence, the PLC has not used these mechanisms effectively.²⁶

In terms of its relationship to civil society, the PLC communicates regularly with a number of institutions and provides them the opportunity to give input during committee hearings on draft legislation.

Recommendations on the PLC

The principle of balanced separation of powers requires that the PLC address the following:

- Develop a system supported by clear and binding provisions and mechanisms to govern the relationship between the executive and legislative branches in their tasks of drafting and approving legislation.
- Amend legislation to bring it in line with the UNCOC and ensure corruption is clearly defined as criminal activity.
- Adhere to the legal procedures and provisions necessary to enforce control.
- Amend the Basic Law to provide mechanisms to hold the president and the institutions that report to the president accountable, as it does not currently fall within the duty of the Cabinet to report to the PLC.
- Draft a code of conduct for legislators and adopt and implement it without delay.
- Strengthen the role of the newly established complaints office and empower its staff.
- Provide public access to PLC decisions.

²⁵ Article 95 of the PLC Bylaws.

²⁶ Ahmed Abu Dayyeh and Jihad Harb, 'The Dilemma of the Separation of Powers in the Palestinian Political System, The Executive: The Presidency and the Cabinet', AMAN, Report Series 3, Ramallah, January 2006.

3.

POLITICAL PARTIES

Political parties in Palestine can be divided into three groups:

- **Factions of the PLO:** These factions have bylaws that regulate their activities. Each operates within a particular ideological framework with a stated political and socioeconomic vision. These factions include the Palestinian National Liberation Movement (Fateh), Popular Front for the Liberation of Palestine (PFLP), Democratic Front for the Liberation of Palestine (DFLP), Popular Struggle Front, Palestinian Democratic Union (FIDA) and the Palestinian People's Party (PPP).
- **Islamic organisations** include the Islamic Resistance Movement (Hamas), Islamic Jihad and Hizb Al-Tahrir (the Liberation Party), each of which are governed by their own ideology and political vision.
- **New secular parties** include the Palestinian National Initiative.

Article 26 of the Palestinian Basic Law states citizens have the right to engage individually and collectively in political activity and have the right to form political parties and hold membership in political parties in accordance with the law.

Although the Basic Law stipulates that the formation of political parties and membership within them shall be regulated by a law, the PLC to date has not drafted legislation specifically dealing with this topic. Under Prime Minister Fayyad, the Cabinet drafted legislation to this end but it was strongly opposed by a number of political parties as well as civil society organisations. Their main reasons were:

- A sovereign Palestinian state does not yet exist within Palestinian territory, and the PNA continues to operate under the Israeli occupation, which represses political activity and puts the safety of Palestinian political activists at risk.
- The PLO provides a broader framework than the PNA is able to provide, and it already has principles and systems in place that regulate the actions of its members and provide ground rules for national and political action.
- Most Palestinian political organisations operate both inside and outside of the territory under the jurisdiction of the PNA, both in terms of leadership structures and members. Since PNA laws are enforceable only in the Gaza Strip and parts of the West Bank, creating legislation to govern the activity of political parties may complicate the legal status of existing Palestinian political organisations.

Most Palestinian factions, however, engage in partisan activities, whether under the umbrella of the PLO, or on the basis of their political foundations, as is the case with religious and newly established parties. These factions and organisations, with the exception of Islamic Jihad and Tahrir Party, took part in the 2006 legislative elections and were registered with the Central Elections Commission as political blocs.

Transparency

The unique situation of the Palestinian Territories, in terms of being under occupation, is used by many Palestinian parties and factions to justify the lack of transparency that characterises their activities and management of finances. Other factors include competitiveness resulting in factions being unwilling to share information, the general lack of trust among some parties and factions in the political system, and the engagement of parties in some underground activities on a partisan basis. Consequently, these parties are not willing to declare their budgets or sources of funding. Their unwillingness is supported by a lack of legislation requiring them to do so, as well as a lack of understanding on the part of the public regarding the importance of political organisations disclosing their funding sources. Furthermore, most of these parties are not following democratic principles in terms of the election of their leadership.

Combating corruption

Political organisations, like other organisations within society, tend to speak out against corruption, particularly when it represents an opportunity to expose the shortcomings of political opponents. While each party affirms the importance of combating corruption in its propaganda and public statements, this issue does not rank as a top priority in its daily activities. Some political activists, however, are genuinely committed to this issue and work against corruption through their party's popular committees and affiliated institutions, and by participating in workshops on the issue. The public does not have great faith in the commitment of political parties, organisations and factions to combat corruption, however, and opinion polls typically indicate the public views factions themselves as guilty of corruption and skeptical regarding the will of their leaders to combat it.

Recommendations on political parties

- Political parties must work to strengthen the political will of the PNA and its political organisations to combat corruption and bring reform in the structures and culture of government, parties and factions, as well as to strengthen the role of opposition parties in exposing corruption and motivating for reform in the ruling party.
- Parties and factions must integrate the principles of transparency and accountability into their policies and activities, and adopt more democratic internal election procedures.
- Parties must instruct their representatives in the PLC to demonstrate their commitment as individuals to combat corruption and participate in mechanisms of control.
- In the absence of legislation to govern the actions of parties, parties and factions must take the initiative to draft their own codes of conduct that include at least the basic elements of democracy and transparency. These documents can provide a foundation for drafting legislation when it becomes appropriate to do so.

4. CENTRAL ELECTIONS COMMISSION

The Central Elections Commission is an independent commission responsible for administering and supervising presidential, legislative and local elections in Palestine. Its nine members – experienced judges, lawyers and academics – are appointed by the president of the PNA by presidential decree. The president of the PNA appoints a chairperson and secretary general from among the members, taking into consideration the diversity of abilities and independence.

The Central Elections Commission has a track record of conducting elections with transparency and integrity. It has published a number of reports. Its decisions have a high degree of credibility. Any member of the public may appeal a decision of the commission to the Elections Affairs Court. The Central Elections Commission, therefore, makes a significant contribution towards integrity in Palestinian government.

On 2 September 2007 the president exercised the authority given to him by Article 43 of the Basic Law to issue a decision by law introducing a number of significant amendments to Election Law No 9 of 2005, some of which impact the work of the Central Elections Commission.

Although local and international observers of Palestinian elections have recommended in their reports that new legislation be drafted to strengthen the independence of the Central Elections Commission, the amended law further limits its independence. Article 9 (2) of the amended Elections Law authorises the president to replace any member at the Central Elections Commission at will. This article, which did not exist before the amendment of the law, seriously compromises the independence of the Central Elections Commission and endangers the integrity of its work.

The amendments to the law strengthen the independence of the Central Elections Commission in another regard, however. Article 118 entitles the Central Elections Commission to issue regulations without authorisation of the Cabinet. This enhances the independence of the Central Elections Commission in relation to the Cabinet, but it does not strengthen the independence of the commission in relation to the president.

Furthermore, the new amendments to the law impose unnecessarily harsh restrictions on members. For example, Article 7 (10) prohibits members from accepting any positions in charitable organisations or other non-governmental organisations. The law does not prohibit them from membership in political parties, however.

Problems

In addition to the issues that have been mentioned, a number of difficulties continue to plague the Central Elections Commission:

- While the Central Elections Commission has demonstrated a high degree of professionalism and independence in its work, this is largely attributable to the integrity of its senior staff and the support the organisation has been given by local and international organisations, rather than being due to effective regulations and structures within the organisation. The members are hand-picked by the president of the PNA with no legal limits placed on their political activities.
- The Election Law still does not make adequate provision for stakeholders in the elections – including candidates, voters, civil society organisations, the media and private businesses – to submit grievances during the elections process with any assurance their grievances will be addressed promptly and resulting changes implemented. The law does not clearly charge the Central Elections Commission with addressing grievances and specifies no timeframe within which they must be resolved or protocol for enforcing the law or the decisions of the Central Elections Commission.

- The law does not provide a mechanism to ensure transparency in the work of the Central Elections Commission. For example it does not require minutes of meetings or decisions to be made public. Similar organisations often have a clause requiring all meetings of members be open to observers and party representatives.
- The law imposes two main constraints on the financing of election campaigns. First, it prohibits accepting funds from foreign sources. Second, it sets a specific spending limit for the various campaigns as follows: USD 1 million for presidential candidates, USD 1 million for candidates running on party lists, and USD 50,000 for individual candidates running for election according to their geographical constituencies. However, the law provides no mechanism to enable the Central Elections Commission to enforce these limits.
- The law also specifies some restrictions on campaigning. For example, candidates are prohibited from holding rallies at mosques or churches and from using PNA institutions for publicity. However, there are no mechanisms in place to ensure compliance with these articles or prosecute violators.

Resources and Structure

The Central Elections Commission operates on an annual budget of USD 2.5 million and employs 80 people.²⁷ It submits its annual budget as well as budgets for special elections to the Ministry of Finance for inclusion in the general budget of the PNA.²⁸ The 2007 decision by law,²⁹ which amended the Election Law, stipulates that budget allocations for the Central Elections Commission must appear as a separate financial center within the state budget. This was implemented for the first time in 2008.³⁰

A number of sponsors help to fund elections. These contributions are channeled through the Ministry of Finance, and the Central Elections Commissions issues a financial report to the Ministry of Finance for auditing.³¹

The Elections Law No. 9 of 2005 imposes limits on expenditures for election campaigns of both independent candidates and those representing parties. The law also stipulates a number of conditions on sources of campaign funding, requiring candidates and parties to provide detailed information on both their funding sources and expenditures during their campaigns. In reality, however, parties and candidates have not necessarily complied with these requirements. In a report on the presidential elections published 9 January 2005, AMAN documented a number of violations by candidates, including using government vehicles, cellular phones and human resources to support their campaigns.³²

The role of the Central Elections Commission as a pillar of the national integrity system

The Central Elections Commission is not required to report to the government or any other authority on its financial or administrative activities.³³ Its independence in this regard is provided by the Election Law.³⁴

The Central Elections Commission is currently regulated by the Decision by Law on Elections³⁵ and the international standards that form the basis of its bylaws. The basic principles guiding the work of the Central Elections Commission are independence, neutrality, professionalism and transparency. Every employee of the Central Elections Commission is required to sign a statement committing them to:

²⁷ Interview with Hisham Kuheil, Executive Officer of the Central Elections Commission, 22 May 2008.

²⁸ Bylaws of the Central Elections Commission, 2007.

²⁹ Decision by presidential decree - Law 2007 on General Elections.

³⁰ Interview with Hisham Kuheil, Executive Officer of the Central Elections Commission, 22 May 2008.

³¹ www.elections.ps

³² Palestinian Elections Law No. 9 of 2005; AMAN report on Palestinian Presidential Elections, 9 January 2005.

³³ Bylaws of the Central Election Commission, 2007.

³⁴ Interview with Ashraf Al-Shu'aybi, Deputy Executive Officer of the Central Elections Commission, 22 May 2008.

³⁵ Interview with Hisham Kuheil, Executive Officer of the Central Elections Commission, 22 May 2008.

“work with neutrality, integrity, honesty and without bias in favor of any one candidate or political party over another, and to refrain from any act which may compromise the integrity of the elections process and/or the Central Elections Commission and its independence.”

The Central Elections Commission places a high priority on transparency in all aspects of its work, including its financial policies and employment and tender procedures, as well as in its management of registers that are open for monitoring by local and international agencies, in addition to various political parties and the media. The Central Elections Commission has also been diligent in publishing results of the voter registration process and informing all stakeholders of any changes to voting procedures. The Central Elections Commission also publishes the minutes of its meetings on its website. It has also demonstrated its commitment to transparency by setting up mechanisms for exchanging information with the parties and factions in order to keep them informed of its activities.³⁶

Fighting corruption internally and externally

In its report on the second legislative elections, held in 2006, the Central Elections Commission recorded several violations of the law by candidates in their campaigns. One of the coalitions registered a complaint with the Central Elections Commission. No intervention was taken, however, and violations continued. Furthermore, Central Elections Commission did not remove any election signs from cities and villages, although it kept the deposits paid by candidates who did not win. The executive officer of the commission indicated all complaints submitted to the Central Elections Commission have been addressed either at location (i.e., at a given voting center in a certain district) or by the commission itself.³⁷

Accountability

The work of the Central Elections Commission is regulated by the Basic Law and Election Law No 9 of 2005 amended by the decision by law in 2007. It is also regulated by the Local Councils Elections Law No 10 of 2005, which remains in effect.

The law mandates that the Central Elections Commission submit financial and administrative reports to the president and PLC within three months of its announcement of election results.³⁸

A large number of local and international observers monitored the most recent presidential and legislative Palestinian elections. All phases of the elections were open to observers, including voter registration, the election itself, counting of ballots and the announcement of final results. A total of 17,309 local observers from 257 Palestinian organisations were registered with the Central Elections Commission for the 2006 legislative elections, in addition to 1,042 international observers from 75 international organisations. The Central Elections Commission also registered 158 guests from different countries, as well as 50,681 observers representing political parties.³⁹

Integrity Mechanisms

There are no written codes of conduct for the members of the Central Elections Commission, but a code of conduct does exist for its staff, which they sign upon their appointment.⁴⁰ However, the Election Law does address conflict of interest. It stipulates that the members of the commission may not be employees or members of any charitable or other non-governmental institution, may not run

³⁶ www.elections.ps

³⁷ Interview with Hisham Kuheil, Executive Officer of the Central Elections Commission, 22 May 2008.

³⁸ Ibid.

³⁹ 'Report on the Second Legislative Elections', Central Elections Commission, 25 January 2008.

⁴⁰ Interview with Hisham Kuheil, Executive Officer of the Central Elections Commission, 22 May 2008.

for election in any general or local elections and may not assist any candidate's elections campaign during their term of service to the commission⁴¹

On one occasion, a seat on the commission became vacant and the president of the PNA nominated a person who had run as a candidate in the legislative elections. The Central Elections Commission rejected the appointment due to conflict of interest and the possibility of bias, forcing the president to withdraw his nomination.⁴²

The law does not regulate the receiving of hospitality and gifts, and the commitment of members not to accept gifts or hospitality in exchange for performing their duties is therefore based on ethical grounds rather than the law.⁴³

Transparency

Measures provided in the Elections Law are not strong enough to ensure the transparency of the Central Elections Commission. Nevertheless, the commission publishes its financial reports and those of candidates on its website⁴⁴ at its own initiative. The Central Elections Commission also publishes the minutes of its meetings on its website. During the 2006 legislative elections, some international organisations suggested that representatives of observers and political blocs attend Central Elections Commission meetings, as is the practice in several other countries. However, the Central Elections Commission refused to allow non-members to attend its meetings, making the minutes available after the meetings instead.

According to the Election Law, each electoral list or candidate participating in elections must submit a detailed list of funding sources and expenditures for his/her campaign to the commission within a month of the release of the final election results. The law also requires each candidate or list to submit their electoral program along with their application for registration of their candidacy. The law, however, does not require the Central Elections Commission to disclose this information. The Central Elections Commission has published detailed financial reports on the campaigns of winning candidates on its website.

The integrity of the executive power during elections

The Election Law states the government media office and the executive branch must maintain a neutral position for the duration of the electoral process. The Central Elections Commission has successfully prevented interference and influence in its work by executive bodies, including the Cabinet, the presidency and security service.⁴⁵ The Independent Commission for Human Rights published a report after the 2006 legislative elections documenting the participation of a number of government employees in election campaigns in violation of the Election Law, which requires them to maintain a neutral position. For example, PNA employees participated in election campaigns inside electoral centers.⁴⁶

Complaints / Enforcement Mechanisms

Complaints by the public regarding the actions of the Central Elections Commission are handled by the Elections Affairs Court, which is mandated by law to hear appeals to the decisions of the Central Elections Commission. In addition, the Central Elections Commission has an Elections Affairs Department that receives

⁴¹ Palestinian Elections Law No. 9 of 2005

⁴² Interview with Hisham Kuheil, Executive Officer of the Central Elections Commission, 22 May 2008.

⁴³ Interview with Husam Sarandah, Technical Adviser to the Executive Officer of the Central Elections Commission, 22 May 2008; Interview with Hisham Kuheil, Executive Officer of the Central Elections Commission, 22 May 2008.

⁴⁴ Programs and Expenses of Elections Campaigns, www.elections.ps

⁴⁵ Interview with Husam Sarandah, Technical Adviser to the Executive Officer of the Central Elections Commission, 22 May 2008.

⁴⁶ Report on the Second Legislative Elections Process, The Independent Commission for Human Rights, conducted on 25 January 2006.

complaints and appeals. Some of these are addressed by the relevant departments of the Central Elections Commission and others are referred to the members. Those that cannot be resolved internally by the Central Elections Commission are referred either to the public prosecutor for legal action or to the Elections Affairs Court. Citizens are entitled to submit complaints regarding the elections process or report procedural violations by the staff of the Central Elections Commission. The Central Elections Commission also conducts investigations into violations it uncovers in the course of performing its duties. These are reported to the public prosecutor if there are sufficient grounds for prosecution.⁴⁷

In addition, the law authorises the Central Elections Commission to impose penalties in some instances. For example, if a candidate fails to remove campaign posters from public places after the elections, the Central Elections Committee is entitled to keep the deposit paid by the candidate.⁴⁸ However, penalties are generally light and have proven inadequate to ensure candidates comply with the law.

The relationship of the Central Elections Commission to other pillars of the national integrity system

The Central Elections Commission has a relationship with the executive branch, as the president appoints its members. The Central Elections Commission also has a relationship with the judicial and legislative branches, as an elections court exists that is governed by law. Finally, the Central Elections Commission interacts with civil society organisations through awareness programs and activities it conducts, as well as by virtue of the right these institutions possess to monitor the elections process.

The political division between the Gaza Strip and West Bank poses a threat to the work and integrity of the Central Elections Commission. The extreme polarisation of political parties has resulted in some parties being unwilling to work with public institutions, even those that are independent, such as the Central Elections Commission. Interference by parties in the work of the commission could undermine its ability to serve as a main pillar supporting integrity in government.

Recommendations on the Central Elections Commission

- Develop a policy so the appointment of members involves both the president and PLC. For example, policy could require the president to select members and the PLC to approve their appointment; or that the PLC draft a list of nominees from which the president may make appointments. In addition, policy should be developed to prevent a member from being removed during his/her term of office except by a judicial ruling of incompetence. The law must state that commission members must not be members of any political party.
- The commission must be given the freedom to exercise the powers granted by the 2007 amendments to the Election Law to issue regulations without obtaining the approval of the Cabinet, which was a condition in the 2005 law, including regulations for monitoring funding and other aspects of election campaigns.
- Expand the authority of the Central Elections Commission to monitor compliance with the law and grant it an oversight function to ensure its independence from influence by any party, such as monitoring and enforcing the requirements of the Election Law regarding publications, posters and campaign budgets.

⁴⁷ Interview with Husam Sarandah, Technical Adviser to the Executive Officer of the Central Elections Commission, 22 May 2008.

⁴⁸ *Ibid.*

5.

PUBLIC AUDITOR

The position of public auditor was created within the Ministry of Finance as part of the ministry's strategy to reform the financial management systems of the PNA and develop a unified accounting system to track the budget from its approval until year-end reports are submitted. The role of the public auditor is to oversee the unified accounting system, which covers all financial operations related to the budget. This includes financial orders, projections, disbursements, receipts, accounting records and commitments. It also includes registration of assets, oversight procedures and the release of all required financial reports and data. The goal of this system is greater transparency and efficiency in the management, monitoring and administration of public funds.

With the new system in place, departments handling payments, payroll, general accounts, government property accounts, public debt and cash (a new department), civil financial control (formerly internal control) and military financial control, which all have a role in administering the budget, report to the public auditor.

The public auditor is responsible for the following functions:

- Financial planning and cash flow projections
- Monetary planning and banking of the PNA
- Management, regulation and monitoring of the various sources of funding
- Management of the bank accounts of the PNA
- Management of the fixed and financial assets of the PNA
- Management of public debt
- Management of grants and loans
- Administration of the budget of the PNA
- Management of the performance of the financial system and control of all functions that govern transactions within this system
- Auditing and reporting

The financial management and accounting system has been upgraded to be in line with international standards for accounting (IAS) and good management of the public treasury. A monthly cash flow chart has been introduced, as well as the concept of a single unified treasury account with accompanying zero accounts, to track the current and projected status of the treasury and provide for liquidity in a timely manner, in order to improve the management of public debt. The conventional model of financial control that was in use has been developed into a model that provides comprehensive control based on actual needs for disbursing allocated funds and linking disbursements to the objectives they are aimed to meet.

The most notable achievements of this system are:

- Cash flow projections for the treasury are made on a monthly basis, including both revenues and expenditures.
- All civil and military accounts with commercial banks have been closed, and new zero accounts opened.
- Shortfalls are projected on a monthly basis.
- Accounts that are not essential have been closed and others have been linked to a single account managed by the Ministry of Finance, with the daily activity of the account accessible on the internet.
- The linkages between monthly expenditure allocations have been improved through coordination between the General Budget Department and the public auditor.

The priority issues to be addressed next are:

- Training of financial control staff in best practices of financial control.
- Enhancing the competency of staff responsible for budget planning and administration.
- Completing the process of centralising all civil and military funds into a single account; with sub-accounts continuing to operate as zero accounts.
- Transitioning from cash-basis to commitment-basis accounting by 2010, and then to accrual basis by 2012.

6. STATE AUDIT AND ADMINISTRATIVE CONTROL BUREAU

Introduction⁴⁹

Article 96 of the Basic Law states that:

“the State Audit and Administrative Control Bureau shall be established by law to oversee all bodies within the Authority, which shall include monitoring of the collection of public revenues and spending within the limits of the budget”.

Paragraph 2 of the same article states:

“The bureau shall submit an annual report, as well as additional reports as requested, to the president of the Palestinian National Authority and to the Palestinian Legislative Council”.

The State Audit and Administrative Control Bureau Law, passed in 2004, stipulates the bureau shall be an independent body with the authority to report on matters under its jurisdiction. The law states the bureau is an independent legal entity that it is to be allocated a special budget within the overall budget of the PNA (Article 2).

The bureau chief is appointed by decision of the president of the PNA upon the recommendation of the Cabinet. The PLC approves the appointment (Article 4). If the PLC rejects the appointment, the president must nominate another candidate within two weeks (Article 5). The bureau chief must be a Palestinian at least 40 years of age with relevant experience and competence, and of good standing in the community (Article 6). The chief, deputy chief and director general of the bureau enjoy immunity in all activities related to the performance of their duties (Article 11).

The law prohibits interference of any kind by the government in the work of the bureau. The parties which are audited by the bureau are required to cooperate fully with all requests by the bureau (Article 12). It is inadmissible for the bureau chief to be removed except by an absolute majority of the PLC (Article 10).

Resources and structure

Structure

The bureau consists of the chief, deputy chief, director general and the administrative staff responsible for the public audit and control functions, as well as a number of other administrative units. The PNA is required to provide the bureau with resources necessary to perform its duties professionally, effectively and independently.

Budget

The budget of the State Audit and Administrative Control Bureau totaled USD 1,973,000 in 2008. Article 2 of the State Audit and Administrative Control Bureau Law states the bureau shall have a special budget within the state budget of the PNA.⁵⁰

In compliance with the law, the bureau submits a draft budget to the Cabinet, which presents it to the Ministry of Finance for approval, as is the case with PNA ministries.⁵¹

The law grants the bureau authority in terms of accessing information to funds that do not appear in records, as follows:

The bureau is responsible for auditing all expenditures, revenues, loans, stores and warehouses of the PNA in accordance with Law 23 (6). The bureau is also responsible for auditing public expenditures in accordance with the State Budget Law 23 (13d).

⁴⁹ Hadeel Qazzaz, et al, ‘Survey of National Integrity System Reconstruction’, Report Coordinator, AMAN, Palestine, 2007.

⁵⁰ State Audit and Administrative Control Bureau Law No. 15 of 2004.

⁵¹ Interview with Faisal Othman, Acting Director General for Administrative and Financial Affairs at the State Audit and Administrative Control Bureau, 25 May 2008.

Article 29 states:

“In accordance with the law and its mandate, the bureau has the authority to request access to, study and retain any documents or information it requires, or obtain copies of such documents or information, including classified information, as well as summon whomever it chooses to a hearing.”⁵²

Hence, the PLC has granted the bureau the necessary authority to exercise effective oversight and control over the individuals and institutions within its mandate, without discrimination. However, the PLC has handicapped the bureau in its ability to effectively combat corruption by not providing needed tools and mechanisms.

The independence of the State Audit and Administrative Control Bureau

The law does not explicitly address the issue of the independence of the State Audit and Administrative Control Bureau. The State Audit and Administrative Control Bureau Law states the PLC must approve the organisational structure of the bureau. Some provisions state the Civil Service Law is applicable to staff of the bureau, which means the bureau's members, employees and auditors come under the administrative and financial authority of the General Personnel Bureau and Ministry of Finance. These dispersed lines of oversight weaken the bureau's independence and undermine its ability to perform its duties independent of the interests of government officials.

The role of the State Audit and Administrative Control Bureau as a pillar of the national integrity system

The State Audit and Administrative Control Bureau contributes to upholding the integrity of the government in the following ways:

- The State Audit and Administrative Control Bureau Law places all public institutions and commissions under the bureau's control.
- The PLC approves the appointment of the bureau chief, who is accountable to the law and the PLC alone.
- The law requires the bureau to publish its findings.

Problems

Obstacles that may interfere with the ability of State Audit and Administrative Control Bureau to hold government accountable include:

- A lack of qualified and experienced staff.
- A lack of experience or a tradition of public control on which to build, and the cumulative effect of a culture that does not value financial accountability of public funds.
- A lack of resources; the bureau is unable to audit every public institution and monitor their administrative performance with its existing budget.
- The role of the bureau in reporting corruption to the public prosecutor is not clearly defined.
- No mechanism exists to govern the relationship between the bureau and PLC.
- The PLC has not approved the appointment of the current bureau chief, which weakens his credibility.

Integrity Mechanisms

Article 17 of the State Audit and Administrative Control Bureau Law addresses conflict of interest in the work of the bureau, by prohibiting the chief, deputy chief and director general from engaging in the following activities while they are in the service of the bureau:

⁵² Ibid.

- Accepting any other position, buying or leasing property belonging to the PNA or any public legal entity, directly or by auction, rental, bartering or sale of property.
- Participating in commitments made by the PNA or its public institutions or commissions.
- Holding a position with the State Audit and Administrative Control Bureau while simultaneously holding a senior position with any company, institution or governmental or non-governmental organisation.

The State Audit and Administrative Control Bureau Law does not explicitly address the issue of accepting gifts or hospitality. However, Article 67 of the Civil Service Law prohibits employees from using their position or power for personal gain or profit, and from accepting, directly or by proxy any gifts, rewards, grants or commissions in return for performing their duties.⁵³ Furthermore, the bureau is granted unlimited access to classified information related to certain positions at ministries and has the authority to summon whoever it chooses to a hearing, in compliance with the State Audit and Administrative Control Bureau Law.

Transparency

The State Audit and Administrative Control Bureau publishes general reports and briefings on its website in order to ensure public access to this information.⁵⁴ It is unknown whether the bureau publishes all the information at its disposal, and whether it refers all cases of criminal activity of which it is aware to the public prosecutor.

Complaints / Enforcement Mechanisms

The law gives citizens the right to report violations or neglect by government officials in the performance of their duties. In its 2006 general report, the bureau indicated it had begun to process complaints. It handled some complaints in-house for legal reasons, referred some to relevant authorities and referred others to the public prosecutor for legal action.

Relationship to other pillars of the national integrity system

The State Audit and Administrative Control Bureau, as an authority performing administrative and financial control functions, has established relationships with the internal control departments of various ministries, most notably the Ministry of Finance, as well as a number of civil society organisations.

The State Audit and Administrative Control Bureau has a relationship with the legislature, because the bureau chief, while appointed by the president, is approved by the PLC, and also because the bureau reports regularly to both the president and PLC, and provides special reports to either upon request. The fact that the PLC has ceased to function, therefore, weakens the bureau because under the present circumstances it does not have the benefit of PLC oversight. The 2006 report of the State Audit and Administrative Control Bureau documented a number of administrative and financial violations by various PNA institutions, particularly in managing the state budget of the PNA.⁵⁵ Finally, civil society organisations are also audited by the State Audit and Administrative Control Bureau.

Recommendations on the State Audit and Administrative Control Bureau

- In order for the bureau to function effectively, the staff needs to have the necessary skills to perform their work competently. More staff are needed and all staff need to be developed through training, particularly in the area of finan-

⁵³ Civil Service Law, Previous source.

⁵⁴ www.facb.gov.ps

⁵⁵ SAACB Annual Report, Previous source.

cial control, to ensure the bureau has the capacity to monitor all sectors within its mandate.

- At present the bureau only deals with certain institutions and financial or administrative activities. It is important to expand the bureau's oversight to cover the financial performance of all public institutions specified by law and empower it to report any employee suspected of criminal activity to the public prosecutor.
- The State Audit and Administrative Control Bureau needs greater independence in order to perform its functions effectively. In particular, the executive branch must be prohibited from interfering in the work of the bureau, especially in terms of monitoring the financial activities of the executive branch. In order to increase the effectiveness of the bureau's role, it is crucial for its financial and administrative independence to be guaranteed and that it be given adequate funding to perform its duties.
- The State Audit and Administrative Control Bureau Law should be amended to emphasise more strongly the mandate of the bureau to exercise the role of financial and administrative auditor. A commission should be established to address corruption.
- Policy should be developed to regulate the relationship between the State Audit and Administrative Control Bureau and the PLC to provide checks and balances – clearly defining the powers of the bureau, mechanisms for reporting, and mechanisms for resolving potential disputes between the bureau and the executive branch.
- A mechanism should be developed to keep the public informed of the bureau's activities. This is important to enhance the spirit of accountability and protect the public's right to access to information.
- A code of conduct should be developed for the State Audit and Administrative Control Bureau staff that affirms their commitment to the principles of transparency, integrity and independence in their work, in order to raise the credibility of the bureau in the eyes of the public and other parties.
- An effective mechanism should be developed for addressing public grievances. Although the bureau has received some complaints in the past, documentation indicates these were general issues raised by the media. It is important, however, to have a clear complaints mechanism for the public to follow.

7. JUDICIARY

The judicial branch of the PNA became divided as a result of the Hamas takeover of the Gaza Strip, as was the case with the other institutions of the PNA. Hamas has set up a Higher Justice Council in Gaza in parallel with the PNA Higher Judicial Council, which has resulted in two judicial authorities on the ground. Because most PNA judges in the Gaza Strip do not have a relationship with the Higher Justice Council and its courts, Hamas has recently appointed and promoted a large number of judges to fill the vacuum.

Resources and structure

The Higher Judicial Council of the PNA constitutes the institutional framework that oversees the judiciary and its functions.⁵⁶ The Higher Judicial Council has the authority to review policy relating to structure and the performance, appointment, promotion and transfer of judges.

In addition to regular civil courts, the PNA judicial system has military courts and Shari' (Islamic) courts, each of which operates with structures and regulations separate from the regular courts. The military courts, set up in 1995, have jurisdiction over the police and security personnel, and deal with crimes committed by civilians against the military. Since 2007 the president of the PNA has issued a number of presidential decrees that expanded the authority of the military courts to cover some civil cases of a political nature or that relate to national security. Shari' courts handle the personal status cases of Palestinian Muslims.⁵⁷

The judicial authority performs its function of hearing cases and sentencing offenders through the regular court structure, which is made up of the High Court (Cassation Court and Higher Justice Court), Appeals Court, First Instance and magistrate courts, which were established by Article 14 of Judicial Authority Law No 1 of 2002 and Article 2 of the Regular Court Formation Law of 2001. Although these courts serve a wide range of functions, their role within the judicial system has been limited because of the slow speed in which cases are handled. This is due primarily to the shortage of judges, especially in the magistrate, first instance and appeals courts. As a result, people have turned to other resources to help them settle their disputes, including conciliation committees and traditional and tribal systems of justice, which has weakened the credibility of the judicial branch of the PNA.

Since the appointment of the caretaker government by Prime Minister Salam Fayyad, the capacity of the judicial system has increased. More judges have been appointed and the infrastructure of the courts has improved. This has improved the rate at which cases are handled and reduced the backlog of cases, although the problem has not been completely resolved. Despite significant efforts by the caretaker government to respond to the needs of the judiciary, judges and staff still need to develop their skills and expertise in order to be fully competent for their work.⁵⁸ The Higher Judicial Council conducts in-service training on topics such as corruption in order to build the capacity of judges.

The budget of the judiciary

Article 96 of the Judicial Authority Law⁵⁹ mandates that the judicial authority have a separate budget that comprises part of the general PNA budget. The Ministry of Justice drafts this budget in consultation with the Higher Judicial Council and in compliance with provisions of the State Budget and Financial Affairs Law. The Minister of Justice, in coordination with the Higher Judicial Council, administers the budget of the judiciary once it is approved. The budget of the judiciary is subject to the Palestinian National Authority State Budget Law. The budget of the

⁵⁶ *The Judicial Authority Law No 15, Of 2005, Article 92.*

⁵⁷ *Hadeel Qazzaz, et al, 'Survey of National Integrity System Reconstruction', Report Coordinator, AMAN, Palestine, 2007.*

⁵⁸ *Annual Report, The Independent Commission for Human Rights, Issues 6-10, 2000-2004, Ramallah.*

⁵⁹ *Ibid.*

judiciary for 2008 was USD 11.8 million,⁶⁰ with 141 judges and 511 staff on the payroll in the last quarter of the 2007 fiscal year.

Accountability

The powers of the judiciary are clearly defined by a legislative framework comprised of the Basic Law, Judicial Authority Law, Law on Regulating the Legal Profession (and its amendments), Regular Court Formation Law, Regular Court Fees Law and the Enforcement Law. The Higher Judicial Council supervises the enforcement of these laws and the work of the judiciary in general. The judiciary submits annual reports to the president,⁶¹ which are accessible to the public on the website of the Higher Judicial Council.⁶²

Transparency

Court hearings are open to the public unless the court decides on its own initiative, or at the request of one of the parties, to restrict public access for ethical reasons or to maintain public order. Sentencing is always done in an open session.⁶³ Judges must provide justification for their rulings as stipulated by Article 7 of the Judicial Authority Law, which states that:

“sentences are issued and enforced on behalf of the Palestinian people and must include the reasons on which they are based.”

Palestinian courts do not monitor the performance of the executive branch unless a case involving the executive is brought to court. The Higher Justice Court has the authority to hear appeals to decisions made by the officials of the executive branch, including the president. Article 30 of the Basic Law clearly states that: *“it is prohibited to stipulate by law any immunity for any administrative decisions or actions against judicial control.”*

Integrity Mechanisms

The independence of the judiciary is supported by Article 97 of the Basic Law, which states:

“The authority of the judiciary shall be independent and shall be administered at different levels by the various courts. The law shall determine the manner in which they are constituted and their jurisdiction. They shall issue their rulings in accordance with the law.”

Article 98 of the Basic Law states:

“Judges shall be independent and shall not be subject to any authority other than the authority of the law while exercising their duties. No other authority may interfere in the judiciary or in judicial affairs.”

Furthermore, the Judicial Authority Law states:⁶⁴

“The authority of the judiciary shall be independent and shall be administered at different levels by the various courts. Ensuring the independence of the judiciary, and the dignity, integrity and competence of judges is the duty of the state, as this is a safeguard for the protection of freedoms, rights and the rule of law. Judges shall be independent and shall not be subject to any authority other than the authority of the law while exercising their duties.”

The Judicial Authority Law of 2002 granted the Palestinian judiciary a certain degree of independence and power. But implementation of this on the ground has been impeded by resistance by the executive branch to the independence of the

⁶⁰ PNA State Budget Law of 2008.

⁶¹ Interview with Ali Abu Dyak, Assistant Deputy Minister of Justice, 8 June 2008.

⁶² Higher Judicial Council, www.courts.gov.ps

⁶³ Article 5 of the Judicial Authority Law.

⁶⁴ Articles 1, 2 and 3 of the Judicial Authority Law.

judiciary and continual disputes between the Higher Judicial Council and other institutions (such as the Ministry of Justice) that center on disagreements over the following: the division of authorities and responsibilities, issues related to the budget, the responsibility for training court personnel, and planning for the justice sector in general.⁶⁵ Although most differences have been resolved in favour of the Higher Justice Court, the resulting decisions have not been institutionalised by law, and the potential for further disputes continues to exist.

In addition, the lines of authority and accountability for the public prosecutor are not clear. He or she is accountable neither to the Higher Judicial Council (though he or she is part of the judicial authority) nor to the Cabinet. This results in conflict, especially with regard to bringing corruption cases before the judiciary. This problem is exacerbated by a lack of clarity concerning the mechanisms that provide oversight of the staff of the public prosecutor, all of whom fall under the judicial authority, while the Judicial Authority Law designates authority to the Minister of Justice to provide administrative oversight of the prosecutor.

The annual report of the Independent Commission for Human Rights illustrates the executive branch does not honour rulings of the courts, particularly in cases involving political detention or dismissal on political grounds. Powerful officials in the executive branch also have been found to attempt to influence judges in favour of a particular party to a case, or to dismiss certain cases altogether.⁶⁶

In terms of conflict of interest, Article 29 of the Judicial Authority Law prohibits judges from engaging in any commercial activity or any other form of paid work from any other activity that compromises the independence and dignity of the judiciary, disclosing any confidential or classified information, and engaging in political activity. The law instructs the Higher Judicial Council to develop a system to identify those activities in which judges may not participate because they conflict with the effective performance of their judicial duties. Article 30 of the same law prohibits judges who are second-degree blood relatives or related by marriage from working in the same department. It also prohibits judges from presiding over cases in which a plaintiff or defendant, or a member of the prosecution or defence, is a third-degree blood relative or relative by marriage.

The Judicial Authority Law does not regulate the receiving of gifts by judges. The Higher Judicial Council did, however, institute the Judicial Code of Conduct in its Decision No 3 of 2006, which is applied to the judiciary.⁶⁷ The Higher Judicial Council published Decision No 4 on Judicial Inspection in the government gazette on 19 October 2006. The Judicial Inspection Department was established in 2003 but has only recently become functional.

The achievements of the judiciary during 2008 have increased its credibility in the eyes of the public. This is evidenced by the sharp increase in the number of cases brought before the courts, an increase in the rate at which cases are resolved, and a decrease in dependence on traditional structures and local conciliation committees. However, a huge backlog of cases still exists, with a vast number remaining unresolved many years after they were opened. This is due to a legal framework that is inadequate for resolving such cases in a timely manner as well as the inadequacy of the judicial police, which assist the judiciary, escort defendants and witnesses to the courts, and enforce court decisions.

Transparency, effectiveness and independence of judges

Article 99 of the Basic Law states a judge may only be removed from office by the procedure described in the Judicial Authority Law of 2002 and upon the decision

⁶⁵ Hadeel Qazzaz, et al, 'Survey of National Integrity System Reconstruction', Report Coordinator, AMAN, Palestine, 2007.

⁶⁶ Ahmed Abu Dayyeh and Jihad Harb, 'Separation of Powers: The Status of Palestine: The Judicial Power', AMAN, Ramallah, 2007.

⁶⁷ AL-Muqtafi, www.muqtafi.bitzeit.edu

of the Higher Judicial Council with the approval of the president. In addition, Article 27 of the Judicial Authority Law states that “it is inadmissible to remove judges from their posts except as stipulated by the law.” In practice, no judge has ever been removed from his/her post since the PNA was established.

The Judicial Authority Law provides the framework that regulates the process of appointing judges. A judge is appointed by decision of the president of the PNA upon the recommendation of at least a two-thirds majority of the Higher Judicial Council, and in compliance with the criteria set out in the law. According to the Judicial Authority Law, it is inadmissible to appoint any candidate to the position of a judge until his competence, eligibility and good conduct have been verified.

Under the Judicial Authority Law, an appointee must meet criteria related to experience and competence that enable professional development. The law requires the same of judges coming from abroad. The law also requires the Higher Judicial Council to set up a system to train and develop the capacity of judges.⁶⁸ On a number of occasions, however, appointments of judges have been made without consideration of seniority and competence, which undermines the principles of integrity in judicial promotions.⁶⁹ Furthermore, judicial appointments and promotions have been frequently influenced by nepotism, party loyalty and favouritism until 2006. In January 2006 the Higher Judicial Council began to advertise vacancies in newspapers.

According to Article 28 of the Judicial Authority Law, a judge must submit a statement upon his/her appointment, and every three years thereafter, declaring the financial status of him/herself, spouse and minor children, including details regarding real estate and movable property, debts, and any stocks, bonds and cash in Palestine and abroad. These statements must be submitted to the president of the Higher Justice Court, who makes the necessary arrangements to ensure their confidentiality. Access to these statements is prohibited except by a Higher Justice Court decision in a case of necessity. The law does not require judges' assets to be monitored on an ongoing basis after their appointment. But if a complaint is filed or claim laid indicating a change in standard of living, the public prosecutor is required to take action. Over the past five years, there have been no incidents in which a judge has been prosecuted for corruption.⁷⁰

Regarding access to records, every citizen is entitled to a copy of his/her case record from the court. In addition, the public can access the budget of the judiciary, which forms part of the general budget of the PNA, on the website of the Ministry of Finance.

Complaints / Enforcement Mechanisms

The Judicial Authority Law states that receiving complaints brought by the public is one of the tasks of the judiciary. The Judicial Authority Law addresses the special penalties imposed for malpractice by the judiciary in the following manner:

- **Ruling on judges' grievances:** According to Article 45 of the Judicial Authority Law, the Higher Judicial Council rules on grievances related to judges' aptitude reports before ordering transfers.
- **Enforcing disciplinary decisions:** The Higher Judicial Council enforces the decisions of the Disciplinary Council. If a decision is made to remove a judge from office, the judge will be considered to be on mandatory leave from the date of the decision until proceedings are completed, according to Article 55 of the Judicial Authority Law.
- **Suspension of judges:** According to Article 57 of the Judicial Authority Law, the Higher Judicial Council has the authority to suspend judges as well as

⁶⁸ Articles 15, 17, 18, 19 and 20 of the Judicial Authority Law.

⁶⁹ Ahmed Abu Dayyeh and Jihad Harb, 'Separation of Powers: The Status of Palestine: The Judicial Power', AMAN, Ramallah, 2007.

⁷⁰ Hadeel Qazzaz, et al, 'Survey of National Integrity System Reconstruction', Report Coordinator, AMAN, Palestine, 2007.

- reinstate them unless the case was heard in a criminal court.
- **Removal of judges:** If the Disciplinary Council decides a judge must be removed, a presidential decree is required, according to Article 55 of the Judicial Authority Law. The removal is effective from the date of the council's decision.⁷¹

The Judicial Authority Law guarantees the right of all citizens to have access to justice. Article 90 provides for the mechanisms needed by the Ministry of Justice to perform its duties. These include a requirement that citizens are able to have access to the judiciary at a public facility in order to exercise their rights to litigation, to obtain judicial assistance when necessary, to have their cases resolved within a reasonable length of time, and to have the rulings on their cases enforced, without any discrimination based on race, sex, age, religion, wealth or place of residence.

Relationship to other pillars of the national integrity system

The Basic Law regulates the relationship between the executive and judicial branches. Articles 75 and 76 grant the judiciary, through the public prosecutor, the authority to investigate and indict officials from the executive branch, who must then be prosecuted through the court system. The provisions and rules of the Criminal Law and Criminal Procedures Law apply to officials in the executive branch, including ministers, deputy ministers, assistant deputy ministers and their counterparts.

In terms of the relationship of the judiciary to the legislature, the constitutional court examines the constitutionality of laws and regulations drafted by the PLC. The judiciary is also entitled to express its opinion on legislation drafted by the PLC that relates to the judiciary and prosecution.

The main problems confronting the judiciary can be summarised as follows:

- An enormous backlog of cases exists, which includes tens of thousands of cases that have been in process for years. This is due to the shortage of judges and the unwillingness of many judges to work as many hours as required, as well as problems related to the legal requirement that three judges are assigned to some cases, even though cases are ultimately decided by one judge. Although more judges have been appointed during the past two years, there are still not enough to properly address the backlog.
- The executive branch has been slow to execute the rulings of the courts, particularly when they conflict with the wishes of influential officials or with the political or social considerations of senior executives.
- A large number of judicial appointments have been made on the basis of favouritism and nepotism.
- In many cases judges have been promoted on the basis of their seniority alone, without due consideration of their competence.
- Cases involving corruption are usually ruled as misdemeanors and offenders are given light penalties, when in fact they constitute felonies for which heavier sentences should be given.
- Lines of accountability and oversight for the staff of the public prosecution are ambiguous, and the powers of the president and the Ministry of Justice regarding oversight of the public prosecution overlap.
- Disagreements of a personal nature exist between a number of judges.

⁷¹ Ahmed Abu Dayyeh and Jihad Harb, 'Separation of Powers: The Status of Palestine: The Judicial Power', AMAN, Ramallah, 2007.

Recommendations for strengthening the effectiveness of the judiciary

- Stronger commitment on the part of the president and Cabinet is needed to ensure the executive branch complies with rulings handed down by the judiciary and enforces them properly. Officials in the executive branch must stop interfering in judicial affairs with the intention of influencing the rulings of judges' in favour of their interests.
- The military courts must stop interfering in civil cases. The authority of the civil courts, which at one point was transferred to military courts, must be restored.
- Amend legislation that deals with judicial procedures to introduce more efficient processes to address the backlog of cases, and to prohibit interference by the Minister of Justice in the judicial authority through the budget, recommending judges to the courts or overseeing administration of the courts.
- Clarify the lines of oversight and accountability between the public prosecutor and the Higher Judicial Council and other authorities.
- The Higher Judicial Council must draft a clear protocol and criteria for the selection of judges that includes competence and experience.
- The established rules and procedures of the Higher Judicial Council must be implemented.
- The Higher Judicial Council must establish clear policies and protocols to govern the relationship of the judiciary with other authorities. It must create offices within its structure to ensure communication and coordination with the other authorities.

8. PUBLIC INSTITUTIONS⁷²

While the PNA has established dozens of public institutions since its inception, this has not been done according to a unified strategy. Some have been established by special laws and others by legal action, such as by decision of the Cabinet or by presidential decree. The conflicting legal mandates governing these institutions have resulted in chaos. Some public institutions have lost the character of traditional public institutions, and while they enjoy freedom from the bureaucratic red tape that plagues government bodies, they suffer from a lack of transparency and integrity as their independent character lends itself to abuse by powerful personalities within the institutions. In addition, their systems of accountability and control are typically weak because such a large number of these institutions have been created without a thorough and in-depth needs assessment, resulting in poor use of funds.

The problems experienced by these institutions can be summarised as follows:

Lack of a true mandate from the law

The legal grounds on which many of these institutions exist contravene the Basic Law, in terms of their establishment, lines of authority and structure. Article 69 of the Basic Law states public institutions must report to the Cabinet, while currently some public institutions, for example the Palestine Broadcasting Corporation, report to the president. In addition, some public institutions are regulated by subordinate legislation such as presidential decrees, regulations or decisions of the Cabinet, rather than laws passed by the legislature – although Article 69 (9) of the Basic Law clearly states public institutions must be regulated by law and not by any other level of legislation. Furthermore, although the founding decisions of many institutions have never been published, they are allocated budgets within the general budget of the PNA. Some institutions established by presidential decree have no bylaws to govern their actions at all. Moreover, the legal and administrative status of the staff of these institutions is not clear. For example, some employees are considered public employees who come under the Civil Service Law, while others are dealt with under the Labor Law, which applies to the private sector. In some cases institutions have employees who fall into both of these categories. The status of the chairpersons and senior staff of these institutions is especially problematic, as most of them are appointed by presidential decree in contravention of Article 69 (9) of the Basic Law, which states that appointment of employees in this category must be made by the Cabinet, not the president.

Misunderstanding of the concept of financial and administrative independence

A misconception about what is meant by financial and administrative independence is one of the main factors that adversely affect the performance of public institutions. Managers of some institutions understand independence to mean the completely autonomous management of the institution with no oversight whatsoever. To say that controls are needed for independent institutions appears to be a complete contradiction in terms.

Financial and administrative independence does not imply, however, that the laws, regulations and statutes regulating the financial and administrative activities of public institutions are not applicable. Rather, independence refers to institutions being given the flexibility to accomplish their work in the most effective manner, as well as being free from the interference and influence of other bodies in their decisions, which could compromise the public good. It must be made clear that granting an institution financial and administrative independence does not mean it is independent from oversight and control by the bodies mandated to do this, as transparency and regular monitoring safeguards the effectiveness of an organisation.

72 Based on the AMAN report, 'Public Management of State Non-ministerial Institutions in Palestine'.

General Personnel Council⁷³

The appointment of personnel to the executive branch is governed chiefly by the Civil Service Law. While enforced in a general sense, this law is often violated by officials making appointments on the basis of favouritism or to serve factional interests. This has been documented in reports published by a number of governmental and non-governmental monitoring bodies. It has also been verified through opinion polls, such as one conducted by AMAN in 2007 and another conducted by the Palestinian Center for Policy and Research Surveys in 2008, in which 77 per cent of respondents said gaining employment in the PNA is dependent on favouritism based on political, familial or personal connections.⁷⁴

A major concern is the unjustifiable number of employees, which represents a gross misuse of public funds. Another problem is the ongoing politicisation of the process of appointments and promotions. This has led to ineffectual human resource management, manifested in a number of problems. The General Personnel Council is unable to regulate the process of appointments in the public sector according to the regulations provided in the Civil Service Law because its members lack the capacity and expertise. In addition, disputes are common between the Ministry of Finance and General Personnel Council because of ambiguity regarding which body is responsible for different aspects. There is no independent committee to appoint senior staff or monitor the process, and no standard criteria for evaluating employees.⁷⁵

Information regarding appointments and promotions is considered confidential in some cases, though the Civil Service Law states the responsibilities of the General Personnel Council include reviewing the administrative decisions of government departments on appointments and promotions, which they are required to report to the General Personnel Council within 15 days. In terms of contracting consultants to provide expertise in particular areas, the law states the Cabinet shall, upon the recommendation of the General Personnel Council, develop procedures for handling the temporary or ad hoc employment of experts. However, the contracts of advisors and senior employees allow a great deal of latitude for corruption, and such appointments are typically based on factional or political considerations rather than merit and equal opportunity.⁷⁶

Resources and Structure

The General Personnel Council operated on a budget of USD 30.6 million for the 2008 fiscal year.

Legal status

Article 87 of the Basic Law identifies the principles underlying the establishment of the General Personnel Council, as follows:

"All civil service affairs shall be regulated by law; the Human Resource Council, in coordination with the relevant governmental bodies, shall seek to advance and develop the public administration. The opinion of the General Personnel Council is to be considered in the drafting of laws and statutes pertaining to the public administration and its staff."

Civil Service Law No 4 of 1998 and its amendments of 2005 set out the legal basis for establishing the General Personnel Council, particularly Articles 6, 7 and 8, which identify the Council's purpose, its role, structure and mission.

Other legislation that governs the civil service and public administration are the Labor Law, Security Services Law, Pension Law, Insurance and Pension Law for the Security Services, and the Diplomatic Service Law.

⁷³ General Personnel Bureau Development Plan.

⁷⁴ Al-Ahyan, Palestinian Center for Policy and Research Surveys, Poll No 11, 17 March 2004, Ramallah.

⁷⁵ The Good Governance Forum, Second periodic report, 2007.

⁷⁶ Civil Service Law No 4 of 1998, Articles 15, 16 and 17.

The role of General Personnel Council as a pillar of the national integrity system

The PNA is the largest employer in the Palestinian Territories, with 122,000 civil servants on the payroll in the early part of 2004, 140,000 towards the end of 2005, and 150,000 in 2008. Their salaries represent more than USD 1 billion of the total budget of the PNA.

The Palestinian civil service has been criticised strongly for favouritism and nepotism in appointments and a lack of transparency in advertising vacancies, usually at the expense of qualified appointees. In addition, an undocumented number of employees receive wages without reporting to work. As a result of the Hamas takeover of the Gaza Strip, a large number of PNA employees in the Gaza Strip – except for employees at the Ministry of Education and Higher Education, Ministry of Health and some other basic services – do not perform their duties, upon instruction by the PNA government in the West Bank. As a result, the Hamas government has appointed new staff to perform the duties of vacant positions in each government sector. It is estimated the Hamas government has appointed around 40,000 employees.

Integrity and accountability of civil servants⁷⁷

The Civil Service Law prohibits civil servants from engaging in certain activities and specifies penalties for violating laws and regulations. Article 68 states that if an employee violates a law, regulation, instruction or decision applicable to his/her position,⁷⁸ disciplinary action will be taken as follows:

First violation: Notice given

Second violation: Warning given

Third violation: Salary suspended for up to 15 days

Fourth violation: Scheduled salary increase denied or postponed for up to six months

Fifth violation: Refusal of promotion

Sixth violation: Suspension from work for up to six months at half pay

Seventh violation: Demotion

Eighth violation: Warning of dismissal

Ninth violation: Compulsory retirement

Tenth violation: Termination of employment

The law does not restrict civil servants from political activity.

A unified Palestinian criminal law does not yet exist. The Jordanian Criminal Law No 16 of 1960 is applied in the West Bank, while Criminal Law No 72 of 1936 and its amendments are applicable in the Gaza Strip. Both laws contain provisions that prohibit bribery, while they define civil servants more broadly than does the Civil Service Law. Article 169 of the Jordanian Criminal Law No 16 of 1960 defines a public employee as any person elected, appointed, seconded or assigned to perform a public service. The law punishes any public employee who accepts bribery by imprisonment for six months to two years with a fine of JOD 10 to 200 (USD 14 to 280) (Article 170). Article 171 of the same law stipulates any public employee who asks for a bribe or gift in exchange for committing a violation of the law or failing to perform one of his duties shall be sentenced to prison for one to two years and pay a fine of JOD 20 to 200 (USD 28 to 280). Article 106 of the Criminal Law, which is in effect in the Gaza Strip, provides for a sentence of up to three years for any public employee who accepts a bribe. Article 109 of the same law stipulates an employee who accepts monetary or other gifts in exchange for providing a service to the person may be sentenced for up to two years in prison.

⁷⁷ *Ibid.*

⁷⁸ *Public Employee Manual, Civil Service Law, AMAN Publications, 2006.*

Statement of financial status

The Illicit Gains Law of 2005 applies to senior level public employees, such as governors, directors, deputy ministers and assistant deputy ministers, in addition to employees falling in first and second employment categories, and heads of public commissions and institutions with a rank of minister. It requires all senior officials to submit a declaration of their property and that of their dependents. This requirement has not yet been instituted, as it requires an institutional framework in order to be implemented. In addition, the Illicit Gains Commission first must be made functional.

Complaints / Enforcement Mechanisms

Though the Civil Service Law provides for complaints to be filed against public employees, it includes no provisions to protect employees who report a violation. Other laws also lack mechanisms to protect informants. The Illicit Gains Law is the only legislation that addresses this. It requires all public employees to report any incidences of an illicit gain of which he or she has knowledge (Article 1 (19)). The law prohibits any disciplinary action against informants. Article 30 states anyone who falsely reports an illicit gain shall receive a prison sentence of up to six months and receive a fine of at least JOD 100 (USD 140). The Civil Service Law also states the promotion of a civil servant who is under investigation shall be postponed until the investigation is complete.

Relationship to other pillars of the national integrity system

The executive branch continues to influence the General Personnel Council in terms of the appointment of public servants, despite the legal mandate the council possesses to operate with independence. The procedures the General Personnel Council uses lack transparency and are subject to political influence, though appointing the head of the General Personnel Council is subject to the approval of the PLC. The council does report regularly to the Cabinet and PLC.

Conclusion

Some progress has been made in terms of ensuring greater transparency in the appointment of civil servants, but weaknesses still exist in the working, administrative and oversight levels of the civil service in Palestine. In order for the civil service to function with greater integrity, transparency and accountability, it must function according to clear policies and protocols applied uniformly for all civil servants.

The Palestinian Pension Commission⁷⁹

The Palestinian Pension Commission operated with a budget of USD 139 million during 2008.

The institutional structure of the Palestinian Pension Commission

The Palestinian Pension Commission consists of the chairperson, board of directors and employees appointed to perform the duties and implement the objectives of the agency.

Chairperson of the Palestinian Pension Commission

Article 56 of the Public Pension Law of 2005 stipulates the chairperson of the Palestinian Pension Commission must be appointed by the president upon nomination by the Cabinet. The appointment must be approved by a simple majority in the PLC.

The chairperson of the board of directors of the Palestinian Pension Commission also serves as its chief executive officer. He or she manages the agency and is responsible for the administrative duties mandated by the law, regulations and instructions of the board of directors.

Board of directors

The board of the Palestinian Pension Commission is appointed by presidential decree, according to Article 44 of the Public Pension Law of 2005. The chairperson of the board also serves as its secretary. Board members serve a four-year term and can be reappointed for a maximum of one additional term upon the recommendation of the relevant representative body, according to Article 39.⁸⁰

The role of the Palestinian Pension Commission as a pillar of the national integrity system⁸¹

The Palestinian Pension Commission was established by the Public Pension Law No 7 of 2005, consolidating all existing pension schemes. It is a separate legal entity, afforded by law the financial and administrative independence necessary to fulfill its mandate.

The goals of the Palestinian Pension Commission are to:

- Regulate and manage the pension scheme of the PNA by:
 - Paying out pensions to employees upon retirement from their service to the PNA. Employees may choose to be paid the total amount or part of the amount due in a once-off payment, or receive their pension in monthly disbursements of up to 70 per cent of the amount of their final paycheck, in accordance with the law.
 - Paying once-off payments instead of monthly pension payments, in accordance with the law.
 - Paying out pensions to the next of kin upon the death of a member, in accordance with the law.
 - Providing insurance in cases of injury on duty, depending on the type of injury.
 - Providing loans to members in accordance with the law.
- Invest the assets of the Pension Commission, which consist of the membership fees of all employees of the PNA (which in addition to civil and military personnel includes PLO personnel stationed abroad whose salaries are paid

⁷⁹ This information relies heavily on report by AMAN, 2008

⁸⁰ Article 39 of the Public Pension Law of 2005 states that "a board of directors consisting of nine members shall be in charge of the commission as follows: a) three professional members specialized in financial and economic affairs, b) the chairperson of the commission, c) Chairperson of the General Personnel Council; d) head of the Organization and Administration Commission; e) a representative of local councils employees selected from their representative bodies; f) a representative of retirees selected from their representative bodies; and g) a representative from the Ministry of Finance selected by the Minister of Finance provided that he or she holds at least the rank of director-general and is an expert in financial and economic affairs."

⁸¹ Ahmad Abu Dayyeh and Jihad Harb, 'Pension Management in Palestine', AMAN, 2007.

from the budget of the PNA); the contribution of the government; the property of the Palestinian Pension Commission; and investments of the fund expected to guarantee capital and ensure the highest possible returns. Factors that may affect the resources of the agency and its capacity to meet its financial obligations must be taken into consideration. Investment involves the following activities:

- Identifying an investment policy for the funds of Palestinian Pension Commission. The policy must be chosen with consideration for investment goals, admissible types of assets, distribution of property and projected returns, types of risks and financial tools.
- Developing protocols and mechanisms to manage the agency's investments.
- Appointing a custodian⁸² to manage the funds and property of the Palestinian Pension Commission and defining its term of service.
- Appointing an investment manager⁸³ to manage the investments of the agency, with a limited term of service.

Accountability

The Public Pension Law of 2005 requires the board of the Palestinian Pension Commission to submit an annual report to the Cabinet that is also to be provided to all members of the pension plan. The report must provide information on the finances and accounts of the agency for the preceding year; indicate investment performance; state the investment policy, criteria and procedures for the coming year; and indicate the amounts of compensation and benefits provided to board members. The board is also accountable to the Cabinet and PLC, according to Article 39 of the Public Pension Law.

The Cabinet has been ineffective in overseeing the work of the Palestinian Pension Commission. It has not requested any progress or performance reports from the board of the Palestinian Pension Commission for the past 12 years.⁸⁴

Relationship to other pillars of the national integrity system

Relationship of the Palestinian Pension Commission to the Ministry of Finance

Article 19 of the Public Pension Law (paragraphs 1 and 2) stipulates the payroll department of the Ministry of Finance shall deposit fees paid by members of the pension scheme (specific benefits scheme and specific contributions scheme) to special accounts managed by the custodian of the commission. The Ministry of Finance is also responsible for deducting monthly payments from the accounts of employees who have taken loans from the Palestinian Pension Commission and transferring these payments to the fund.

Paragraph 3 of Article 19 of the same law stipulates the payroll department of the Ministry of Finance must provide the Palestinian Pension Commission with a copy of the payroll in order to maintain accurate records for each member in terms of payments and benefits.

The work of the commission

Although the Public Pension Law is currently applicable, the Palestinian Pension Commission continues to operate in accordance with the Insurance and Pension Law issued by Decision No 8 of 1964, as well as with the two executive and internal bylaws and their amendments. This is due to the deficit of the PNA and the inability of the Ministry of Finance to pay the amounts deducted from employ-

⁸² Custodian: Bank or financial institution appointed by the Agency's board in order to keep the funds and property of the agency according to the board's instructions.

⁸³ Investment manager: The person or the competent financial institution appointed by the Agency to manage its investments in accordance with the instructions of board and best practices.

⁸⁴ Ahmad Abu Dayyeh and Jihad Harb, 'Pension Management in Palestine', AMAN, 2007.

ees (10 per cent) or the amounts due from the government (12.5 per cent). In addition, procedures are still being drafted regarding the calculation of pensions for employees of the PLO based on their years of service and the parties that shall pay their savings (deductions made by the National Palestinian Fund) so they will be able to receive pension allowances commensurate with their years of service.⁸⁵

The Palestinian Pension Commission has the following responsibilities:

- **Manage funds.** The agency is responsible for investing fees paid by members, estimated at USD 200 million.⁸⁶ While the Palestinian Pension Commission has legal auditors' reports and is audited by the State Audit and Administrative Control Bureau, it has not disclosed records of its investment activity for many years.
- **Disburse pensions.** The Palestinian Pension Commission pays out pensions to all members. This is known as the 10 per cent system. The Palestinian Pension Commission annually pays an estimated USD 50 million in pensions to 5,500 pensioners, averaging USD 700 per month per pensioner.
- **Grant loans.** The Palestinian Pension Commission provides loans to members using their pension payment as collateral. Recipients pay an 8 per cent annual interest rate instead of the commercial rate of 12 per cent, as stipulated by the board of the Palestinian Pension Commission in its Decision No 3/98 of 15 September 1998. The commission set up procedures and conditions for eligibility for loans in compliance the Insurance and Pension Law of 1964. The Palestinian Pension Commission gave a large number of loans to employees in early 2006, as PNA employees stopped receiving salaries following Hamas' victory in the legislative elections and formation of the government.

Financial control and accountability in the Pension Law

Article 82 of the Public Pension Law states the Palestinian Pension Commission must comply with rigorous standards of accounting in its work. It is required to:

- Maintain records and reports on all account activity following the International Accounting Standards (IAS).
- Establish administrative, financial and information monitoring systems.
- Keep records of investment activity implemented in the previous year.

Article 83 stipulates that the agency keep accounting records and books as well as the necessary systems and procedures, ensuring:

- Pension assets are protected or monitored.
- Financial transfers of the agency and custodian are conducted in compliance with the relevant legislation, regulations, decisions and instructions.
- The human, financial and natural resources of the agency are managed effectively and in an economically sound manner.

Article 84 of the same law addresses financial and accounting data. It requires the agency to produce an annual report that must include:

- The final balance sheet for the fiscal year
- A report of revenues and expenditures for the previous fiscal year
- Net changes in the value of assets
- Investments

Article 86 of the law addresses financial reports. The agency must produce quarterly reports covering the same information required in the annual report. Articles 87 and 88 require internal and external audits to ensure the soundness and accuracy of the agency's transactions and procedures.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

Problems

- The fact that the board chairperson also serves as the chief executive officer of the agency represents a weakness because allows a potential conflict of interest – namely, the chief executive officer reports to the board, while the board chair participates in giving directives to the chief executive officer. This means the chief executive officer/chairperson of the board oversees him/herself and reports to him/herself.
- The Public Pension Law does not specify a length of term for the chairperson, giving the board the authority to renew or end his/her term. Hence, the board is not held accountable. Furthermore, the law does not grant the PLC the power to end the service of the chairperson by a majority although it approves his/her appointment by this method.
- The board has no role in appointing the chairperson (who also serves as the chief executive officer), which gives the board no authority to oversee his/her performance. In addition the chairperson enjoys a higher status than the other board members, as his/her appointment is approved by the PLC. This puts the chairperson in a stronger position than other board members.
- The Palestinian Pension Commission lacks a clear and transparent investment policy. Furthermore, there have been instances of the executive branch attempting to access Palestinian Pension Commission funds for purposes other than its own investments.
- The agency's administration is not held accountable by the executive or legislative powers or by its own members. An amendment to the Insurance and Pension Law of 1964 (Law No 4 of 1996) grants the board of the agency expansive powers⁸⁷ without clear control by the executive branch (neither the president nor Cabinet) or accountability to the PLC. This deprives the PLC access to information about the investments of the Palestinian Pension Commission. Although investments total USD 200 million⁸⁸ and are audited, none of them have been presented to the PLC or Cabinet over the years.

Recommendations on public institutions

- Work to develop the understanding that the concepts of financial and administrative independence, and of control are complementary rather than contradictory; neither negates the other. The financial and administrative independence of public institutions does not exempt them from control.
- Work to develop the understanding that the concept of financial and administrative independence is relative and varies from one institution to another, according to the degree of independence an institution requires in order to perform its duties effectively. The degree of financial and administrative independence needed by each institution therefore should be determined on an individual basis, with consideration of its specific needs in terms of financial control, so it can enjoy an adequate margin of discretion while remaining subject to control.
- Mechanisms for the control and oversight of the Palestinian Pension Commission and its investments must be put in place. The PLC and State Audit and Administrative Control Bureau must be given access to its accounting reports, and it must submit annual reports to the Cabinet and PLC. In addition a clearer division between executive and supervisory roles in the agency is needed to avoid conflict of interest. This could be achieved by having the board recommend the appointment of chairperson and removing the chairperson from membership of the board. Stricter monitoring is needed of the mechanisms and personnel responsible for calculating years of service for pension purposes.

⁸⁷ The amendments of 1996 state that “decisions of the Fund’s board are applicable and binding starting on the date identified by the board.”

⁸⁸ Ahmad Abu Dayyeh and Jihad Harb, ‘Pension Management in Palestine’, AMAN, 2007.

9. SECURITY SERVICES/ LAW ENFORCEMENT

Introduction

The Palestinian security services were established under special circumstances that have influenced their form, character and development over the years. These institutions have been established in a context in which the PNA has enjoyed very limited sovereignty over the territory under its jurisdiction, yet under the Oslo Accords has had overwhelming obligations in terms of maintaining control. Until recently, there was no institutional or legal framework to regulate the work of the various security services. More and more security apparatuses have been created without justification, resulting in overlapping and conflicting powers. The security services of the PNA consist of the police, presidential guard, preventive security, general intelligence, civil defence and national security.

Resources and Structure

The various security services do not operate with itemised budgets approved or published in accordance with the procedures stipulated in the State Budget Law or the official financial system of the Ministry of Finance. This is true of security apparatuses individually and collectively. Their budget totals appear in the general budget of the PNA but without details regarding the nature, type or size of revenues and expenditures. Moreover, while the actual number of staff in these institutions is unknown, funds for operational costs are disbursed every month to each apparatus.

Although the PLC has the power to approve and control budgets, historically there has been no real disclosure of the actual figures of the budgets of the Palestinian security services. Neither the PLC nor State Audit and Administrative Control Bureau has produced any detailed reports on the security services; if such reports exist they have not been published.

The total budget for all of the security apparatuses comprises 27 to 32 per cent of the state budget of the PNA. There was a significant increase in the security budget in 2007 because of an increase in the number of employees on the payroll. A World Bank report published in March 2007 estimated the number of Palestinian security service staff at 77,000 persons.

The role of the security services as a pillar of national integrity

Security services, in particular the police, constitute the primary arm of law enforcement. The problems afflicting these institutions limit their role in this regard. For example, appointment procedures in the military services are ambiguous, especially for soldiers or non-commissioned officers. The Palestinian Law of Security Services indicates regulations must be established to govern appointment procedures, but as of the end of 2008 this has not occurred.

The absence of adequate regulations or instructions to enforce Palestinian Law of Security Services constitutes a major weakness resulting in a lack of transparency in this regard, which in turn weakens accountability. This situation, accompanied by a lack of stability in the structure of these bodies, has created an enabling environment for corruption in the form of a large number of unjustified appointments and the development of a climate of favouritism, nepotism and cronyism on personal, partisan, factional and regional bases. Vacancies in the security services are not advertised in local newspapers, with the exception of some opportunities with the Police Academy. The Law on Security Services stipulates the appointment of officers must be from certain categories specified by law and that new appointees must complete required military training courses. Despite the clarity of the law, the appointment of many officers has been in violation of these requirements, especially during the first 10 years of the existence of the PNA.

Accountability

Security services are regulated by the Basic Law, the Law on Security Services No 8 of 2008, and the Judicial Authority Law. In practical terms, the security services and their commanders are not subject to the control and oversight of the executive branch or PLC. Recently the State Audit and Administrative Control Bureau has started to monitor some security services. Some legislation addressing service in the security forces does exist, including a law dealing specifically with pensions of security personnel and another law addressing general intelligence. However, the requirement that commanders of security forces must declare their financial status in writing is not being met. It should be noted that if they violate the law, security service personnel are taken before military courts rather than civil courts.

Integrity Mechanisms

No code of conduct exists for the security services, merely some special instructions. However, compliance with these instructions is not monitored.

Transparency

Since their establishment, the Palestinian security services have lacked protocols for their work and have failed to produce reports or provide access by any other means to basic information regarding their status, programs, budgets and decisions. Again, the requirement that commanders provide statements of financial status of security services commanders is not enforced.

Relationship to other pillars of the national integrity system

Considerable progress has been achieved with respect to the relationship of the security services to the other pillars that play a role in the integrity of the PNA. At the organisational level, most services are subordinate to the executive branch, specifically the Ministry of Interior and the president of the PNA. In addition, they have become more accountable to the legislature according to the law, despite the fact that the PLC is non-functional at present. Security personnel, especially senior staff, are prohibited from joining political parties or participating in the electoral campaigns of candidates. However most security personnel, particularly senior staff, have established political affiliations and some combine these two roles.

The relationship of the security services to the judiciary has improved, as the police have started to play a more active role in enforcing court orders and sentences.

Complaints / Enforcement Mechanisms

No independent mechanism exists for handling complaints by the public against the police. The military penal code applies to police convicted of corruption. However, no instances of security personnel being charged with corruption appear in records of the court, though the names of some security personnel have appeared in some corruption investigations conducted by the public prosecutor.

Recommendations on security services and law enforcement

- Security services and their senior officials must not act in the interests of one political faction against another. This is crucial for the orderly transfer of authority, which is a hallmark of democratic systems. Therefore, the fact that the security services continue to be headed by persons who have partisan allegiance or factional affiliation does not strengthen the stability of these institutions and undermines their legitimacy and credibility.
- Security apparatuses must be subordinate to civil command (political author-

ity) and must comply with its orders. It must not interfere in political decisions and its commanders must not assume any political roles and must not be allowed to interfere in political life as long as they have a role in the security forces.

- The executive branch is directly responsible for the security services. It must oversee them and their commanders and hold them accountable. The security services must also be overseen by other control bodies, such as the PLC and State Audit and Administrative Control Bureau.
- Greater clarity is needed in the legal framework regulating the work of the security services and a basic security law needs to be drafted. At present the security services operate exclusively in response to instructions and administrative orders issued by the president, who serves as Commander General of the Revolutionary Forces, despite the fact that some legislation does exist relating to security personnel, such as the Law on Security Service and Pension for security staff and the General Intelligence Law.
- More stringent standards must be developed for the selection of security personnel, based on professionalism and merit rather than political allegiance.
- Action is needed by both the legislature and executive branch to ensure the terms of service of commanders in the security services are limited. The legislative branch must be given a greater role in overseeing commanders.
- The security budget must be drafted in accordance with the General Budget Law of 1998 and its amendments, with stringent legal control over the administration of the budget.
- Regulations need to be developed that will implement the Law on Security Service, especially with regard to appointments, promotions and penalties.
- An effective system is needed for the public to register grievances and ensure that complaints are addressed appropriately. The complaints offices must relate to the Minister of Interior, the Office of the President and the Cabinet.
- Codes of conduct are needed for commanders, soldiers, officers and non-commissioned officers
- The legal requirement that commanders of security services declare their financial status must be enforced.

10. PUBLIC CONTRACTING SYSTEM

Introduction

The process by which the PNA enters into a contract is different from that used by private companies or individuals. When a PNA institution enters into a contract, it is subject to a number of checks and balances to ensure the contract is in the interest of the public, both in terms of its form (open tender, direct contract or call for proposals) and its compliance with the general principles identified in the law. The most important of these are equal opportunity for contractors and the quality, efficiency and transparency of the tender, as well as its effective use of public funds to address the identified needs.

Resources and Structure

The Public Supplies Law No 9 of 1998, particularly Articles 14 through 16, mandate the creation of a Central Tender Committee headed by the Director General of Public Procurements and representing the ministries of finance, economy and trade, industry and public works, as well as two senior representatives of the bidder. Members of the committee serve a two-year term. In addition the Chief of the State Audit and Administrative Control Bureau appoints a representative to the Central Tender Committee as an observer. The Cabinet appoints the committee from representatives nominated by the relevant ministries. The Cabinet is authorised, upon the recommendation of the Minister of Finance and the minister of the ministry involved in the contract, to form a special tender committee to procure supplies for each project, comprised of the deputy minister, director general of the ministry and three senior PNA staff. The committee may only meet if a quorum is present and decisions are made by majority vote. Procurement decisions are approved by the relevant minister and the Minister of Finance. Disputes are referred to the Cabinet for resolution. The role of the Central Tender Committee is to consider tenders for amounts over USD 15,000. Tenders of a smaller value are handled by a procurement committee within the ministry or institution involved.⁸⁹

Article 2 of the Law on Tenders for Public Works No 6 of 1999, states a Department of Central Tenders shall be set up at the Ministry of Public Works, with its own staff and a director general appointed by the Cabinet. The Tender Department is to establish tender committees to handle the following functions:⁹⁰

- **Central Tender Committee:** Article 7 of the Tender Law states this committee is responsible for tenders for four sectors: government buildings; water, irrigation, canals and dams; roads, transportation and mining; and electromechanical and telecommunication works. These committees handle tenders that do not fall within the mandate of other committees, as well as other tenders as requested by the Minister of Public Works on behalf of the relevant minister.
- **Department Tender Committee:** In each department, a Department Tender Committee exists that is authorised to handle tenders for projects of up to USD 150,000 and technical services of up to USD 7,000.
- **Governorate Tender Committee:** Each governorate is to have a Governorate Tender Committee responsible for handling tenders for amounts up to USD 25,000.

Role as a pillar in the public contract system

Government tenders are regulated by Public Supplies Law No 9 of 1998 and Instructions No 1 of 1999, which deals with procurement of public supplies. They are also regulated by the Law on Tenders for Public Works No 6 of 1999, which deals with public works and all matters pertaining to different types of buildings, roads, construction and engineering projects, as well as issues such as supplies, maintenance, supervision and follow-up. The Cabinet has issued two decisions regulating the administrative system of the Public Tender Department at the

⁸⁹ AMAN, *Tenders in Governmental Institutions*.

⁹⁰ *Ibid.*

Ministry of Public Works and Housing, and the composition of the contractors' classification committee.

Article 5 of the Tender Law states tenders must be advertised in local newspapers and cannot be advertised or awarded unless funds have been allocated for the project or the funder has committed funds to the Cabinet. The principles of competition and equal opportunity apply to all applicants eligible to execute works or provide technical services. The selected tender must represent the best offer in terms of fulfilling the conditions stated in the invitation for tenders and being priced competitively without compromising quality, deadlines or standards and specifications.⁹¹

Although tenders in general must be advertised in newspapers, Article 17 of the Public Tender Law provides for exceptions. It is possible to invite offers or enter directly into contracts in the following instances:⁹²

- In cases of emergency or exigencies that do not allow for an invitation for tenders.
- To utilise machinery and equipment already purchased, reduce redundancy, save on spare parts, or because of special expertise.
- To purchase spare parts, accessories, machines, tools, supplies or services available at the required level of competence from one source only.
- In contracts related to technical or scientific services.
- If the contract for implementing works or providing services is entered into with government or scientific institutions, or if prices are set by official authorities.

Article 40 of the Public Tender Law refers to cases of emergency in which the Cabinet is released from the law's requirements and may act upon its own judgment. The PLC, which included this provision into the law, needs to amend the law in this regard, in light of the fact that the Basic Law provides for the declaration of a state of emergency (Article 110).⁹³

Article 5 (Paragraph 3) of the Public Tender Law supports the principle of obtaining the best quality goods at the lowest cost, and states that public tenders must: *"adhere, when awarding tenders, to the offers which best fulfill the conditions of the invitation for tender and the most competitive prices, while taking into consideration the required quality of work, possibility of implementation within the set timeframe, and the ability of the contractor or consultant to perform the required task according to standards and specifications."*

Article 7 (Paragraph B) of the Public Supplies Law stipulates *"selecting the best supplies for the best prices and conditions."*⁹⁴

Article 12 of the Public Tender Law regulates tender procedures, conditions for eligibility, duration of advertising, procedures for the submission, opening, consideration and evaluation of tenders, criteria for awarding and other conditions that must be met in tender documents or by contractors or consultants, according to binding regulations issued by the Cabinet and published in the government gazette.

Article 19 of the Public Tender Law authorises the administration to alter administrative contracts, including adding or changing the form, type or quantity of work or technical services during implementation. However, giving such latitude for altering contracts after they have been awarded and work has commenced presents opportunities for fraud. For example, bidders may indicate unrealistically low costs in their tenders and then, after being awarded the contract, begin to revise these costs, expecting the administration to accept the revisions based

⁹¹ Ibid.

⁹² 'The Integrity of Administrative Contracts in Light of the Public Tenders and Public Supplies Laws, A Critical and Analytical Review', AMAN.

⁹³ AMAN, *Tenders in Governmental Institutions*, Ibid.

⁹⁴ Ibid.

on this article. In addition, the article provides for the possibility of the tender committee or one of its members colluding with the bidder. Fraud of this nature constitutes a serious violation of the principles of integrity, competition and equal opportunity in public procurement. In such cases, all those involved in drafting the tender documents must be held accountable, if the request for change was required due to negligence during preparation of the tender documents. This could be the result of either error or complicity, and necessitates an investigation.⁹⁵

Article 44 of the State Budget and Financial Affairs Law No 7 of 1997 states that: *“it is inadmissible to disburse any expenditure that does not have an allocation in the State Budget Law; it is also inadmissible to use allocations for a purpose other than that for which it was approved.”*

This article imposes a constraint on the implementation of the Public Tender and Public Supplies laws, as it prohibits contracting for government works or procurement of public supplies unless the related expenditures have been allocated in the State Budget.⁹⁶ Consequently, projects must be based on goals that have been identified in the annual plans of the various ministries, in accordance with a comprehensive vision for national development.

An analysis of the Public Tender and Public Supplies laws reveals that in general they comply with most international standards and principles concerning the management of public funds, in terms of embracing the concept of invitation for tenders and the principles of competition, equal opportunity and obtaining the best commodities for the lowest prices.⁹⁷ While the laws support these principles, they also contain a number of gaps and shortcomings that open the door to violations of these principles, as will be demonstrated later.

Accountability

Tenders are monitored by the State Audit and Administrative Control Bureau during the course of its audit of the revenues and expenditures of ministries and public institutions. It submits a comprehensive annual report to the president and PLC that includes remarks and opinions on violations and corresponding liabilities. The State Audit and Administrative Control Bureau sits as an observer on the Central Tender Committee. In addition, the Ministry of Finance exercises internal financial control over tenders, as no disbursements are made until all required documentation has been reviewed.⁹⁸

Although the control function is the duty of State Audit and Administrative Control Bureau, no legislation exists requiring the Central Tender Committee or department to report directly to any control body. To establish principles of transparency and accountability, the law stipulates that tenders are to be opened publicly, in the presence of applicants and all members of the Central Tender Committee.⁹⁹

Integrity Mechanisms

The law clearly stipulates that tender committees must include some members with relevant expertise. If it is deemed necessary to alter a contract while it is in progress, the contract remains in effect. The supplier must submit a technical report justifying the need for changes and the impact it will have on the project budget before approval. Expanding the original scope of the project or other changes are approved on the recommendation of an ad hoc technical committee consisting of at least three persons qualified and experienced in the relevant field.

⁹⁵ ‘The Integrity of Administrative Contracts in Light of the Public Tenders and Public Supplies Laws, A Critical and Analytical Review’, AMAN.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ AMAN, *Tenders in Governmental Institutions*, AMAN.

⁹⁹ Ibid.

The procurement process: Public supplies¹⁰⁰

The procurement process involves several stages in order to ensure integrity in all procedures. The process begins with an application by the beneficiary party for the procurement of supplies through the Central Tender Committee. The request is referred to the technical committee, which assesses the cost of the purchase request and communicates with the Ministry of Finance in order to allocate the necessary amount in the budget. The invitation for tenders is then drafted with clear specifications and conditions, and published in two different newspapers for at least two days, indicating a deadline for the submission of applications.

Tenders are opened publicly in the presence of applicants and members of the Central Tender Committee. The technical report undergoes a second technical examination. Offers are initially awarded to one bidder and posted publicly for four days to provide an opportunity for the award to be contested. This period may be reduced to two days when the process is expedited. All applicants are informed of the decision to allow them the opportunity to contest the committee's choice. This is done through a written objection addressed to the Central Tender Committee for its consideration. If the challenge is on technical grounds, it is submitted to the technical committee that reviewed the tender. The party that submitted the objection must receive a written response from the committee, whether or not the committee's decision was favourable.

Once a call for tenders has been published in a newspaper and the tender documents are purchased, bidders have the right to contest the tender or its specifications. Objections may be submitted from the beginning of the process, as they could potentially address bias toward a particular bidder. Objections are referred to the technical committee that drafted the specifications. The objection is examined from a technical perspective, and if the specifications are found to be biased, new specifications must be drafted. If the specifications are not found to be biased, a written response is provided to the complainant.

The final decision on awarding a tender is made after much deliberation, as the decision cannot be revoked except by a subsequent amendment. This is only possible if a problem arises that the Central Tender Committee considers serious enough to warrant revoking the decision. Once the committee approves the final award, it is submitted to the relevant minister for approval, after which a contract is signed with the successful bidder with mutually agreed upon terms for delivery and payment.

The Procurement process: Public works¹⁰¹

Projects are selected on the basis of needs identified in writing by applicants with consideration of available funds. When the Central Tender Committee approves a project, it is adopted by the Public Tenders Department and a call for tenders is announced in two different newspapers for two days. After the deadline, the relevant tender committee opens the tenders in the presence of at least five of the seven members of the Central Tender Committee, including the minister.

Bids are then transferred to a technical committee, which evaluates the tenders and submits a technical report with its recommendations to the Central Tender Committee. The committee reviews the recommendations and, after deliberation, awards the contract. The committee notifies the beneficiary of the winning bidder and both parties sign the contract.

The potential exists for conflict of interest in the tendering process for administrative contracts. A review of the two pertinent laws reveals both have overlooked this matter, which necessitates amending these laws and adding provisions to

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

prohibit members of tender committees from bidding, directly or by proxy, for tenders being offered. The law must also include provisions requiring committee members to remove themselves from any tendering process that involves the interests of a first- or second-degree relative.¹⁰²

Transparency

The Public Supplies and Public Tender laws do not stipulate the need to disclose the financial status of employees involved in tenders and contracts. This creates an enabling environment for corruption. On the other hand, after a contract is awarded to a bidder, an announcement is usually posted for four days, providing a limited opportunity for a third party to challenge the eligibility of the applicant. However, this period may be reduced to two days.¹⁰³

Although both the Tenders and Supplies laws make reference to the principle of transparency, PNA institutions have typically not heeded this at all, violating this principle in the following manner.¹⁰⁴ Article 3 (Paragraph 4) of the Public Tender Law states the Tender Department is required *“to produce pamphlets regularly on the construction sector providing current prices for construction work and materials.”* This is not being done, however, which constitutes a violation of the right of the public of access to information, as well as a violation of the principle of transparency that must be applied to public procurements.

While there is no compliance with the Public Tender Law with respect to the mandatory publishing of information, this flaw is even more pronounced in the Public Supplies Law. Article 3 of the law, which addresses the responsibilities and authorities of the Public Supplies Department, does not mandate the publishing of information to ensure public access to information concerning public supplies, particularly for those affected.

Complaints / Enforcement Mechanisms

The Public Supplies and Tender laws do not indicate the appropriate channels for addressing grievances or hearing appeals. This deprives the complainant of an expedient means of appealing a decision and potentially having it reversed. Instead, a complainant is forced to appeal directly to the judicial branch, which is a complicated process that does not allow for problems arising in contracts to be resolved simply. Instead, the two laws could provide for the decisions of committees to be appealed or grievances submitted to a relevant official, who would have the ability to respond speedily to resolve issues involving public sector tenders.¹⁰⁵

Article 26 of the Public Tender Law authorises the Public Tender Committee to reject tenders submitted by individuals who have violated tender procedures or failed to meet previous commitments, or who are subject to an applicable decision of deprivation from participation in public tenders. However, the law does not require the committee to reject such applicants; it simply gives them the option to disqualify them. The law, therefore, allows latitude for seriously compromising the integrity of the tendering process, which is intended to select the best services. This article must be amended to instruct the committee to reject all such applicants.¹⁰⁶

The legislation that deals with tenders and contracts provides no penalties for cases of fraud or abuse of powers. Existing legislation also does not regulate ten-

¹⁰² *‘The Integrity of Administrative Contracts in Light of the Public Tenders and Public Supplies Laws, A Critical and Analytical Review’*, AMAN.

¹⁰³ AMAN, *Tenders in Governmental Institutions*.

¹⁰⁴ *‘The Integrity of Administrative Contracts in Light of the Public Tenders and Public Supplies Laws, A Critical and Analytical Review’*, AMAN.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

ders in which a foreign party or donor provides partial funding for procurements, or provide for the protection of those who report violations of the law. The fact that two separate laws exist to deal with procurement and tenders generates problems and conflict in some instances. A unified law is needed to cover contracting for both public works and supplies.¹⁰⁷

Relationship to other pillars of the national integrity system

The State Audit and Administrative Control Bureau is integrally connected to the process of public sector tenders and government procurement contracts, as these are subject to the bureau's control and because a representative of the bureau sits on all committees concerned with government contracts. The public accountant plays an important role in controlling and supervising public contracts and tenders. The Illicit Gains Commission is also concerned with the performance of tender committees, in terms of monitoring and ensuring their integrity and ensuring their members comply with the requirement to disclose their financial status. There is also direct legislative control over these committees through the ministries to which they belong, namely the Ministry of Finance and Ministry of Public Works.

Recommendations on contracting system¹⁰⁸

- Draft a single piece of legislation to address procurement and tendering.
- Address the weaknesses in the Public Supplies and Public Tender Laws, especially the exceptions in both laws allowing proposals for procurement of supplies to be called without a tendering process. Regulations are needed to govern the formation of procurement and tender committees. Altering contracts after they have been signed must be prohibited, and the Tender Department must be required to regularly publish information regarding materials, prices and supplies in accordance with the law. Regulations are also needed for the procurement of supplies from abroad, the presence of foreign parties in tenders, the protection of informers in cases of corruption, and keeping abreast of modern technology used for tender procedures.
- Prevent conflict of interest in the work of any public tender committee. Support these committees with necessary expertise throughout all stages of the process.
- Require all government parties to comply with provisions of the Public Supplies and Public Tender Laws so all tenders are approved in coordination with the Central Tender Committee and involve tender committees in projects funded by foreign aid.
- Clearly formulate penalties applied to public servants who commit fraud or abuse the authority of their position with regard to administrative contracts, or who fail to report criminal activity in the tendering process or handling of contracts. Penalties must be heavy enough to provide an effective deterrent to criminal behavior. Penalties may involve fines, imprisonment or other measures such as confiscation, severance from service and deprivation of civil and political rights.
- Issue regulations to govern tender procedures that include criteria for eligibility, protocols for reviewing tenders and awarding contracts, specifications for guarantees bidders and contractors must provide, and liabilities in case of failure to deliver or implement awarded contracts in accordance with the following provisions: Article 19 of the Public Supplies Law, the special system of financial allowances for experts and technicians who assist the committee in accordance with Article 11 of the Public Tenders Law and Article 18 of the Public Supplies Law; regulations for the preparation of supply lists to be purchased for departments, regulating pertinent purchase orders and submitting them to the Public Supplies Department to conclude the procurement process in accordance with Article 4 of the Public Supplies Law; and the regulations

¹⁰⁷ AMAN, *Tenders in Governmental Institutions*.

¹⁰⁸ *Ibid.*

related to employee bonds in accordance with Article 46 of the Public Supplies Law.

- Develop codes of conduct for personnel who staff tender committees and public procurement and receipt committees within government institutions.

11. PALESTINIAN INDEPENDENT COMMISSION FOR HUMAN RIGHTS (OMBUDSMAN)

The Independent Commission for Human Rights (ICHR) was established in 1995 by a presidential decree published in the government gazette defining its scope of work as being to:

“monitor and enforce the requirements for protecting human rights in all Palestinian laws, legislation and regulations, as well as in the activities of various departments, apparatuses and institutions of the State of Palestine and the Palestine Liberation Organization.”

Article 31 of the Basic Law, approved in 1997 by the PLC and published in the government gazette in 2002, states:

“An independent commission for human rights shall be established pursuant to a law that will specify its formation, duties and jurisdiction. The commission shall submit its reports to the President of the National Authority and to the Palestinian Legislative Council.”

In mid-2005 the commission submitted to the PLC, through one of its members, a draft law to regulate its activity that passed the first reading of the legislature. Consideration of the draft was still underway, however, when the PLC suspended its activity following the events after the election of the new legislature in 2006.

During the ICHR's formation, the concept of a complaints commissioner was introduced to officials and other stakeholders. The commission succeeded in forming a commissioners' council, drafting its bylaws, appointing its core staff and securing necessary funding. It published its first annual report in 1995 and produced annual reports every year from 1997 until 2000. During this period the commission developed and embarked on several initiatives that enhanced and expanded its activities.

With the Second Intifada in September 2000, Palestinian government and private institutions were adversely affected by Israel's violations and destruction of the infrastructure of the PNA, which removed the PNA as an effective and responsive partner for the commission and had an impact on its performance and efficiency. Practices employed by Israel, such as imposing closures and erecting check-points throughout the West Bank, made it impossible for citizens to access the commission. The commission overcame these obstacles and facilitated access for citizens by opening new branches in the north and south of the West Bank and strengthening its relationships with similar organisations locally, in the Arab world and internationally.

Between 2005 and 2007 the commission sought to establish its role as a national commission for human rights in accordance with the Paris Principles, and continued to develop its organisational structure by increasing the number of staff and establishing specialised units to implement its programs. It relied on its own staff to conduct awareness and training programs and prepare reports, rather than external consultants as it had before. Its role continued to increase with different Palestinian governmental and non-governmental partners because of its credibility and the effective role it played in monitoring human rights violations.¹⁰⁹

Resources and Structure

The current budget of the Independent Commission for Human Rights is USD 1.6 million, with 49 employees on its payroll. A number of donors fund the commission. The PNA has started to provide support to ICHR gradually since 2008, giving it a contribution of USD 100,000.¹¹⁰

¹⁰⁹ Independent Commission for Human Rights, www.ichr.ps

¹¹⁰ Interview with Mohammad Abdullah, Director for Financial and Administrative Affairs, ICHR, 25 May 2008.

The role of the Independent Commission for Human Rights as a pillar of the national integrity system

The Independent Commission for Human Rights serves as an ombudsman to the PNA, in addition to its role as a human rights organisation. It is fully independent from the government administratively and financially, although it recently started to receive some financial support from the treasury. The commission reports to the president and the PLC, and has a board of commissioners who are not subordinate to any governmental or non-governmental institution.¹¹¹ Staff is appointed according to merit and by direct contract in accordance with the Palestinian Labor Law.¹¹²

The Independent Commission for Human Rights serves all Palestinian citizens whose basic rights, as laid out in the Basic Law and as commonly accepted by international instruments, have been violated. It has succeeded in addressing many cases and violations by responding to complaints it has received, producing reports and referring cases to the public prosecutor¹¹³.

There is some confusion between the role of the Independent Commission for Human Rights and some of the other organisations that are active in the same field. It is often assumed to be a non-governmental organisation. Furthermore, the PLC and the executive branch have not taken advantage of its reports as a tool for creating accountability and responding to issues, although they officially receive the commission's annual reports each year.

Accountability

Article 31 of the Basic Law states that the commission shall submit its reports to the president and the PLC. It submits both periodic and annual reports, detailing the status of Palestinian citizens, to the president and the PLC. It reports only to the Board of Commissioners on its financial and administrative activities, however.¹¹⁴

Integrity Mechanisms

The commission does not have a written code of conduct, nor does it have established regulations regarding conflict of interest or the receiving of gifts or hospitality. Instructions do exist, however, regarding the relationship of staff to citizens, and on neutrality and objectivity.

Transparency

There is no law binding the commission to publish its reports. Nevertheless, the commission widely disseminates its annual report on the status of Palestinian citizens' rights. However, no administrative or financial reports have been published to date on the website¹¹⁵ of the commission or as a part of its annual reports.¹¹⁶

Complaints / Enforcement Mechanisms

The commission does not provide for complaints to be made anonymously. The Complaints Department receives cases related to violations of basic rights and freedoms according to identified criteria and standards for follow-up with relevant bodies. On occasion, cases are referred to the judiciary for follow-up. The impact of the commission's reports and decisions varies. For example, relevant

¹¹¹ Interview with Sammy Jabarin, Lawyer with the ICHR Complaints Unit, 25 May 2008.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid. It should be noted that this year's report will include a separate section on the commission's financial and administrative reports.

¹¹⁵ www.ichr.ps

¹¹⁶ Independent Commission for Citizens' Rights, Twelfth Annual Report, 2006.

institutions and apparatuses are generally responsive to the commission's recommendations and decisions related to fact-finding missions.

Relationship to other pillars of the national integrity system

The Independent Commission for Human Rights monitors the compliance of the three branches of the PNA, as well as public and private institutions, with legislation and the agreements the PNA has entered into relating to international human rights standards. It also provides training in human rights to PNA officials. The programs of the commission focus on groups most vulnerable to human rights violations or that need greater awareness of human rights. The commission assists concerned civil society organisations to develop awareness and education programs on human rights. It also responds to reports by individuals or organisations of violations of human rights.¹¹⁷

In general the relationship of the commission to the executive branch has improved, with the executive allocating some assistance to the commission from the public treasury. Representatives of the commission are given access periodically to the prisons and detention centers administered by PNA security services. The president of the PNA receives the commission's annual report personally and usually orders it to be sent to relevant parties in order for its recommendations to be implemented. The commission also submits its annual report to the PLC.

Recommendations on the Palestinian Independent Commission for Human Rights

- The PLC must provide a legal mandate for the commission.
- The work of the commission must be developed, enhanced and institutionalised in the Palestinian legal and political system, to allow it to play an effective role as an ombudsman on human rights.
- The PLC must respond to the content, findings and recommendations of the commission's reports and utilise them as a monitoring mechanism.

¹¹⁷ www.ichr.ps

12.

ILLICIT GAINS COMMISSION¹¹⁸

Introduction

The Illicit Gains Commission is one of the bodies mandated in Article 5 of the UN Convention to fight corruption. This means if there are several commissions, each must specialise in a particular area of corruption.

The definition of illicit gains in Article 6 of the Illicit Gains Law coincides with several aspects of the UNCAC's definition of corruption, identifying it as:

- Any money obtained by a person under the jurisdiction of the law, for himself or for another, through abuse of function or authority, or violation of the law or public morality, or any other illegitimate manner even if it does not constitute an offense.
- Any increase in the wealth of a public official who is subject to this law, or that of his/her spouse and minor children, after entering public service or being given authority, that is not commensurate with his/her lawful income and which s/he is unable to explain.
- Any money obtained by an individual or entity through complicity with any person subject to this law through the abuse of function or capacity.

The role of the commission as a pillar of the national integrity system

Article 8 of the Illicit Gains Law stipulates the commission has the following responsibilities:

- Hold all declarations of financial status and request any additional information or clarification.
- Review the financial status of those subject to the provisions of this law.
- Investigate reports of illicit gain.

A review of the law reveals that holding declarations of financial status is not the role of the commission alone; other laws have stipulated such declarations be held by the Higher Justice Court. Hence, the commission has jurisdiction in this regard over civil service employees only, and not over other PNA employees.

Article 17 stipulates that:

*"for categories identified in items 1, 2, 3 and 4 of Article 2 of this law, if there is strong suspicion of making illicit gains, the commission shall refer the case to the president of the PNA regarding the prime minister, to the prime minister regarding ministers, to the PLC regarding the PNA president, PLC Speaker and members, and to the Higher Judicial Council regarding member of the judiciary and the prosecution, in order to take the necessary legal action."*¹¹⁹

The categories mentioned in these items include the PNA president, vice presidents, advisers, the prime minister, ministers and those with a minister rank, PLC members, and members of the judiciary and public prosecution.

The independence and immunity of the commission

Article 3 of the Illicit Gains Law No 1 of 2005 stipulates:

- Based on the provisions of this law, a commission called the Illicit Gains Commission shall be established; it shall have its own legal identity, administrative and financial independence, and a special budget allocated within the general state budget.
- The president of the state shall appoint the chief of the commission upon the recommendation of the Cabinet. The appointment shall be approved by absolute majority at the PLC.
- The chief of the commission shall appoint a sufficient number of employees to enable it to carry out its duties.

¹¹⁸ Ali Abu Dyak and Nasser Al-Rayyes, 'Palestinian Policies and Legislations against Corruption', AMAN, 2008.

¹¹⁹ Ibid.

This article indicates the commission enjoys financial and administrative independence and has a special budget allocation within the PNA budget. Moreover, Article 7 of the Illicit Gains Commission stipulates that *“in accordance with the law, the chief and staff of the commission have immunity for all the work they conduct in order to implement their duties.”* Article 6 strengthens the presidency of the commission; it stipulates that the *“term of the chief of the commission is seven years non-renewable. ... [I]t is inadmissible to remove or change the chief of the commission except by an absolute majority of the PLC. ... [T]he commission’s chief is accountable to the PLC.”*

This law strengthens the independence and immunity of the chief of the commission, since it is not possible to remove him or her except with the approval of the PLC. This protects the chief from yielding to pressure from the executive and becoming biased in its favour. Paragraph 3 of the same article stipulates the chief of the commission is accountable to the PLC, which gives him or her stronger professional position and enhances the commission’s control function over the government, which is complementary to that of the PLC.

Evaluation of the role of the commission

The commission has not yet been officially established; it exists only as a mandate in the Illicit Gains Law No 1 of 2005, published in the government gazette 28 August 2008. Hence it does not yet play a role in upholding the integrity of the PNA, which is the topic of this study. The law must be implemented to expedite the process of establishing this commission.

Once established, the Illicit Gains Commission will be authorised to review the financial status of senior officials. However, the independent national commission for combating corruption, which is mandated by the UN Convention against Corruption, is intended to have a broader scope in terms of combating corruption, which would include investigating cases of corruption and building public awareness.

13. MEDIA

Resources and Structure

The media is a relative newcomer to the Palestinian context due to the historical political conditions. The media depends on advertising to finance itself. Public media receive some support from the government while private media rely on donor funding of particular programs. There is almost no competition on a professional level in the media sector. There is, however, competition in terms of advertising.

Although good journalism is of critical importance, it provides limited rewards to journalists in terms of salaries and benefits. Foreign media agencies can be very attractive to experienced journalists, as the local media sector cannot compete with the benefits they offer. This has resulted in a loss of qualified journalists from Palestine.

The media play a vital role in promoting integrity and combating corruption because of their ability to reach the public so widely.

In terms of ownership the media in Palestine can be divided into three categories:

- State-controlled media (Voice of Palestine, Palestine Television and semi-governmental newspapers such as Al-Hayat Al-Jadidah and the Palestinian News Agency WAFA)
- private media (private radio and television stations, and newspapers)
- factional media (satellite channels, magazines and periodicals belonging to political organisations).

The role of the media as a pillar of the national integrity system

To date, no law exists to protect the right of the public to access to information. Nevertheless, Article 27 of the Basic Law regulates the media in the following manner:

- *Establishment of newspapers and other forms of media is a right of all, guaranteed by this Basic Law. Their financing resources shall be subject to the scrutiny of the law.*
- *Freedom of audio, visual, and written media, as well as freedom to print, publish, distribute and transmit, together with the freedom of individuals working in this field, shall be guaranteed by this Basic Law and other related laws.*
- *Censorship of the media shall be prohibited. No warning, suspension, confiscation, cancellation or restriction shall be imposed upon the media except by law, and pursuant to a judicial ruling.*

All government and private media agencies are subject to oversight by the Ministry of Information. However, factional media is not subject to such oversight and is not published regularly. Such media reflect the perspectives of their own political faction or organisation, and constitutes a platform for promoting the organisation's activities and writers.¹²⁰

Journalists find it difficult to obtain documents and information regarding cases dealing with corruption from government departments or the public prosecutor, since access to information is extremely limited. In addition journalists generally have inadequate experience and training, with the result that they lack the expertise to investigate cases involving corruption according to professional standards. Strong competition has prevailed recently among factional media, to the extent that state-controlled television has become part of this competition over winning public opinion for factional purposes. This has aggravated the divisions and political polarisation that have developed in Palestinian society.

Electronic media agencies have multiplied recently. Most are affiliated with political factions and governed by the policies of these factions and reflect their ideology. While a number of websites have published exposés on cases involving

¹²⁰ Surour Al-Shu'aybi, *Report of the Ministry of Information* (unpublished).

corruption, typically these are done by either Fateh or Hamas for the purpose of slinging mud at the opposition, and are not handled with professionalism.

Accountability

The Basic Law and the Press Law No 9 of 1995 regulates media agencies. The Ministry of Information supervises the media sector. In addition the Journalism Information Department, which is a special department within General Intelligence, monitors foreign media agencies.¹²¹

Integrity Mechanisms

The most significant attempt by the Palestinian media to combat corruption has been the establishment of the Media Network for Integrity and Transparency, a voluntary body consisting of a group of Palestinian journalists committed to working to achieve the goals of the network. The network seeks to strengthen the independence of the media and develop the role of journalists in promoting the values of integrity and public oversight over government performance in various sectors within Palestinian society. The network also aims to create a culture within the media sector that is intolerant toward corruption and has the capacity to address it in society in general and the public sector in particular.¹²²

The current state of political division between the West Bank and Gaza has had a detrimental effect on the freedom of the media and press. Some media agencies have been shut down in the West Bank and Gaza Strip, and there have been incidents in both the West Bank and the Gaza Strip of journalists being arrested because they expressed opinions that opposed official discourse.

The Ministry of Information, which is responsible for licensing media agencies, has published clear standards for licensing. In practice, however, certain political factions are given preference over others. For example, it may take one political party only days to obtain a license for operating a satellite television channel, while another political party may wait for more than two years to obtain a similar license.

The Association of Journalists and other professional associations play a marginal role in promoting integrity and transparency; such subjects are almost totally absent from their agendas and programs.

Every Palestinian citizen has the right to file a complaint of defamation or libel against the media. This has occurred on more than one occasion, as with the 2001 defamation case of Al-Qanoun Society against Al-Hayat Al-Jadidah and its editor-in-chief. However, subtle pressure is often exerted on plaintiffs to encourage them to withdraw such charges against official governmental parties.

The relationship of the media to other pillars of the national integrity system

There is no institutionalised relationship between the media and other pillars of the society. For example, there is no formal or working relationship between the media and the PLC. AMAN plays a major role in building relations between official institutions and the media, by involving them in joint activities. AMAN seeks to engage the media in discussions about corruption with other pillars, such as political parties and the PLC.

Nevertheless, the state-controlled media is typically used to showcase the government's agenda, and they do not have any influence on it. The media sector in Palestine is still incapable of playing a role in combating corruption, and therefore

¹²¹ Hadeel Qazzaz, et al, 'Survey of National Integrity System Reconstruction', Report Coordinator, AMAN, Palestine, 2007.

¹²² www.aman-palestine.org/Media/About.htm

it also has no capacity to create accountability for other pillars.

Private media agencies are free to engage in criticism of the government's performance in a professional manner. But PNA media outlets are biased and instead of reflecting public opinion on public issues, they offer only a one-sided perspective. Palestine Television, a government television station, has received strong criticism from a number of sides for its lack of professionalism and poor performance.

The PNA security services censor all media outlets. They have investigated journalists and managers of media outlets for the content and perspectives represented in their programs. Private media agencies tend to censor their own material strictly, out of fear of being shut down by the PNA.

Palestine lacks a tradition of investigative journalism and follow-up of news stories. Palestinians frequently rely on international media sources in order to follow local issues.

There is a serious absence of media reporting on cases involving corruption. News items pertaining to such topics are usually brief and exclude details and names. There has not been even a single case involving corruption in which the media played a role in exposing those involved. The media also fail to follow corruption cases in the courts or report on them to government bodies. Corruption is usually addressed within the context of political and partisan backbiting.

Recommendations on the media

- Build the capacity of media staff and develop their role in promoting good governance and combating corruption through:
 - Building a partnership against corruption among different media outlets, through the media network against corruption.
 - Enforce the Journalists Association Law, which protects journalists from external influence.
 - Implement the code of conduct for the media profession.
 - Build the capacity of the staff of the various media agencies in terms of their understanding of the causes and consequences of corruption and their investigative reporting skills.
 - Promote investigative journalism that uncovers corruption.
- Bolster the right of the media to access to information as a tool for combating corruption. This requires that legislation be drafted dealing with public access to information.
- Conduct professional and independent elections for the Journalists Association.
- Put an end to the prosecution of journalists and media outlets, and provide them with necessary protection.

14. PALESTINIAN NON-GOVERNMENTAL ORGANISATIONS (CIVIL SOCIETY)

Historical background: NGOs before the PNA

Before the Oslo Accords, which established the PNA, Palestinian non-governmental organisations (NGOs) existed as organisations with popular support that were run by volunteers. They were established chiefly by parties and factions seeking to organise and mobilise their grassroots, and were generally unlicensed. These organisations played a prominent role in creating a spirit of volunteerism, which gave them legitimacy in their communities.¹²³ Their main characteristics were:

- They operated in an almost underground fashion because of persecution by Israel
- NGOs were linked to political factions and forces
- There was strong competition between civil society players due to political allegiances
- There was a strong influence by the PLO abroad on civil society organisations
- NGOs were instrumental in the development of local political leaders

The establishment of the PNA following the Oslo Accords, however, redefined the nature and role of NGOs. Today Palestinian NGOs are characterised by:

- The emergence of social and developmental visions at the expense of political visions
- Focus on developmental aspects rather than the political content of programs
- The emergence of a spirit of competition between PNA institutions and NGOs
- Leaders of NGOs beginning to disengage from and even compete with political factions
- The role of NGOs shifting from influencing politics to influencing policy
- The emergence of NGO alliances and networks
- Increasing awareness of the role of international public opinion and the importance of contributing to global agendas and social forums
- Rapid change within NGOs programs, with a large number of senior NGO staff leaving to work in the newly established PNA

Resources and Structure

The more than 4,000 NGOs in Palestine are active in every sector of society, including health, education, agriculture, the environment, social affairs, gender issues and charity. However, few institutions address – directly or indirectly – issues of governance, accountability, transparency or combating corruption. Some institutions monitor policies and laws, or focus on human rights issues. AMAN (The Coalition for Accountability and Integrity) is a non-governmental institution whose main focus is good governance, combating corruption and enhancing transparency.¹²⁴ AMAN is a coalition of several non-governmental organisations interested in public affairs, including quality of governance, combating corruption, social justice and integrity. The institution has a proven record of credibility, as it has succeeded in addressing issues about which the public has expressed concern but could not access any relevant information.

Trade unions and popular unions tend to focus on those laws and policies that interest their members, and they chiefly reflect their intellectual, organisational and partisan allegiances. Unions, particularly professional unions of doctors, engineers and other professionals, play a major role in strengthening participation in governance and enhancing social concepts and values.

The budgets of NGOs are public. Some rely on funding from international donors to run their projects and struggle to pay overhead expenses and staff salaries.

¹²³ Abdul Rahman Tamimi, 'The reality of the network of non-governmental organizations', *Tasamuh Magazine* (Ramallah Center for Human Rights Studies), No. 7.

¹²⁴ 'Enhancing Accountability and Good Governance in the NGO Sector', AMAN Newsletter, No. 9, 2005.

The role of civil society as a pillar of the national integrity system

The existence and nature of civil society organisations constitute indicators of democracy, since their freedom to act and the nature of the laws that regulate them constitute the foundation for a vital and dynamic society.¹²⁵

In terms of laws, Palestinian NGOs operating in the West Bank and Gaza Strip are subject to the Charitable Societies and Non-Governmental Organizations Law No 1 of 2000, which authorises the Ministry of Interior to register NGOs.

Independence

Palestinian civil society institutions are highly independent in running their daily affairs and developing projects. A number of institutions are linked to political parties that may attempt to influence the organisation to employ party members as staff or to use projects to achieve certain political aims. Such interference is generally limited. However, the escalating struggle for power and the internal rift between the leadership of the West Bank and the Gaza Strip has led to interference by the executive branch and security services in the work of institutions, in terms of attempting to influence their boards and even shutting down some organisations in the West Bank and Gaza Strip for political reasons. In addition, Israel has shut down several institutions in Jerusalem for political reasons. Moreover, donors may interfere in the agendas of some institutions by imposing their own funding agendas and predetermined programs, or by dictating political conditions for funding (such as requiring recipients to sign the anti-terrorism certificate created by the governments of Canada, the US and Australia).

The effectiveness of NGOs

Effectiveness refers to the direct and indirect impact of NGOs. As such, Palestinian NGOs in particular and civil society have had a significant impact, as attested by the following facts:

- NGOs are active in all sectors of society
- A very large number of programs have been implemented, with hundreds of thousands of beneficiaries
- NGOs participate in drafting law and policy
- They serve as a watchdog in terms of the implementation of many laws and policies, and they have a measurable impact in terms of facilitating public debate and shaping public opinion on key issues
- NGOs generally network extensively with social, political and international bodies

Faith-based NGOs

Faith-based NGOs operate in parallel with other civil society organisations and are active in the following fields:

- Social needs (health, education, social services)
- Trade unions (creating parallel unions)
- Humanitarian relief activities

Although they are regulated by law, faith-based NGOs rarely report on their financial or administrative activities. However, the public considers these organisations to have integrity and they enjoy greater public trust than other organisations. Nevertheless, these organisations are believed to constitute the main infrastructure of religious political movements.

NGOs and combating corruption

A number of NGOs work to combat corruption and promote values of good governance. Several organisations have made a commitment to fighting corrup-

¹²⁵ Palestinian NGO Network, *Annual Report, PNGO Publication, 2004-2005*.

tion and developing mechanisms to ensure transparency in public and non-governmental organisations. They have also participated in monitoring presidential, legislative and municipal elections, published detailed reports on the actions and violations of candidates, and drawn attention to the fact that some organisations are driven by political and factional interests.

Educating the community regarding corruption and building positive values in society are important ways of fighting corruption. This requires a broad, sustained effort to impact the value systems of individuals and society, as well as the education system, which is largely the domain of civil society organisations.

AMAN and other organisations run a number of programs that aim to build community awareness and social values, through awareness campaigns, seminars and the media. However, much work is needed in order to introduce these concepts to the school curriculum.

AMAN has published several reports and held several symposia on the topic of corruption and promoting integrity, targeting non-governmental and governmental organisations. These reports have jumpstarted a healthy debate and promoted the concept of accountability.

NGOs have not experienced harassment as a result of their efforts to address corruption, though pressure is sometimes exerted on them to prevent reports from being published or to alter the information in these reports. In general, a positive environment exists for any organisation seeking to work on this issue, but difficulties accessing information may largely obstruct such efforts.

NGOs have built a number of partnerships with international organisations working to combat corruption. For example, AMAN works with Transparency International, and a number of NGOs participate in regional programs promoting concepts of good governance and combating corruption.¹²⁶

Accountability

Non-governmental and civil society organisations are accountable on several levels, including:

- Accountability to general assemblies: Law No 1 of 2000 stipulates that boards must present annual financial and administrative reports for approval by their general assemblies.
- Accountability to members: A number of NGOs have large memberships, especially trade unions and professional unions. These are accountable to their members by law, and their legitimacy stems from their members' approval of their reports at general assemblies. Some popular unions, however, have not revised their bylaws or held elections for a long period of time, especially those that come under the umbrella of the PLO (labour unions, student unions and others).
- Accountability to the Ministry of Interior and the relevant ministry: By law, the Ministry of Interior is responsible for registering organisations and verifying board elections are held regularly and honestly. Organisations are accountable to the ministry regarding their elections and results. NGOs are required by law to submit their annual and financial reports to the appropriate ministry.
- Accountability to donors: Many funders require detailed financial and administrative reports. In addition, some contract auditors to audit the projects they fund and verify reports.
- Accountability to the community: Several NGOs report on their activities to the public, which can constitute an effective form of ensuring transparency and community control, as well as strengthening their reputation and credibility.
- Accountability to the State Audit and Administrative Control Bureau: The State

¹²⁶ Hadeel Qazzaz, 'The Civil Society and its Challenges', observations at a seminar by MIFTAH, 13 February 2006.

Audit and Administrative Control Bureau Law authorises the bureau to audit all institutions that handle public money and report any violations to the judiciary.

NGOs have recently drawn attention to the importance of codes of conduct. Organisations have collaborated through the networks to which they belong to produce an ethical code of conduct to regulate the non-governmental sector. AMAN has been a partner in this process; it has sought to introduce concepts of transparency, accountability and prevention of conflict of interest to these codes, and conducted training on these issues. The resulting comprehensive code of conduct was completed and approved by all participating parties in 2007. It still requires mechanisms for monitoring of its implementation.

The Palestinian NGO Development Center (NDC) has awarded a number of grants to assist NGOs in developing their capacity to implement the code of conduct and improve their administrative and financial performance.

AMAN has also provided financial assistance to some NGOs to implement public awareness programs on the concepts of transparency, integrity, accountability and responsible use of public funds.

The adopted code of conduct stipulates the need to prevent conflict of interest, domination of work by factional or partisan interests, and discriminating against some sectors of the public in service delivery. The code of conduct also addresses fundamental issues such as the need for transparency, reporting, maintaining current records and ensuring free public access to information on organisations' activities.

Transparency

Some of the larger and better organised NGOs are committed to producing administrative and financial reports and having their financial reports audited. Organisations are required by law to publish their reports or make them accessible to the public. The recent state of division between the West Bank and Gaza Strip, however, has resulted in organisations affiliated to one of the parties in the conflict operating with less transparency and greater discretion in order to protect themselves.¹²⁷

Most Palestinian civil society organisations disseminate their financial and administrative reports through their general assemblies, or publish them on their websites. They also submit their reports to the competent authorities. NGOs also report to their donors, which is an obligation under the law. Boards, the backbone of NGO structures, are accountable by law for the contents of their organisations' reports.

However, most NGOs do not have clearly established criteria for appointing their staff and managers, and these appointments are often based on favouritism, nepotism or factional loyalties.

Relationship of Palestinian NGOs to other pillars of the national integrity system

The relationship between civil society organisations and the PNA fluctuates between competition and cooperation. The internal political division has had an adverse impact on this relationship, especially for NGOs affiliated with a party to the conflict. In the West Bank, the PNA has shut down a number of Islamic institutions and charitable organisations, disbanded the boards of others and appointed board members who are loyal to the PNA and arrested the members and activists of these organisations. In the Gaza Strip, the Hamas government has shut down

¹²⁷ 'Code of Ethics and Conduct on Transparency and Accountability in the Palestinian NGO Sector', AMAN, 2008

some organisations affiliated to Fateh and confiscated their property.

The role of civil society organisations in holding the executive branch accountable is still weak, as they have no role in monitoring the drafting or administration of the general budget or development programs.

Recommendations on Palestinian non-governmental organisations

- Promote the principles of integrity, transparency, accountability and rejection of corruption in the work of NGOs themselves, so they can provide a good model and have the capacity to monitor other sectors. This can be done through:
 - Building integrity, transparency and accountability in their own work and with their constituencies, general assemblies and boards, as well as their funders and in their management of funds.
 - Expediting the process of enforcing and monitoring the NGO code of conduct.
 - Developing standards to monitor and enforce compliance by NGOs with the principles of integrity, transparency and accountability.
- Raise public awareness of the causes and consequences of corruption and ways to create an environment that does not tolerate corruption, by developing programs and activities to promote these concepts and establish models of combating corruption, through:
- Contributing to the development of an ongoing national campaign regarding the causes and consequences of corruption and how to fight it, in order to build public opinion against corruption in Palestine.
- Developing and implementing awareness programs on the importance of combating corruption, through coordination and networking with other parties such as the media and political parties, and by using various forms of media campaigns and publications that provide the public with correct and accessible information.
- Coordinating the programs and plans of NGOs promoting integrity and transparency within the framework of a comprehensive national plan against corruption.¹²⁸
- Empower NGOs to monitor the public sector through:
 - Establishing the principle of holding the public sector accountable to the public through NGOs, which constitute an important voice for the public and represent their interests.
 - Lobbying PNA institutions to adopt values of integrity and accountability in their work, and to draft, approve and implement relevant legislation.
 - Monitoring the administration of the general budget; publish information on expenditures and projects related to basic services such as education, health and social welfare; communicate such information to the public; and hold the government accountable for its actions and priorities in spending.
 - Holding public hearings for ministers and public officials to present their strategies and achievements and the challenges they face.

¹²⁸ F. Muqet, et al, 'Accountability in the Work of NGOs', AMAN, 2007.

15.

PRIVATE SECTOR

It is difficult to make generalisations regarding the private sector because of its diversity and plurality, as it includes banking, insurance, industry and trade. Nevertheless, it is possible to assess it on three levels:

- Laws and regulations
- Transparency and public access to information on its activities
- The role of the private sector in promoting integrity and transparency

Resources and Structure

The Palestinian private sector is different from most other sectors because it relies on its own funds and is generally linked to wealthy families. Only relatively recently have businesses engaged in joint ventures with international partners, and this is still fairly limited. It is fair to say the Palestinian private sector is the weakest in the region in terms of resources. It has suffered numerous setbacks due to the political situation and has experienced an investment drain due to instability in the region.

Legal framework

Palestinian companies operate in accordance with the Jordanian Companies Law No 12 of 1964 (applied in the West Bank); the British Mandate Companies Law No 22 of 1929 (applied in the Gaza Strip), and according to the public and private shareholding article stipulated in the general companies law at the registration department of the Ministry of National Economy. This legal framework does not provide sufficient shareholder protection or protection from fraud. Moreover, there is no appropriate legal framework to regulate monopolies within the private sector to ensure they operate fairly, transparently, efficiently and that consumers' rights are protected.

The role of the business sector as a pillar of the national integrity system

The business sector is the backbone of the national economy, employing a large number of people and continually creating jobs. The business sector regulates itself by means of several representative bodies. The oldest of these are the chambers of commerce, industry and agriculture, which are based in Jerusalem. The Businessmen's Association was established in 1997 as a non-profit organisation representing business people with the mission of keeping the Palestinian private sector abreast of regional and international economic developments. The association established the Center for Private Sector Development, which has run a number of programs and activities on corporate governance. It has also established the Private Sector Coordination Committee, which constitutes a forum for businesses to express their political positions and address national and public issues in addition to business affairs. The private sector suffers from a number of problems, most importantly the plurality of representative bodies and a lack of regular elections in those representative bodies, especially the chambers of commerce.¹²⁹

Transparency

The Companies Law and the instructions of the Palestine Monetary Authority and Capital Markets Authority obligate public companies and banks to disclose their balance sheets and activities to all shareholders, as one means to provide information to the public. Mechanisms for monitoring companies and their activities, however, are weak.

Despite the existence of legal control over companies, there are several gaps in the law regarding public shareholding companies, protection of shareholder rights and transparency in these companies. There is a definite weakness in this area, and the authorities of various official bodies over financial and administrative

¹²⁹ www.paltrade.com

control overlap. Some public and private companies do not disclose all required information to the public.

A limited number of companies concern themselves with corporate responsibility, and when they do the goal is usually publicity. Companies have become more aware of this responsibility, however, and there is potential for strengthening the social role of the private sector in the future.

There is a clear bias toward the private sector in terms of decision-making in government. Policies that favour the private sector are often adopted without in-depth study of their impact. The private sector has had a very significant influence on government, particularly in the successive governments formed during the past two years (2007 and 2008).

No documentation exists concerning corruption in the private sector, including bribery and other practices, because the private sector does not release information in this regard and the media have not been effective in investigating these issues.

Independence

Public and limited liability companies are accountable only to their owners, shareholders, supervisor and the Capital Markets Authority (CMA). Banks, however, are subject to strict scrutiny of the Palestine Monetary Authority (PMA) and are bound by law to have regular audits as a means of ensuring sound procedures. The Anti-Money Laundering Law of 2007 (approved by a presidential decree) represents a new mechanism to control bank operations.

The private sector is considered one of the sectors most susceptible to corruption, in the form of bribes and commissions. However, this does not exist on a large scale. The most widespread form of corruption is conflict of interest, particularly in granting monopolies and concessions in public utilities, such as telecommunications, cement, tobacco and petroleum, for persons who work in public institutions or private companies.

Combating corruption

The Corporate Governance Commission has assisted public shareholding companies in drafting the Good Governance document for shareholding companies. This requires awareness programs on combating corruption and money laundering to be conducted, in the form of seminars and publications.

Complaints / Enforcement Mechanisms

The supervisor at the company is the party responsible in the public sector for handling all complaints related to companies. Violations are referred either to the judiciary, the general insurance companies' supervisor, the Palestine Monetary Authority or the sectoral coordination bodies.

Governance

Globalisation and modern telecommunications have created a new atmosphere of local and foreign competition for companies operating in the West Bank and Gaza. Recently the PNA issued several pieces of legislation to regulate the private sector, in addition to the regulatory frameworks of companies, particularly those listed on the Palestine Securities Exchange (PSE). These include the Monetary Authority Law, Banks Law, Investment Promotion Law, Capital Markets Authority Law, Securities Law, Law on the Practice of Auditing, Insurance Law, Illicit Gains Law, Anti Money-Laundering Law, and the Decision by Law of 2008 to amend the Companies Law. These laws include the set of rules and principles

at the core of international practices of governance. In parallel with these laws the Capital Markets Authority has formulated rules for corporate governance in Palestine, in coordination with the Palestine Securities Exchange, Palestine Monetary Authority, International Finance Corporation (IFC) and AMAN. The interest of various countries and international institutions in this topic has recently increased following the economic crises in East Asia and Latin America, as well as the financial and economic scandals afflicting large companies at the beginning of the century. Consequently, a national corporate governance committee was formed in Palestine consisting of representatives of monitoring bodies as well as legal and academic experts. The National Corporate Governance Committee set up a technical team to formulate a code of conduct on corporate governance according to a previously developed plan. The code has been published on the websites of several institutions, but there is no mechanism in place to monitor compliance by companies.

Influence of the private sector

Despite the powerful role of the private sector in public economic life and the national economy, it is important that it neither influences government officials nor is influenced by them, and that its relationship with the public sector be regulated. However there are several indications that the influence of the private sector on the public sector in Palestine is increasing. There are several areas of conflict of interest and corruption in which individuals are actively engaged in both the private and public sectors.

This growing influence of the private sector on the public sector has not yet reached the point that government control over activities of the private sector is ineffective. In several cases authorities responsible for overseeing the private sector have taken significant steps to protect shareholder and citizen rights. For example, the Palestine Monetary Authority appointed an ad hoc committee to supervise the International Bank of Palestine after the bank's management was charged with a number of violations. The authorities also liquidated the Arab Insurance Company and intervened in the deal between Zain and the Palestinian Telecommunications Company (PALTEL) to preserve public rights.

The relationship of the business sector to other pillars of the national integrity system

The Businessmen's Association, which represents a large number of businesses, and other well-organised unions, such as the Federation of Industries and others, participate in a coordination council representing the private sector, civil society organisations and local government that conducts activities to promote integrity and transparency. Private sector organisations serve as a liaison between NGOs and the state on one hand, and between NGOs and the private sector on the other. There is no relationship between this sector and political parties or the PLC. The relationship of the private sector with the government is restricted to issues pertaining to the private sector.

Recommendations on the business sector

- Support national efforts to implement a corporate governance code.
- Companies and sector representatives must implement the private sector professional code of conduct, enhance auditing procedures, prevent extortion and bribery, and develop a culture of sound practices by the staff of private businesses and enterprises.
- The PNA must develop a legal framework to regulate monopolies and concessions, and monitor compliance with this legislation. It must review existing monopolies and concessions to allow for competition, distance the government from market competition, and restrict its role to oversight of policies and their implementation.

16.

LOCAL GOVERNMENT STRUCTURES

Article 85 of the amended Basic Law of 2003 states:

“The law shall organize the country into local administrative units, which shall enjoy juridical personality. Each unit shall have a directly elected council, as prescribed by law.”

The Palestinian Local Council Law No 1 of 2001 identifies the areas of responsibility of the local administrative units, how they are to be financed, their relationship to national government and their role in the drafting and implementing development plans. The law specifies the means by which oversight will be provided to these units.¹³⁰ There are 331 local and municipal councils in the West Bank and the Gaza Strip.

Resources and the role of local government as a pillar of the national integrity system

Municipalities operate independently. They draft their own budgets, most of which are allocated to infrastructure development projects. Disbursements from the national government constitute only 15 per cent of their overall revenues. Municipalities in the Gaza Strip collect property taxes directly, using 90 per cent and sending the remaining 10 per cent to the national government. The central government collects fuel taxes, with a certain percentage to be sent to municipalities as prescribed by law. The Local Council Law of 2001 stipulates that half of the revenues from fuel taxation, vehicle registration fees and traffic tickets are to be allocated to local authorities. The PNA, however, does not disburse these revenues to the local councils because some local councils do not pay their water and electricity bills to Israeli providers. As a result the Israeli government deducts these amounts directly from returns. It should be noted that Palestinian municipalities implement most infrastructure projects essentially through donor funding.¹³¹

Article 15 of the Local Councils Law stipulates the functions, responsibilities and powers of local councils to be exercised by the council or its staff within their geographic jurisdictions. The Ministry of Local Government, which oversees local councils, regulates their administrative structure in accordance with operational bylaws it issues.

Accountability and mechanisms to safeguard integrity and transparency

The law provides for several levels of control over local councils:

- **External control:** A legal auditing firm must audit accounts.
- **Legal and administrative control:** The Ministry of Local Government and State Audit and Administrative Control Bureau provide oversight.
- **Internal control:** An internal control committee is to be formed by the municipal or local council.
- **Control by the Higher Justice Court:** Handles cases not considered by regular courts.
- **Control by the Independent Commission for Human Rights:** The grievances of individuals and institutions are considered.

The main problems confronting the work of local councils are:

- The mechanisms and standards for granting facilities, providing services, issuing building licenses and making appointments are weak and vague, and lack transparency. In addition, they are largely driven by family, political and personal interests.
- Organisational and administrative structures are weak. The Ministry of Local Government has not yet completed drafting operational bylaws.
- Most local councils do not have a tradition of drafting budgets and lack experience.

¹³⁰ Local Councils Law No. 1 of 2001.

¹³¹ Hadeel Qazzaz, et al, ‘Survey of National Integrity System Reconstruction’, Report Coordinator, AMAN, Palestine, 2007.

- There have been some instances of violations of the law, abuse of power and conflict of interest in local government tenders.
- Local councils lack transparency and openness in their relationships with the public. It is uncommon for local councils to meet regularly with residents to openly discuss problems in the community.
- Government control over local council operations is extremely weak.
- It is unclear to what extent legislation dealing with conflict of interest and disclosure of financial status applies to the heads and members of local councils and staff.
- A code of conduct does not exist for heads and members of local councils.
- No clear mechanisms are in place for addressing complaints by the public.
- A number of local councils are appointed and not elected. This is the case in Hebron, for example.

Transparency

Local councils do not make their financial and administrative reports or plans available to the public. Only council members have access to these reports, programs and plans. Community participation in the development or approval of plans at the local level is rare.

Complaints / Enforcement Mechanisms

No clear mechanism exists to handle complaints in local councils. Factors contributing to this problem are the unstable relationship of local councils to the Ministry of Local Government, the institutional instability of the Ministry of Local Government itself, the weakness of the judiciary, and a culture of unwillingness to hold local councils accountable for political, factional or partisan considerations.

The relationship of local government institutions to other pillars of the national integrity system

Local governments engage in projects or fixed-term activities with non-governmental institutions. They do not have any institutionalised relationships with the private sector or civil society. Moreover, the activities of local councils are often of a factional or tribal nature, especially in rural local councils. Political parties do not have mechanisms in place to provide oversight to their representatives in local councils. The Ministry of Local Government has a very limited role in this regard and the Association of Palestinian Local Councils only provides guidance and recommendations. Local councils that have been appointed, rather than elected, lack popular and legal legitimacy, and the process of appointing council members usually lacks transparency and fails to comply with any standards.

Recommendations on local government

- Put systems in place to ensure transparency and accountability in the performance of local councils in their management, project implementation and service delivery to the public.
- Adopt and implement codes of conduct for local councils.

17.

INTERNATIONAL INSTITUTIONS

Israel's occupying forces is the chief external party affecting the PNA and Palestinian society within the West Bank and Gaza. It has played a detrimental role, encouraging corruption through promoting select officials within the PNA to serve its purpose, hence obstructing attempts to reform Palestinian institutions. Furthermore, the occupation has strangled economic activity through closures, checkpoints and restriction on movement and travel, which have added to the problem. Neighboring countries such as Egypt and Jordan have also had an influence on the development of Palestinian legislation. And the international community has focused on building strong Palestinian security institutions at the expense of human rights and principles of transparency and accountability.

In general, international donors have had a direct influence on the PNA and its institutions, although it is not fair to generalise about all of them. Donors include governmental and non-governmental institutions, the United Nations and private firms. The amount of funding granted to the Palestinian people by donors varies, as do the mechanisms of oversight and accountability used to monitor the projects they finance.

The integrity, transparency and accountability of donor organisations can be assessed on two levels.

- Internally, donors rarely make their financial and administrative reports available to the Palestinian public and are not subject to the control of any Palestinian entity, although they obtain funds pledged to the Palestinian people. Their budgets and mechanisms of disbursement are unclear.
- In terms of their relationship to Palestinian institutions, donors have different types of relationships with their beneficiaries due to the multiplicity of agendas, goals and modes of operation they employ. A number of institutions do not disclose project budgets even when they have entered into a partnership with a Palestinian organisation.

Furthermore, some donor organisations employ questionable practices. For example some use the same contractor for most of their projects. Their tendering process does not appear to be genuine and they have no protocols to ensure transparency. The amounts of money they spend on some projects do not appear to correspond with the scope of the projects.

In the recent past donor organisations have been involved in implementing projects directly, and some have attempted to marginalise official and non-governmental Palestinian parties. It is not standard procedure for these institutions to report on their activities to any Palestinian body, and most do not consider themselves accountable to any Palestinian entity.

Transparency

International institutions and non-governmental organisations lack transparency, as they do not publish their balance sheets, provide information on their projects or make public the criteria they use for appointments. They are accountable to their headquarters and not to any local or community control. They constitute the main competitor of the governmental and non-governmental sectors in attracting funding; large international non-governmental institutions often have budgets that exceed by far those of PNA ministries operating in the same field.

Foreign donors sometimes attempt to impose conditions on Palestinian partners, such as the signing of the anti-terrorism certificate required by American and Canadian donors.

No foreign institution has been held accountable for the failure of its project or operations by the PNA or a community-based party, while Palestinian institutions are frequently subject to this.

The relationship of international institutions to other pillars of the national integrity system

Some international donors fund Palestinian institutions with an agenda of promoting their ideological or political goals. A number of donors and diplomatic missions have interfered by trying to direct Palestinian priorities and development agendas.

Since the recent political division between Fateh and Hamas, it has become apparent that UN agencies are attempting to influence policy-making in Palestinian institutions and interfere in many other issues.

Recommendations on international institutions

Donors must be persuaded to coordinate all grants and aid with the PNA, whether their assistance is intended to support the budget or developmental projects, in order to ensure such assistance is consistent with the vision and development plan adopted by the PNA. There is also a need for donors to include civil society organisations in the oversight and management of aid, through regular meetings between donors and recipients, to ensure such assistance meets the real needs of the Palestinian society. All donors must be subject to the mechanisms of accountability prescribed by Palestinian law, though this can only be possible if they agree to conduct their operations with transparency.

