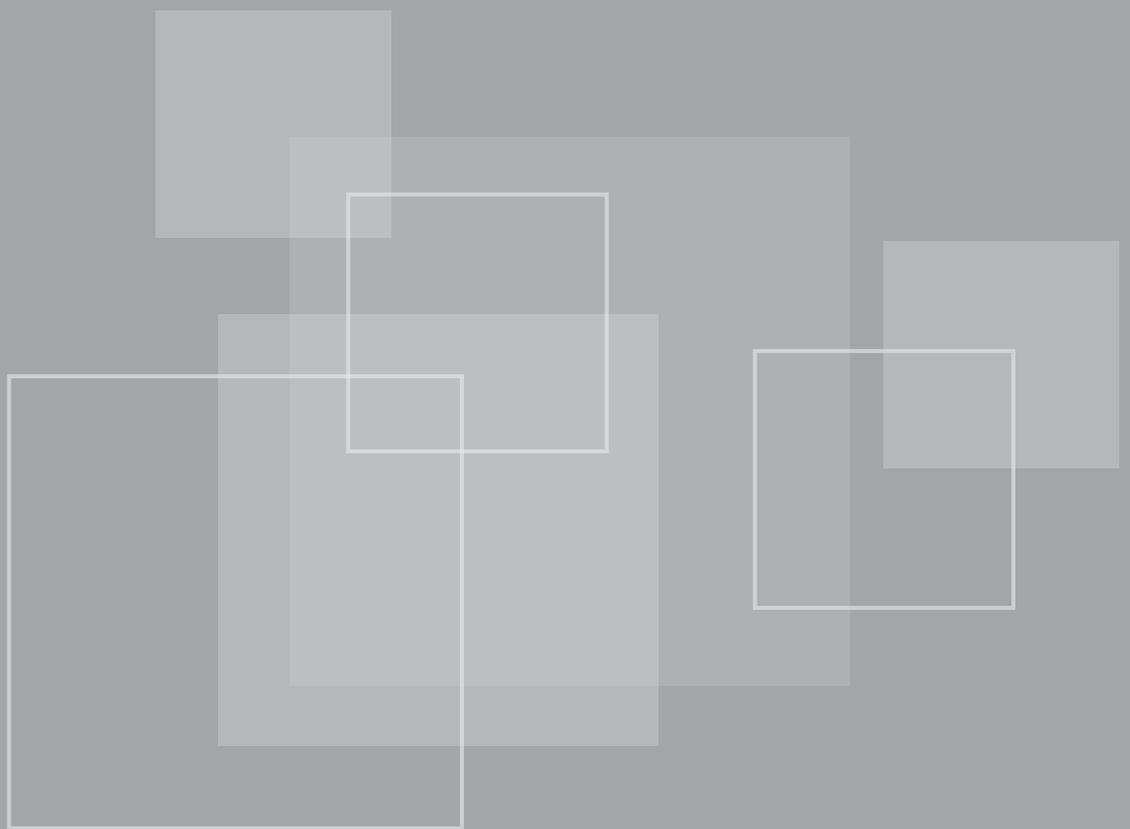


# Improving the Consistency of Palestinian Security Sector Legislation with the United Nations Convention against Corruption



**DCAF**

a centre for security,  
development and  
the rule of law

**Preventing Corruption in the Palestinian Security Sector**

**Improving the Consistency of  
Palestinian Security Sector Legislation  
with the United Nations Convention  
against Corruption**

Geneva Centre for the Democratic Control of Armed Forces (DCAF)



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the rule of law

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The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is an international organisation dedicated to assisting states – both developed and emerging democracies – in advancing good security sector governance, within a democratic framework and in respect of the rule of law. DCAF provides in-country advisory support and practical assistance programmes to states that seek to strengthen governance of their security sector. DCAF works directly with national and local governments, parliaments, civil society, international organisations and defence and security forces.

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## **LIST OF ABBREVIATIONS**

ACC	Anti-Corruption Commission
AMAN	Coalition for Accountability and Integrity
DCAF	Geneva Centre for the Democratic Control of Armed Forces
ICHR	Independent Commission for Human Rights
ICRC	International Committee of the Red Cross
PLC	Palestinian Legislative Council
PNA	Palestinian National Authority
SAACB	State Audit and Administrative Control Bureau
UNCAC	United Nations Convention against Corruption

# Executive Summary

On 2 April 2014, Palestinian President Mahmoud Abbas signed the United Nations Convention Against Corruption (UNCAC), the only globally agreed framework for combating corruption. One month later, the UNCAC entered into force in Palestine. Palestine is now obliged to incorporate the convention into domestic legislation. It must also make the necessary changes to its institutions and practices. This requires effecting corruption-preventive measures at both the domestic and international level. At the domestic level this involves criminalising certain conducts. At the international level it means strengthening international law enforcement, judicial cooperation, technical assistance, and the provision of effective legal mechanisms for stolen asset recovery and exchange of information.

Although the UNCAC outlines international standards, it does not stipulate how to put them in place. Each state must determine its own priorities and the appropriate sequencing of reform steps. This requires a broad political dialogue with domestic and international stakeholders and the crafting of technical assistance programmes.

In order for Palestine to implement the UNCAC, it will have to identify and address its own corruption risks. In particular, this means scrutinising the security sector, its budget, and its transparency and accountability mechanisms. This is especially important given that the Palestinian Authority spends more on security than on any other sector: In 2014, total security spending amounted to USD 1.2 billion - 30.6% of its total budget, compared to only 18.4% for education and 13.1% for health.

## Why this report?

In its endeavour to fulfil its obligations under the UNCAC, the Palestinian Council of Ministers in December 2013 requested DCAF's assistance in examining Palestinian security sector legislation. It particularly wished to examine those laws pertaining to corruption prevention measures. The Council of Ministers sees the analysis of this

legislation as a first step in a self-assessment of compliance with the UNCAC.

In response to this request, DCAF designed a participatory process to review selected pieces of Palestinian security sector legislation. The aim was to assess their compliance with the preventive measures included in the UNCAC. This process involved consultations with civil society organisations, Palestinian legal experts, security forces, ministries and oversight bodies. Specifically, this report draws on survey responses from security agencies and workshops with representatives of Palestinian security agencies and with the Higher National Committee of the Legislative Plan. DCAF also included international anti-corruption experts who assisted in the analysis and provided a peer review on the final report.

## Summary of conclusions

At present, Palestinian security sector legislation incorporates corruption-prevention measures only in a piecemeal fashion. As such, it is only partially consistent with the UNCAC. The legislation provides an insufficient foundation for preventing corruption, and more needs to be done – including revisions of certain texts – in order to achieve coherent standards of transparency, integrity and accountability. Particular weaknesses include the following:

- **The lack of an access to information system is undermining anti-corruption efforts:** while the principle of confidentiality is necessary in the security sector, it should not obstruct transparency and information sharing. Interests of state security need to be balanced with public access to information. At present, access to information is granted at the personal discretion of security sector officials. It is important to clarify the criteria and processes that govern access to information, to institutionalise this process and ensure the right balance is established. Ensuring access to information is a crucial step

towards strengthening informal oversight and combating corruption in the security sector.

- **Security agencies and employees are often exempt from financial oversight laws that regulate other public employees:** there is a division in the Palestinian National Authority between employees that are 'civilian' or 'public' and security employees. This distinction is implied from Article 84 of the Amended Basic Law of 2003, and the Law of Service of 2005. This means that the security forces are considered immune from many anti-corruption provisions, including those pertaining to declaration of financial statements.
- **Current human resource management practices increase corruption:** Effective human resource management reduces corruption risks. It provides for transparent recruitment procedures that are based on objective and equitable criteria and a merit-based promotion system. In the Palestinian security sector, human resource management remains opaque. The relevant laws are often contradictory, and frequently are not respected (one example are the provisions around the rotation of leadership positions).
- **Most security agencies have not adopted codes of conduct:** Integrity and transparency should be the guiding principles for internal management of security agencies. The adoption of codes of conduct, as recommended by the UNCAC, would aid anti-corruption efforts. It would notably help address issues raised by this report, such as the disclosure of financial assets, gifts received and conflicts of interest.
- **Weak formal oversight of the security sector hinders anti-corruption efforts:** The Palestinian Anti-Corruption Commission (ACC) has an unclear and irregular mandate, and its role is only reactive: it reviews corruption cases referred to it by other bodies (such as the Palestinian Legislative Council (PLC), or the General Inspectorate). In order to minimise corruption risks, and

ensure transparency and accountability, the public needs to have access to an anti-corruption body which has the resources and the authority to proactively seek out and investigate cases of corruption. In the absence of a functioning parliament (the PLC), the role of a public anti-corruption authority becomes even more important.

By signing the UNCAC, along with a host of other international conventions, the Palestinian National Authority has signalled its will to meet international standards for good governance. It now needs to take concrete steps to ensure that this will is made reality. DCAF hopes that this report will contribute to these efforts.

# Introduction

## Background

The security sector often provides a fertile ground for corruption. It is frequently characterised by a culture of secrecy on the grounds of national security. This hinders accountability and creates the risk of patronage, nepotism and bribery. To fight this, states must create a legal and institutional framework grounded in the principles of good governance. This report focuses on four elements of good governance which are fundamental to making anti-corruption measures work:

1. Integrity;
2. Transparency;
3. Accountability and oversight;
4. The participation of society.

These components are critical to an effective and accountable security sector that functions according to international best practices. They are also in line with the standards set by the (UNCAC).

Palestine acceded to the UNCAC in April 2014, and the convention entered into force in Palestine on 2 May 2014. Article 65(1) of the UNCAC provides that each state party will adopt public policies to prevent corruption. The UNCAC further urges state parties to consolidate good governance, the rule of law, transparency, and accountability in their domestic systems. It asks that legislative authorities enact laws in accordance with the standards set out in the convention. It also asks that state parties ensure that these are implemented in line with the UNCAC's principles and obligations.

However, Palestine would need to reform its legislation to bring it in line with the convention. The legal framework of the Palestinian security sector is still incomplete. The Oslo Accords, which were signed between 1993 and 1995, partially created the legal and constitutional framework that served as a basis for the Palestinian National Authority (PNA). They also provided for a

number of PNA security forces. However, no clear legislative framework existed when the various security forces were established, and many of them lacked basic founding laws. Apart from a number of regulations inherited from earlier periods, only very limited legislation has since been put in place to govern the operations of security agencies. This has resulted in many Palestinian security actors having overlapping powers, and lacking defined legal mandates. Much of the newer legislation that the PNA has enacted since then serves mainly to strengthen control over the population and protect the governing authorities.

## What is the UNCAC?

The UNCAC is a landmark international anti-corruption treaty adopted by the UN General Assembly in October 2003. It represents a consensus-based global response to the problem of corruption. It outlines obligations on its states parties to implement policies to reduce corruption and to enforce sanctions against it. As of April 2015 there were 140 signatories and 175 states parties to the UNCAC.

The main areas of the UNCAC cover:

- **Prevention:** State parties must adopt coordinated policies to prevent corruption and designate 'a body or bodies' to coordinate and oversee their implementation. Such policies shall entail measures such as:
  - o Transparent procurement systems;
  - o A merit-based civil service;
  - o Access to information;
  - o Civil society involvement in the fight against corruption;
  - o Public auditing procedures, and
  - o Anti-money laundering measures.

- **Criminalisation:** State parties must criminalise bribery, embezzlement, obstruction of justice, and the concealment, conversion or transfer of criminal proceeds. This applies equally to crimes in the public and private sectors.
- **International cooperation:** State parties are obliged to assist each other in cross-border criminal matters.
- **Asset recovery:** The UNCAC provisions lay a framework, in both civil and criminal law, for tracing, freezing, forfeiting, and returning funds obtained through corrupt activities.<sup>1</sup>

## How does the UNCAC relate to the security sector?

The UNCAC applies to both the private and public sectors, and thus, by extension, to all aspects of the security sector. The most relevant part of the UNCAC for security sector actors are the articles on prevention.<sup>2</sup> The UNCAC states that all state parties must make efforts both in legislation and practice to prevent corruption in all sectors, including the security sector.

## Why this report?

In its endeavour to fulfil its obligations under the UNCAC, the Palestinian Council of Ministers requested in December 2013 DCAF's assistance in examining Palestinian security sector legislation. It particularly wished to examine those laws pertaining to corruption prevention measures. The Council of Ministers sees the analysis of this legislation as a first step in a self-assessment of compliance with the UNCAC.

## Objectives and scope of this report

This report presents DCAF's response to the request received from the Council of Ministers.

<sup>1</sup> Hannes H., 2010. *An Ambassador's Guide to the United Nations Convention against Corruption*. (U4 Brief July 2010 special) [pdf] Bergen: Chr. Michelsen Institute (updated in 2013). Available at: <<http://www.u4.no/publications/an-ambassador-s-guide-to-the-united-nations-convention-against-corruption/>> [accessed on 20 April 2015].

<sup>2</sup> UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58422/, available at: <http://www.refworld.org/docid/4374b9524.html> [accessed on 20 March 2015], Chapter 2, or arts. 514.

The report provides a gap analysis of selected pieces of Palestinian security sector legislation with the preventive measures of the UNCAC. It looks at how these laws compare with the requirements of the UNCAC, assessing to what extent the current Palestinian security sector legislation helps prevent corruption.

This report analyses key pieces of Palestinian security sector legislation to assess their compliance with the preventive measures of the UNCAC. It focuses on the standards of integrity, transparency, accountability, and the participation of society in anti-corruption methods.

In particular, this report focuses on three key pieces of Palestinian security sector legislation:

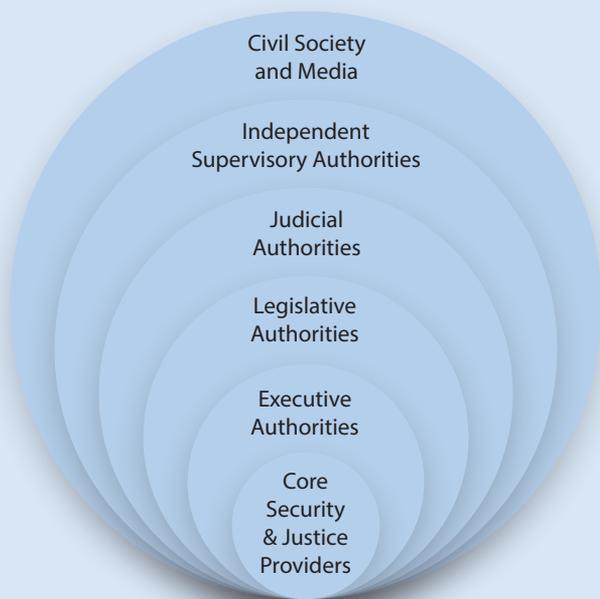
1. The *Law of Service in the Palestinian Security Forces No. 8 of 2005*. This law prescribes necessary regulatory provisions and serves as the governing framework for the Palestinian security agencies. However, it neglects some aspects of the security forces, such as their organisational structure and legal and administrative terms of reference.
2. The *Law on General Intelligence No. 17 of 2005*, which governs the functioning of the General Intelligence Agency and defines its powers.
3. The *Law by Decree on Preventive Security No. 11 of 2007* which governs the Preventive Security Agency and defines its powers.<sup>3</sup>

These three legal texts have been heavily criticised for the restrictions they impose information sharing within the security sector, and the extensive powers they grant to the security agencies.

Although the report focuses mainly on these three laws, it also considers the broader body of Palestinian security sector legislation. According to DCAF's definition, the security sector consists not only of security agencies, but also of the institutions that govern them (ministries), those providing formal and informal oversight over them (parliament, civil society and the media),

<sup>3</sup> For the full text of these laws, and all other relevant pieces of security sector legislation, see Friedrich, R. Luethold, A. and Milhem, F., eds., 2008. *The Security Sector Legislation of the Palestinian National Authority*, Geneva & Ramallah: DCAF. Available at: <<http://www.dcaf.ch/Publications/The-Security-Sector-Legislation-of-the-Palestinian-National-Authority>>.

## What is the Security Sector?



The security sector consists of the core security and justice providers and their management and oversight institutions. The legal and policy framework regulates their tasks, authorities and structures.

Core security and justice providers:

- Security forces (armed forces, police, intelligence and security services, but also liberation armies and insurgency groups);
- Justice and law enforcement institutions (courts, prosecution services, prisons, traditional justice systems).

Management and oversight institutions:

- Executive management and oversight bodies (presidency, council of ministers, ministries of defence, interior, justice and finance);
- Legislative management and oversight bodies (parliament and its committees, ombudspersons);
- Informal oversight institutions (civil society organisations, media, research and advocacy organisations).

and the citizens and communities receiving their services. Applying this definition, the Palestinian Authority has passed several other pieces of legislation related to anti-corruption in the security sector<sup>4</sup>, such as the *Law on Illegal Gains No. 1 of 2005* and the *Palestinian Law on Public Procurement No. 8 of 2014*, as well as the *Amended Basic Law of 2003* (the proto-constitutional text of the PNA)<sup>5</sup>. However, as this report shows, these laws do not apply or are not being applied to the security sector because of Palestinian legislation and practice set different standards for military and civilian personnel.

<sup>4</sup> For a complete collection of financial and administrative legislation, see DCAF. 2013. *Palestinian Legal Collections: Financial and Administrative Oversight in the Security Sector*. Geneva: DCAF, 2013. Available at: <http://www.dcaf.ch/Publications/Palestinian-Legal-Collections-Financial-and-Administrative-Oversight-in-the-Security-Sector/>.

<sup>5</sup> The *Amended Basic Law of 2003* regulates the system of governance, public rights, and freedoms in the PNA-controlled territory. It serves as the Palestinian constitution until the establishment of an independent Palestinian State.

## How was this report prepared?

In response to the request by the Council of Ministers, DCAF designed a process to conduct a participatory review of the legislation in question and related practices. Specifically, DCAF:

- Mandated a Palestinian legal expert to work with DCAF on the gap analysis of Palestinian security sector legislation;<sup>6</sup>
- Developed a survey, including questions on integrity, transparency, accountability, oversight and participation of society. Completed by security agencies, the survey examined the consistency of the Palestinian legal framework with the UNCAC and current practices of Palestinian security agencies;
- Held consultations with civil society organisations to gather their input, and review existing expertise on the subjects of anti-corruption and the UNCAC;
- Organised three workshops with representatives of Palestinian security agencies<sup>7</sup> and three workshops with members of the Higher National Committee of the Legislative Plan, gathering their opinions and recommendations;<sup>8</sup>
- Held a public consultation on the topic of anti-corruption and the findings of this report;
- Invited the Basel Institute on Governance to peer review this report.

<sup>6</sup> For more information on the legal framework, a background paper is available through DCAF, Ramallah.

<sup>7</sup> Held on 14 April 2014, the first workshop involved representatives of the General Intelligence Agency. The second workshop was held on 16 April 2014 and brought together officers from the National Security Forces and Military Intelligence Agency. The third workshop took place on 19 April 2014 with officers of the Preventive Security Agency. The workshops were designed to identify legal gaps, and highlighting challenges to integrity and transparency in light of standards and controls set by the UNCAC. The workshops were informed by a survey designed previously for this purpose.

<sup>8</sup> Two meetings with the Higher National Committee of the Legislative Plan were held on 21 April and 12 May 2014.

## Structure of this report

This report is structured according to the principles of good governance listed in the introduction: integrity; transparency; accountability and oversight; as well as participation of society.

- *Chapter 1:* This report begins by analysing the consistency of the Palestinian security legislation with principles of integrity and transparency. Specifically, it focuses on how effective the current legislation is at preventing conflict of interest; applying codes of conduct; reporting corrupt practices; preventing the giving and receiving of gifts; declaring financial statements; and complying with procurement policies and systems. Chapter 1 then proceeds to consider how consistent the security sector legislation is with ensuring access to information, including making information available online; publishing financial and narrative reports; and applying transparent and standardised human resource management procedures.
- *Chapter 2* of the report assesses the accountability systems contained in the current security sector legislation, and opportunities for participation of society. Specifically, the report considers internal control systems; complaint processing systems; organisational structures; rotation of leadership positions; and mechanisms for community participation.
- *Chapter 3* of the report proposes a number of recommendations with a view to assisting public authorities and decision makers in amending or reforming legislation and practice, and bringing them in line with the provisions of the UNCAC.

# 1. Consistency with principles of integrity and transparency

This chapter examines how consistent Palestinian security sector legislation is with principles of integrity and transparency.

## How consistent is Palestinian security sector legislation with integrity values?

The UNCAC, particularly in Article 5(1), is the most important international instrument that defines integrity<sup>9</sup> and transparency<sup>10</sup>. The following six sections provide a description of the most relevant indicators of integrity and transparency, and an analysis of the compliance of selected Palestinian security sector laws with these principles.

## Preventing conflict of interest

### THE UNCAC STANDARDS

In the context of public functions, Article 7(4) of the UNCAC includes provisions designed to prevent conflicts of interest: “Each state party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest”. Preventing conflict of interests serves to buttress integrity and transparency values.

Palestinian primary legislation provides for preventing conflicts of interest in the security sector. The *Law of Service in the Palestinian Security Forces No. 8 of 2005* explicitly prohibits conflicts of interest in operations carried out by security agencies in Articles 90, 91, 93, 169, 170 and 172. The law further prescribes disciplinary penalties

<sup>9</sup> Integrity comprises a set of values, including honesty, trustworthiness and sincerity. Technically, it requires a number of guarantees that prevent various corrupt practices do not compromise public interest. Musleh, A. 2007. *Integrity, Transparency and Accountability in the Confrontation of Corruption*. 2nd ed. Coalition for Accountability and Integrity (AMAN), pp. 2223-. Also see: Kayed, A. 2010, *Integrity, Transparency and Accountability in Local Government Public Service Delivery*. p. 7.

<sup>10</sup> Most provisions of the UNCAC address these principles. Article 5 of the convention is not the only provision on integrity and transparency.

if security personnel breach this obligation. For instance, prosecutors can file civil and penal cases against offenders. Similarly, article 25 of the *Law on General Intelligence* explicitly lists conflict of interest as a prohibited act and provides for its prevention. Conflict of interest is also prohibited by Article 14 of *Decision No. 4 of 2004 on the Promulgation of the Regulation on Supplies and Procurements of the Palestinian General Intelligence*. The 2007 *Law by Decree on Preventive Security* does not provide for the prohibition of conflicts of interest. Practically, however, this law is subordinate to the *Law of Service in the Palestinian Security Forces*, which expressly forbids conflicts of interest.

While the primary legislation is thus fairly clear, the main problem is the lack of secondary legislation enacting it (executive regulations, rules and orders).

Some efforts have been made to ensure that security officers adhere to professional values. Before security officers occupy their positions in the General Intelligence Agency, they sign a pledge to adhere to professional values. The Preventive Security Agency also applies a code of professional conduct, which includes provisions on the prevention of conflicts of interest. But most security agencies (for example, the National Security Force, the Military Intelligence and the Civil Police) do not have professional codes of conduct, which could serve as tools to prevent and manage conflicts of interest.<sup>11</sup>

A second problem is related to identifying, reporting and investigating possible conflicts of interest. Even when codes of conducts are in place, their implementation should be ensured by an overseeing independent body with investigative powers, or an internal or external reporting mechanism that can submit cases for investigation. The Palestinian security sector currently does not have an effective direct oversight body which could proactively search for cases of corruption. The ACC is reactive, as it can

<sup>11</sup> This was a key recommendation of the stakeholders consulted for this report.

only review cases that are referred to it by other institutions.

## Applying codes of professional conduct

### The UNCAC standards

The UNCAC strongly encourages state parties to develop codes of conduct. Codes of conduct serve to inject integrity standards of behaviour in the public service. Article 8(2) of the UNCAC states that *“each state party shall endeavour to apply ... codes or standards of conduct for the correct, honourable and proper performance of public functions.”*

As indicated in the previous section, not all Palestinian security forces are obliged to have codes of professional conduct. So far the only agencies to create such codes are the General Intelligence and the Preventive Security. There is a general Code of Conduct for Public Employees, adopted by the Council of Ministers in 2012.<sup>12</sup> However this Code of Conduct is not specific to the security agencies.

The General Intelligence is the only security institution that is obliged by law to have a code of conduct. Article 24 of the *Law on General Intelligence* provides that a guidance manual be issued to regulate conduct and ethical standards of General Intelligence personnel. Such regulations for the General Intelligence were issued in 2007. The Preventive Security has created a code, even though the *Preventive Security Law by Decree* does not explicitly provide for the development and adoption of codes of professional conduct for its personnel. Article 8, however, prescribes that the Preventive Security Agency must safeguard rights, freedoms, and guarantees provided by other laws.

Most other security forces, for example National Security Forces and the Military Intelligence, do not have such codes, but are currently considering their development. Articles 89, 90, 91 and 93 of the *Law of Service in the Palestinian Security Forces* provide some directives, behavioural obligations and prohibitions for security personnel. But this law does not go so far as to oblige all agencies to develop codes.

<sup>12</sup> The original Arabic version can be consulted on the website of the General Personnel Council: <<http://www.gpc.pna.ps/diwan/conductFeedback.gpc>>.

As stated elsewhere, ensuring that codes of conduct are adhered to would also require mechanisms for identifying and addressing non-compliance. Currently, the PNA does not have an independent effective direct oversight body which disposes of investigative powers.

## Reporting corrupt practices

### The UNCAC standards

The UNCAC promotes measures for reporting corrupt practices without fear of reprisal.

- Addressing codes of conduct for public officials, Article 8(4) of the UNCAC states that *“[e]ach state party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.”*
- Article 8(6) states that *“[e]ach state party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.”*
- Article 33 of the convention states that *“[e]ach state party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.”*

The legal framework of the Palestinian security sector does not outline a procedure for reporting on cases of corruption. Nor does it provide any ‘whistle-blower’ protection.<sup>13</sup> This is a result of the perception of secrecy, on which operations of the security agencies rely. According to the provisions of relevant laws, information may not

<sup>13</sup> In particular, the Law of Service in the Palestinian Security Forces and Law by Decree on Preventive Security do not provide for reporting or relevant procedures at all.

be disclosed or announced without permission. There is no exception made for reporting cases of corruption. On the other hand, Article 25(2) and (9) of the *Law on General Intelligence* states that General Intelligence officers must avoid “negligence or failure due to which a right of the state may be violated”. Officers are also prohibited from “concealing errors and contraventions by their colleagues at work”. As they stand, these provisions are formulated rather too vaguely to constitute efficient anti-corruption measures.

However, there are some exceptions. The *Law on Illegal Gains No. 1 of 2005* and its amendments provide legal protection to those who report practices of corruption. And in practice, security personnel exercise reporting in line with the applicable chain of command, using available complaint management systems or electronic means.<sup>14</sup> Each security agency has a complaint department where its personnel can report on bribes or gifts. However, there are no documented procedures or clear legal frameworks regulating these departments.

The current system contains some elements that enable the reporting of corruption. But the Palestinian security sector does not have a mechanism or system to facilitate reporting by public officials of acts of corruption to the appropriate authorities. Whilst there are some independent bodies that could play this role, such as the ACC, its current mandate is too narrow for it to be effective (see box 1, page 21).

## Preventing the giving and receiving of gifts

### The UNCAC standards

In several instances, the UNCAC establishes certain acts as criminal offences, such as the bribery of public officials. Examples are articles 15, 16, and 18. This includes promising, offering or giving a public official, directly or indirectly, an undue advantage, in order that the officials act or refrain from acting in the exercise of his or her official duties.

Security agencies do not have clear, written procedures on how to keep track of and dispose of gifts. Article 12 of the *Code of Conduct for*

<sup>14</sup> Zeid (2014, p. 11).

*Public Employees*<sup>15</sup> generally provides that a public official may not accept a gift from any entity whatsoever. But this code does not apply to security personnel, and the legal framework of the Palestinian security sector does not address acceptance of gifts, nor does it state that special registers should be kept at public institutions.

In practice, the issue of giving and receiving gifts is tackled in some secondary legislation: the codes of conduct for the General Intelligence and the Preventive Security refer to the prevention of conflicts of interest and acceptance of gifts. Commanders of security agencies have also issued directives, preventing relevant personnel from accepting personal gifts. This is a common practice within security agencies. If presented to any agency, a gift is recorded on the agency’s registers. Personal gifts are forbidden. However, anti-corruption measures in the Palestinian security sector are greatly hindered by the lack of uniform codes of conduct across all institutions.

## Declaring financial statements

### The UNCAC standards

UNCAC’s Article 8 on codes of conduct for public officials states that such codes should contain obligations around financial disclosure.

Palestinian legislation commits public institutions to declare financial statements. The *Amended Basic Law of 2003* contains provisions on the declaration of financial statements. Although they do not cover all categories of employees or chairpersons of government bodies and public institutions, these provisions, namely Articles 54(2) and 80(1), serve as the primary legal framework for the declaration of financial statements. But the *Amended Basic Law* covers only the Prime Minister and the members of the PLC. It does not stipulate that all public officials are subject to relevant provisions.

Similarly, the 2005 *Law on Illegal Gains* and its amendments commits all public institutions, including security agencies, to declare financial assets. It states that directors of security agencies, including those with the rank of lieutenant and higher, sign financial declarations.

<sup>15</sup> Issued in accordance with the Council of Ministers’ Decision No. 0414/23//CoM/SF of 2012.

This is applicable to the General Intelligence, Preventive Security, the National Security Forces, and Military Intelligence. Evidence suggests that in practice, these provisions are applied in the security forces.

Declaring financial statements does not mean that they are made public. Usually the statements are given to the supervisory body or individually. In the security sector, there is no obligation for the financial statements of agencies to be published. As such, it is impossible for a Palestinian to know the spending of any individual agency.

## **Complying with procurement policies and systems**

### **The UNCAC standards**

The UNCAC states that clear, effective and efficient financial, administrative and accounting processes and systems, including procurement policies, should be in place throughout public institutions. Article 9 sets out the minimum standards to ensure an effective system of procurement as well as financial and accounting standards in the public sector. The interpretative notes also state that the signatory party is free to take any action, or not to disclose any information, that it considers necessary for the protection of its essential interests related to national security (A/58/422/Add.1. para 13).

The Palestinian security sector does not have a coherent procurement system, and is not subject to the system of the rest of the public sector. In general, Palestinian institutions follow the procurement system set out in the *Palestinian Law on Public Procurement No. 8 of 2014*. All procurement transactions of Palestinian public institutions are now subject to this law, apart from those of a 'high security nature'.<sup>16</sup> The *Law of Service in the Palestinian Security Forces* and *Law by Decree on Preventive Security* do not provide for a separate procurement system for the security sector.

Yet some security agencies have their own legally defined procurement systems. For instance, article 19 of the *Law on General Intelligence* does provide for a special regulation on procurement.

<sup>16</sup> *The Law on Public Procurement* was suspended in December 2014 for a period of one year.

Accordingly, the President of the PNA issued *Decision No. 4 of 2007 on the Promulgation of the Regulation on Supplies and Procurements of the Palestinian General Intelligence*. However, these provisions fall short of the standard set by the UNCAC, particularly in terms of oversight of procurement.<sup>17</sup>

## **How consistent is the security legislation with the principle of transparency?**

Articles 10 and 13(1) of the UNCAC provide for enhancing transparency in public administration. Article 13(1) requires signatories to encourage the active participation of the public in anti-corruption efforts in order for these to be effective. However, article 1 qualifies the obligation of the signatories to adopt and take measures to enhance transparency "where appropriate". This gives the signatory significant deference in deciding on public access to information.

## **Ensuring access to information**

### **The UNCAC standards**

Article 10 of the UNCAC requires effective access to public information. As the most important principle of good governance and transparency, freedom of information means that any person or entity, including citizens, journalists, media outlets, civil society organisations and political parties have access to information kept by public institutions. In practice and in the legislation, this access needs to be granted balancing public rights and interests with the interests of the state, usually related to state security.

In the context of security sector legislation, states should define standards for when and

<sup>17</sup> According to Tagarev (2010, p. 77), "[l]oosely defined or overly ambiguous procurement policies regularly lead to: 1) insufficient examination of the rationale for weapons systems procurement; 2) inefficiencies in government decisions with unhealthy consequences for national and regional security; 3) apprehension in neighbouring countries; 4) corruption in arms procurement and in all kinds of military-related procurement decisions; and 5) serious damage to public confidence in the armed forces, which may be discredited and subject to unnecessary controversies."

how to declassify information and make it available to the public. Specifically, the UNCAC requires procedures to exist for the public to gain access to information on the organisation, functioning and decision-making processes of state institutions, where appropriate.

Currently, the PNA has no law regulating “Access to Information”, although various draft laws were circulated since 2005.<sup>18</sup> Such a law is necessary in order to define what information should be publically available, and what information should be kept secret in order to protect the privacy of individuals or national security. The myriad of systems and provisions in other laws for disclosing or protecting information are conflicting and reflect the confusion of legislation. There are no instructions available which safeguard citizens’ rights to access information.

Article 90(5), (6), (7) and (10) of the *Law of Service in the Palestinian Security Forces* prescribes acts that security personnel are prohibited from performing. These include:

- Revealing information or clarifications about issues which must remain confidential in their nature, or as per special directives. Security personnel must continue to respect professional confidentiality after the end of their service.
- Keeping originals or copies of any paper or official document, even if the document was pertaining to a work he/she was assigned to perform personally.
- Contravening the procedures of private and public security on which a decision is issued by the competent minister.
- Issuing statements to the media, except under official authorisation by the competent minister.

An examination of these provisions shows that the procedures to access or disclose security

<sup>18</sup> One draft currently under consideration by the Council of Ministers is the “Palestinian Draft Law on Access to Information: Bringing access to information legislation in line with international civil-democratic standards”, Geneva: DCAF, 2013. Available at: <<http://www.dcaf.ch/Publications/Palestinian-Draft-Law-on-Access-to-Information-Bringing-access-to-information-legislation-in-line-with-international-civil-democratic-standards>>.

information are unclear. There is no specific process in place that defines whether information should be classified as confidential or as public information. The articles above further state that no information may be published, independently of whether an officer is still on duty or his/her service has been terminated.<sup>19</sup>

According to Articles 23 and 25 of the *Law on General Intelligence*, disclosure by intelligence service officers and management of any information, including testimonies before courts, is strictly forbidden except with special permission. General Intelligence officers are not allowed to reveal any information to the media, even after the end of active service. Furthermore, Article 30 of the *Law on General Intelligence* prescribes that information on the “activities, functions, documents, headquarters and properties and the data of the members” of the General Intelligence Agency falls under national security, and cannot be shared with the public by any member of the agency, including after the end of service.

Article 10 of the *Law by Decree on the Preventive Security* states that “(1) The investigations and information of the Directorate General of Preventive Security may not be viewed except upon special permission from the competent minister or in execution of a judicial decision. (2) The information, activities and documents pertaining to the work of the Preventive Security [Agency] shall be deemed to be confidential and may not be disclosed.” Like other laws, this law prohibits disclosure of information relating to operations implemented by the Directorate General of Preventive Security. It also classifies information and documents of the agency as secret information, which may not be revealed.<sup>20</sup>

In addition to legal issues, access to information is also hindered by practical factors: Palestinian security agencies use paper-based filing systems. For example, the Preventive Security Agency has an archive section and an information management system. At the time of this report, no security service has introduced an e-filing system.<sup>21</sup>

<sup>19</sup> Alawneh (2013, p. 265).

<sup>20</sup> See footnote 14.

<sup>21</sup> Source: DCAF workshops and focus groups.

As it stands, access to information is based on the personal discretion of members of the security agencies, with no guidelines or criteria in place, and the issue of confidentiality is frequently invoked.

## Publishing information online

### The UNCAC standards

The UNCAC Legislative Guide to Article 9 gives a number of suggestions for guidelines and good practice in the area of publishing information online. Websites are a tool which security agencies can use for communication with the public and for the publication of general budgets, administrative and financial reports, and operational procedures. Besides electronic performance evaluation, websites facilitate public access to information on many relevant issues, including announcements, statistics, jobs, news, and organisational structures. Citizens can also file complaints via security agency websites.

Currently, Palestinian security agencies have not implemented the UNCAC's guidelines regarding the online publication of adequate information and reports on activities performed by security agencies. The National Security Forces and the Military Intelligence have their own websites, but the General Intelligence and Preventive Security do not. The agencies that run websites only publish general information about the security agency, its commander, and public activities. The websites do not contain information about financial, administrative or oversight reports, results of complaints filed to the agency, or procedures taken to process complaints.

The Ministry of Interior also has a website, but it does not publish information about security agencies or respective organisational structures. Only civil activities, rather than security-related ones, are published on the ministry's website.<sup>22</sup>

The General Intelligence and Preventive Security have Facebook pages, providing general information and posting news on selected

<sup>22</sup> See the Ministry of Interior: <http://www.moi.pna.ps/Home.aspx>.

activities. No administrative and financial reports or organisational structures are published on their Facebook pages.

## Publishing regular financial and narrative reports

### The UNCAC standards

Article 9(2) of the UNCAC contains measures to promote transparency and accountability of the management of public finances. In addition, Article 10 sets out measures for enhancing transparency in public administration.

The Palestinian security sector does not follow principles of transparency when it comes to financial reporting. None of the security agencies make their financial reports publically available. As a result, it is impossible for the public to know precisely how received funds are spent.

The general budget of the PNA designates a special line item for the security sector, comprising 30–35 percent of the total annual budget.<sup>23</sup> This makes the security sector the largest public sector in Palestine. However, information on budget disbursement is not published, for reasons of national secrecy. Both, the Palestinian public and civil society organisations, have voiced deep concerns about the absence of more detailed reports - and budgets - for the security sector.

The *Law on General Intelligence* provides for a mechanism for preparing the budget and the agency produces periodic and annual reports, see Table 1 (page 18). In accordance with Article 12 of the *Law by Decree on Preventive Security*, the Preventive Security submits monthly and annual reports to the Minister of Interior, but again, these are not made public. The agency also produces financial and administrative reports.

<sup>23</sup> For more information (in Arabic), see *Will reductions to the budget of security services limit the financial crisis?!* Available at: <http://felesteen.ps/details/news/85029/> [Accessed 18 December 2014] Also see: *Budgets of Gaza and West Bank governments..Imaginary numbers in Security spending*. Available at: <http://paltoday.ps/ar/post/84110/> [accessed on 18 December 2014]. (Press articles' titles translated from Arabic).

**Table 1: Overview on the reporting practice of key Palestinian security institutions**

Agency	Types of reports	Frequency of reporting	Legal basis	Publicly accessible?
General Intelligence Agency	Narrative reports: programmes, activities and administrative processes Financial reports	Periodic and annual	Law on General Intelligence	No
Preventive Security Agency	Narrative reports on administrative processes Financial reports	Monthly and annual	Law by Decree on Preventive Security	No
Military Intelligence Agency	Narrative reports on programmes and activities Financial reports	Periodic and annual	No legal provisions or bylaws	No
National Security Forces	Narrative reports on programmes and activities Financial reports	Periodic and annual	No legal provisions or bylaws	No

In addition, cooperation takes place between various security agencies, including between the national security forces and other security organisations. For joint operations implemented by all agencies, reports are submitted to the Minister of Interior and relevant authorities, including the President of the PNA, the Ministry of Interior, the Council of Ministers, and governors' offices. These include a report on the security situation in the relevant governorate, operation reports, and strategic analysis reports submitted by security agency commanders to the President of the PNA.<sup>24</sup> These reports are not published, but are distributed to competent bodies only.<sup>25</sup>

## Applying human resource management procedures

### The UNCAC standards

Article 7 of the UNCAC provides for a clear and transparent system for public administrative and human resource management, and

establishes a merit system for civil service. Good practice in this field would include the existence of clear human resource procedures which cover for example: public vacancy announcements, a transparent and criteria-based process for assessing applicants and for making recruitment decisions, and a merit-based promotion and rewards system.

Palestinian legislation currently provides for an opaque system of recruitment and promotion in the security sector. However, there are certain provisions which promote transparency in some areas.

Title One and Chapters 1 through 6 of Title Two of the *Law of Service in the Palestinian Security Forces* provide detailed provisions on human resource management, including appointments and promotions for all security forces. The law sets forth mechanisms of appointment for certain security positions, especially heads of security agencies and directors of relevant units. Irrespective of applicable employment procedures, the mechanism comprises nominations and direct appointments, thereby impinging on the principle of equal opportunities.

<sup>24</sup> Small working group, including representatives of the National Security Forces and Military Intelligence Agency, Caesar Hotel, 16 April 2014.

<sup>25</sup> Small working group, including representatives of the Preventive Security Agency, Caesar Hotel, 19 April 2014.

The law also provides for the establishment of a Committee of Officers, which is tasked with following up on the appointment and promotion of officers, terminations of service, transfers, recommendations to grant decorations, badges and medals, and nominations for external missions.<sup>26</sup> However, while it has been established, the Committee of Officers is not (yet) operational.

The law does not provide for the public advertisement of vacant positions, for example in daily newspapers or online. Article 24 of the law states that the “bylaw shall define the qualifications required to be fulfilled by the officers” to be appointed. Most, if not all, provisions of the law apply to appointments in the security forces. However, employment procedures could have been regulated by a provision under the *Law of Service in the Palestinian Security Forces*, stating that the *Law of Civil Service* will be applicable in all that is not provided for, on the condition that it does not contradict the *Law of Service in the Palestinian Security Forces*.<sup>27</sup> Still, a key problem exists as long as secondary legislation of the *Law of Service in the Palestinian Security Forces* has yet to be passed. In addition to impeding law enforcement, provisions of the law cannot be interpreted due to the absence of bylaws that translate the law and streamline implementation of relevant provisions.

The *Law on General Intelligence* lists terms and conditions for appointment of general intelligence personnel. Officers will meet the conditions set for occupying general intelligence positions, including relevant examinations. However, the law again does not provide for the advertisement of vacant positions. This is often justified by the secret nature of security operations. All that is relevant to service in the General Intelligence, including appointments and promotions, is referred to in the *Law of Service in the Palestinian Security Forces*, provided that this does not contradict the *Law on General Intelligence*.<sup>28</sup>

Similarly, the *Law by Decree on Preventive Security* does not provide for advertising vacancies or conditions for occupying positions in the agency. The law only explains methods of appointment within the agency. After s/he is nominated, the Director General of Preventive Security is appointed by a decision from the PNA President. Assistants to the Director General and directors of departments at the Preventive Security are appointed by a decision from the competent minister based on a recommendation from the director general and approval of the Director General of Internal Security, a position which remains vacant.<sup>29</sup>

In practice, appointments in the General Intelligence are not governed by clearly defined procedures. In most cases, appointments go unadvertised due to the nature of intelligence operations and security concerns. In the Preventive Security, appointments are in line with the *Law of Service in the Palestinian Security Forces*. Appointments are announced in advance.

The National Security Forces and the Military Intelligence Agency do not apply clear conditions and procedures for appointments and promotions. These take place on a needs-basis and are subject to internal directives. The agencies do not set appointment conditions. Vacancies are advertised and candidates go through a process of written and oral examinations. Sometimes, however, information is not disclosed due to secret operations. A bylaw which is supposed to regulate appointments has not yet been enacted.

<sup>26</sup> For more information on the powers of the committee of officers, see Article 19 of the Law of Service in the Palestinian Security Forces of 2005.

<sup>27</sup> Ibid. Article 218.

<sup>28</sup> See Article 35 of the General Intelligence Law.

<sup>29</sup> See Article 11 of the Law by Decree on Preventive Security.

## 2. How effective are the accountability systems in Palestinian security sector legislation?

The concept of accountability is central to anti-corruption efforts. Implementing it requires a hierarchical relationship of responsibility, by which every subordinate officer submits a report on his/her functions to their manager. It also requires internal and external oversight bodies that can effectively review the actions of the public institution.

Key oversight bodies that can exercise oversight over Palestinian security agencies include the PLC, civil society, the judiciary, the military judiciary, the State Audit and Administrative Control Bureau (SAACB), the Palestinian Independent Commission of Human Rights (ICHR), and the ACC.

Systems of accountability comprise for example:

1. Internal control systems;
2. Complaint processing systems;
3. Clear and specific organisational structures;
4. Rotation of leadership positions;
5. Community participation mechanisms.

This section outlines the findings of the legal analysis, according to these indicators.

### Internal control systems

#### The UNCAC standards

Article 9(2) of the UNCAC provides for effective and efficient systems for internal control to be in place. Article 9(3) also prescribes that “[e]ach state party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.”

The Palestinian security sector legislation does create internal control systems, in line with the UNCAC. Various regulations and bylaws implement these systems. One issue however is

that inspection departments are understaffed, which negatively impacts their effectiveness in practice.<sup>30</sup>

The Council of Ministers’ *Decision No. 43 of 2005 on the Financial Regulation of Ministries and Public Institutions* provides the legal basis for setting up internal oversight departments. The *Decision of the Council of Ministers No. 130 of 2006* establishes the internal oversight units at ministries.

Article 145 of *Decision No. 43* provides that financial controllers shall be appointed to each government department. However, this does not always take place according to best practice. For example, the financial controller within the General Intelligence is nominated by the agency’s director and appointed by the President, a process which raises questions about the controller’s independence. The Ministry of Finance is responsible for issuing instructions for the functions of internal control units. Article 151 of the regulation also states that a specialised department shall be established within the Ministry of Finance. This department reports to the minister and functions in accordance with the *Regulation on Internal Financial Auditing* to ensure the proper use of public resources and the commitment of all departments and units to spend in line with applicable financial legislation. The Internal Audit Department submits reports to the minister on its discoveries and recommendations.

The regulation also addresses the appointment of inspection committees. The minister appoints committees to carry out various functions, including inspections and taking stock of funds, warehouses, stamps and papers of financial value. Committees submit their reports to the minister and to the competent minister no later than ten days from the date of assignment for the analysis, evaluation and rectification of any anomalies.<sup>31</sup>

<sup>30</sup> Zeid (2014, supra note 33).

<sup>31</sup> Article 147 of the Council of Ministers’ *Decision No. 43 of 2005 on the Financial Regulation of Ministries and Public Institutions*.

In the current internal control system, a controller, inspector general, or inspection department is only in place in some security agencies. While some control administrative aspects, others oversee both administrative and financial operations. Relevant agencies' security divisions exercise an oversight role over security personnel. At some security agencies, internal control units are not informed by procedural manuals to help organise functions, while others have developed plans of action.

## Complaint processing systems

### The UNCAC standards

Complaint systems provide a mechanism of accountability that helps review, justify and interpret government administrative functions and decisions. It also draws public officials' attention to a lack of performance in some departments, and indications on needed interventions. Complaints lodged by a citizen, a group of citizens, or a legal entity to public sector institutions are one form of public oversight.

This is also the case in the security sector. Through specialised complaint departments, security officers or the security sector as a whole can be held accountable for transgressions of power or violations of citizens' rights. Both international conventions and national legislation enshrine citizens' fundamental right to file complaints.

Article 9(1d) of the UNCAC addresses complaints in the context of public procurement and public property management. Article 13(2) obliges the signatories to ensure that the public is aware of and can report corruption to relevant anti-corruption bodies.

The legislation governing the Palestinian security sector does not provide for the establishment of complaint departments to which citizens can resort.<sup>32</sup> However in practice, many security agencies have established their own complaint departments. These agencies include the Military Intelligence, the Civil Police and the Military Justice.

<sup>32</sup> Harb (2010, p. 2). See also: (Taha 2004, p. 35).

The General Intelligence does not have a complaints system. The Preventive Security has an internal complaints system, which can only be used by its own members.

Several units receive complaints about security officers, including the agencies' security divisions, controllers, and inspector generals. Generally speaking, security agencies lack regulations or written procedures for handling public complaints.

### Box 1: The Anti-Corruption Commission (ACC)

*Number of Employees:*

40

*Laws regulating the institution:*

- Decree Law No. 7 of 2010;
- Amended Law No. 1 of 2005 on Illegal Gains (Amended Law No 1 of 2005 on Anti Corruption);
- Personnel Regulations for Anti Corruption Commission No. 9 of 2011.

*Description*

The ACC is an independent body which receives its budget from the PNA. The ACC:

- Investigates corruption cases in the public sector (responsible for following up on any corruption case brought by the Office of the President, the Council of Ministers, the judiciary, the public prosecution, civil society organisations, political parties, charitable societies etc.);
- Operates an independent hearing system deciding on corruption cases which it then sends to court;
- Creates and implements general policies on anti-corruption;
- Assists in exposing all forms of corruption and its sources;
- Raises community awareness about corruption among legislative, executive and judicial bodies, and civil society.

### *The ACC and the security sector*

The ACC is generally not viewed as a key oversight body in the security sector for two reasons. First, it can only investigate a corruption case if it has been referred to it by another institution. It cannot search for new cases itself. Secondly, as this report shows, it relies on a body of anti-corruption legislation that is rarely or only partially applicable to the security sector.

## **Clear and specific organisational structures**

### **The UNCAC standards**

The UNCAC's Article 7 relates to efforts to "adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest". In this vein, organisational structures are extremely important for the accountability process. Clear tasks and structures ensure transparent mandates and powers. Accordingly, personnel can be held to account for the mistakes made. Access to information about an institution's organisational structure (for example in the form of an organigram) greatly assists accountability, as such information should make clear which section or division covers which responsibilities. In this way, organisational structures provide predictability and build public trust.

The *Law of Service in the Palestinian Security Forces* provides for the establishment of certain security bodies as well as methods of appointment within these bodies (e.g. how the directors of the respective security agencies should be appointed). However, the law suffers from a major weakness as it does not adequately address the organisational structures of the security agencies. In most cases, secondary legislation that would fill this void has not yet been enacted. Two exceptions are the *Law by Decree on Preventive Security*<sup>33</sup> and the *Law on General Intelligence*,<sup>34</sup> which stipulate that organisational

<sup>33</sup> Article 3 provides: "The provisions of this law shall be applicable to all functionaries at the Directorate General of the Preventive Security [Agency]. The Council of Ministers shall approve the organisational structure thereof."

<sup>34</sup> Article 3 provides: "The Intelligence [Agency] shall be

structures should be developed for these forces.<sup>35</sup> In most other cases, the security agencies have proposed draft organisational structures. Although they are not approved through official channels, the security agencies operate in line with these structures.

Some regulations, including the *Law on General Intelligence*, refer promulgation of organisational structures to the PNA President. However, this is in breach of the *Amended Basic Law of 2003*. According to Article 69(9a) of the *Amended Basic Law*, it is the Council of Ministers which has the power to prepare the administrative apparatus, set its structure and provide it with all necessary means, as well as to supervise it and follow up on it. It is also empowered to establish or dissolve agencies, institutions, authorities and similar administrative units belonging to the executive apparatus of the government, provided that each of them shall be regulated by law. The fact that the PNA President is given this power breaches provisions of the *Amended Basic Law*.

## **Rotation of leadership positions**

### **The UNCAC standards**

The UNCAC's Article 7 stipulates that each state party shall endeavour to put in place systems that "include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions". A rotation system based in law provides a first obstacle to unchecked power and thereby reduces corruption risks.

Palestinian security sector legislation provides for the rotation of leadership positions and sets specific terms for the commanders of security agencies. Article 4 of the *Law by Decree on Preventive Security* provides that the "tenure of the Director shall be four years, which may be extended for one additional year by a decision from the President." The *Law of Service in the*

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composed of a head, a deputy and a sufficient number of officers and individuals who are expedient to carry out the work in accordance with the organisational structure to be issued forth by the president. The provisions of this law shall be enforced upon all members thereof."

<sup>35</sup> The only other legislation outlining the organisational structure of a security force is the Civil Defence Law No. (3) of 1998.

*Palestinian Security Forces* also determines terms of certain leadership positions, including the Director General of Internal Security, the Commander-in-chief, and the Director of the General Intelligence.<sup>36</sup> Article 4 of the *Law on General Intelligence* also prescribes that the “duration of appointment of the Head of Intelligence shall last for three years. It may be extended for one year only.”

In practice however, security agencies only sometimes apply appointment mechanisms. Very often the legally prescribed terms are not respected. Commanders of security agencies still occupy their positions years after their legal terms expire. For example, since 2009 the position of the Director of the General Intelligence has not been rotated, partly because of the internal Palestinian political divide and current political situation. In the Preventive Security, some leadership positions are rotated every two years, but the Director of the Preventive Security has not changed. This practice appears to be in conflict with the legal basis, and poses a corruption risk.

## Community participation mechanisms

### The UNCAC standards

Informal oversight of the security sector by civil society is a key component of good governance. The participation of society enables citizens to participate in the planning, implementation, and assessment of the use of available resources in public institutions.

The UNCAC’s Article 13 provides that “[e]ach state party shall take appropriate measures [...] to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.” State parties will raise public awareness on relevant bodies, including anti-corruption commissions, and ensure effective participation of civil society organisations in monitoring and reviewing national policies and international conventions against corruption. The public will also have access to relevant anti-corruption documents, including policies, reviews, and assessments. Article 5(1) of the convention provides for the same.

Participation of society does not mean that the public interferes with the powers and responsibilities of the security agencies. It rather enables civil society to access information of public interest, to participate in public consultations, to engage in planning and decision making, and to promote community-based initiatives in order to reduce the risk of corruption, as provided for in Article 13.

Palestinian legislation does little to encourage community participation in security policy-making. As outlined above, Palestinian law does not provide for the access to information, and the security sector, this access takes place at the discretion of relevant commanders. Only certain general information can be revealed.<sup>37</sup> Spokespersons of security agencies report on permitted issues to media outlets. This is also the case with security-related policy making and budgeting processes (see above). According to security agencies, this is secret information that cannot be shared with civil society organisations.

Despite this, some agencies occasionally carry out joint activities with civil society organisations, for example university lectures on particular issues or public information campaigns. Memorandums of understanding have been concluded with international and local non-governmental organisations, including the International Committee of the Red Cross (ICRC). Security agencies send monthly statements, including lists of detained persons, to the ICRC.

<sup>36</sup> Articles 8, 11, and 14 of the Law of Service in the Palestinian Security Forces.

<sup>37</sup> Ar Ramahi (2010, p. 25).

### 3. Recommendations for strengthening of integrity, Transparency, accountability and participation of society in the Palestinian security sector

Palestinian security sector legislation currently incorporates corruption-prevention measures only in a piecemeal fashion, and therefore provides an insufficient foundation for preventing corruption. Certain legal texts would need to be revised in order to achieve coherent standards of transparency, integrity and accountability throughout the security sector. In addition, adequate anti-corruption structures and mechanisms would need to be put in place to ensure implementation of the legislation.

The following recommendations aim at assisting the Palestinian authorities in implementing and ensuring compliance with the UNCAC.

While many of the following recommendations underline the need for regulatory change, it should not be overlooked that the biggest corruption risk in the current Palestinian context stems from the lack of separation of powers. The PLC has not held a session for over eight years. Since 2007, the suspension of the PLC, the

Executive has assumed all legislative functions. Thus, all corruption prevention measures at the regulatory level risk to be ineffective, as long as the PNA does not restore regular institutional processes. Re-establishing the separation of powers that provides for an effective system of checks and balances between all three branches of government is the most important single measure the PNA can adopt for implementing the UNCAC.

The implementation of the UNCAC provides a real opportunity for the Palestinian authorities to advance inclusivity, integrity, transparency and accountability in security sector governance, in line with the standards and principles set out in the convention.

Based on its analysis, DCAF recommends to the Palestinian authorities the following action for enhancing UNCAC compliance in the security sector:

#### 1. To restore the separation of powers

- To ensure the separation of powers by returning to the PLC its legislative function and by enhancing the independence of the judiciary;
- To resume normal legislative processes;
- To initiate a review of all decree-laws.

#### 2. To enhance transparency of all branches of government

- To complete the review of the draft law regulating the "Access to Information", and enact it swiftly;
- To develop clear and criteria-based provisions and procedures for safeguarding the right of access to information held by public institutions, including security agencies;
- To define in clear and unambiguous terms under which conditions which information may be withheld;
- To include provisions in legislation that explicitly requires security agencies to submit financial and administrative reports.

### 3. To ensure equitable application of all corruption prevention measures

- To ensure that corruption prevention measures, such as laws, codes etc., apply by default to all public employees equally, including to security personnel, and that any exception to that rule is made explicit in the texts establishing these measures;
- To ensure that 'security employees' are generally treated as 'public employees' and that in principle no differential treatment applies to the them;
- To amend the *Law of Service in the Security Forces No. (8) of 2005* with a view to emphasize the civilian status of security personnel, and their rights and duties as civil employees ("citizens in uniform").

### 4. To strengthen formal and informal oversight institutions

- To ensure that the PLC fully exercises its parliamentary oversight functions, including regular scrutiny of budgets, as well as financial, administrative and operational reporting by the security agencies;
- To upgrade the SAACB from an advisory organ to a body, which can issue binding decisions;
- To upgrade the Independent Commission for Human Rights (ICHR)'s from an advisory organ to a body, which can issue binding decisions;
- To strengthen the internal control and inspection units within the security agencies by (1) clarifying their mandate, (2) ensuring their independence from operational command, and (3) by developing systems and procedures for their work and reporting;
- To enhance the ability of the ACC to effectively fight corruption, by granting it the right to independently investigate cases of suspected corruption, and by providing it with the necessary resources;
- To ensure that the judicial authorities exert effective oversight over security organisations and can hold them accountable, both institutionally and individually, for their acts and omissions;
- To ensure that civil society organisations can work freely and enable them, by law, to access information held by public institutions, which helps them to contribute to informal oversight;
- To raise public awareness about the mandates, roles, responsibilities and duties of security agencies and security personnel and actively promote a culture of accountability;
- To enhance communication between security organizations and citizens through improved websites, interactive social media networks and the electronic provision of services (e-services);
- To promote citizen involvement through public consultations and events;
- To involve civil society organisations in the development of policies of security agencies, including budget deliberations.

## 5. To ensure congruency between legal norms and practice

- To bring the organisational structures of security agencies in line with the applicable legislation in effect;
- To ensure that all organisational charts are based on the applicable legislation in effect;
- To ensure that all security agencies provide clear, written human resource management procedures and publicise criteria for recruitments, appointments and promotions;
- To ensure regular rotation at senior command positions in security agencies by strictly observing the maximum term of office that the law defined for certain positions.

## 6. Develop corruption prevention measures for the security forces

- To establish clear written procedures to prevent conflicts of interest in the operations of security agencies, by taking into consideration obligations stemming from the applicable legislation in effect;
- To establish an explicit policy regulating gifts that specifies the conditions under which a gift can be accepted, who must be informed and where the gift needs to be recorded (gift registry, etc.).
- To review public procurement procedures of security agencies and ensure their consistency with the existing Palestinian legal framework, particularly the *Regulation on Procurements of the General Intelligence*;
- To develop written procedures and regulations for handling public complaints against security organisations or security personnel, by making sure that the complaint handling involves an independent third party.

## 6. Create effective information management systems for security agencies

- To develop electronic archiving and information retrieval systems in order to safeguard the information of public institutions, facilitate and expedite the processing and retrieval of data and information;
- To develop data security systems to ensure the regular backup and safety of all electronically stored data and protect them against unauthorised access;
- To develop websites to enable public access to information, including on the structure and mandate of forces;
- To clarify regulations and protection for whistle-blowers in security agencies, facilitating the reporting of corrupt practices without fear of reprisals;
- To make the declaration of personal assets mandatory for all security agency personnel;
- To conduct an external audit of the budget- and expense-management system of all security organisations with a view of evaluating their compliance with applicable accounting and safety-standards and make adjustments, if and where necessary.

## Annex 1:

### Summary of gaps between Palestinian security sector legislation and the UNCAC provisions

UNCAC Standard	UNCAC provisions	Gap with Palestinian legislation
1.1. How consistent is security sector legislation with principles of integrity and transparency?		
1.1.1 Preventing conflicts of interest	Articles 7(4) and 8	<ul style="list-style-type: none"> <li>▶ While Palestinian laws prescribe disciplinary penalties if conflicts of interest occur, they fail to establish an oversight mechanism and do not oblige investigations or the imposition of penalties if this prohibition is breached.</li> </ul>
1.1.2 Applying codes of professional conduct	Article 8(2)	<ul style="list-style-type: none"> <li>▶ Palestinian legislation currently does not oblige security agencies to put in place codes of professional conduct (although the General Intelligence Agency and the Preventive Security Agency have created such codes anyway).</li> <li>▶ Palestinian legislation does not mandate any form of oversight to ensure the implementation of these codes.</li> </ul>
1.1.3 Reporting corrupt practices	Article 8(4) and(6) Article 33	<ul style="list-style-type: none"> <li>▶ Current provisions for reporting corruption exist, but are not streamlined.</li> <li>▶ There is no institutionalised mechanism or system for reporting on corruption.</li> </ul>
1.1.4 Preventing the giving and receiving of gifts	Articles 15,16 and 18, <i>inter alia</i>	<ul style="list-style-type: none"> <li>▶ The legislation does not address the acceptance of gifts, nor does it provide that special registers be kept.</li> </ul>
1.1.5 Declaring financial statements	Article 8(4)	<ul style="list-style-type: none"> <li>▶ The examined legislation does not explicitly provide for a declaration of financial statements. However, according to the 2005 Law on Illegal Gains, all public institutions, including security agencies, are required to declare financial assets.</li> </ul>
1.1.6 Complying with procurement policies and systems	Article 9	<ul style="list-style-type: none"> <li>▶ The Palestinian Law on Public Procurement No. 8 of 2014 is applicable to all procurement processes of PNA institutions. However, the law does not apply to items of a 'high security nature' (see Art. 3) – a term which is undefined and thus open to abuse.</li> <li>▶ Furthermore, in December 2014, this law was suspended for the period of one year.</li> <li>▶ Law of Service in the Palestinian Security Forces and the Law by Decree on Preventive Security do not contain special provisions on procurement.</li> <li>▶ The Law on General Intelligence does contain such a provision, yet it still falls short of the UNCAC standards, particular in terms of oversight</li> </ul>

1.2 How consistent is the security sector legislation with principles of transparency?		
1.2.1 Ensuring access to information	Article 10	<ul style="list-style-type: none"> <li>▶ Provisions on access to or disclosure of security information are vague. They do not foresee a specific process, mechanisms or criteria to define whether information is classified or not.</li> </ul>
1.2.2 Publishing information online	Article 9	<ul style="list-style-type: none"> <li>▶ Some, but not all, security agencies have their own websites. However, very little information is released about their activities, and no information is published about financial, administrative or oversight reports, results of complaints, or procedures taken to handle complaints.</li> </ul>
1.2.3 Publishing regular financial and narrative reports	Articles 9(2) and 10	<ul style="list-style-type: none"> <li>▶ Regulations in the Palestinian security sector do not explicitly require the compilation or publication of any reports, and the reports that are produced are not shared with the public.</li> <li>▶ Information on budget expenditure is not published for reasons of national secrecy.</li> </ul>
1.2.4 Applying human resource management procedures	Article 7	<ul style="list-style-type: none"> <li>▶ Although all three laws analysed contain transparency-related issues on appointments, they provide for an opaque system of recruitment and hiring at the moment.</li> </ul>
2. Assessing the effectiveness of the accountability systems in place		
2.1 Internal control systems	Article 9(2)	<ul style="list-style-type: none"> <li>▶ According to the law, the financial controller within the General Intelligence Agency is nominated by the agency's director and appointed by the President of the PNA, raising questions about the independence of the function.</li> </ul>
2.2 Complaint processing systems	Articles 9(1) and 13(2)	<ul style="list-style-type: none"> <li>▶ Security agencies lack written, specific procedures for handling complaints.</li> </ul>
2.3 Clear and specific organisational structures	Article 7	<ul style="list-style-type: none"> <li>▶ the Law of Service in the Palestinian Security Forces does not address the organisational structure of security agencies. However the Decree on Preventive Security and the Law on General Intelligence contain provisions on the organisational structure of the agencies.</li> </ul>
2.4 Rotation of leadership positions	Article 7	<ul style="list-style-type: none"> <li>▶ Palestinian security sector legislation provides for the rotation of leadership positions, and sets specific terms for the commanders of security agencies. In practice however, it would appear that these provisions are not respected.</li> </ul>
2.5 Community participation mechanisms	Articles 13, 5(1)	<ul style="list-style-type: none"> <li>▶ Palestinian security sector legislation does not provide for any form of community participation in policy making, access to information, budgeting processes, or public meetings.</li> <li>▶ Operations of security agencies are confidential. Information may not be disclosed, including information on security-related policy making and budgeting processes.</li> </ul>

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