

The Compliance of Palestinian Security Legislation with the United Nations Convention Against Corruption

Working Paper
2015



DCAF

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development and
the rule of law

About DCAF

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 programs 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.

DCAF in Palestine

DCAF has worked in the occupied Palestinian territory since 2005. As a neutral and independent organisation, DCAF aims to assist Palestinians in enhancing good governance of the security sector (SSG). It promotes the development of effective, efficient and transparent security and justice providers that are properly controlled and overseen by the Palestinian executive and legislative authorities and fully accountable to Palestinian civil society and its elected leaders.

Publisher

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Cover picture: © Creative Commons, 2015

ISBN: 978-92-9222-391-5

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Acknowledgement

This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and can in no way be taken to reflect the views of the European Union.



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Background

This working paper provides recommendations to Palestinian decision-makers and actors interested in security sector reform on how to address key legal gaps of Palestinian security legislation with regards to safeguarding integrity, transparency and accountability. It reviews international standards and best practice in promotion of good governance of integrity building and anti-corruption measures in the security sector.

The State of Palestine acceded to the United Nations Convention against Corruption (UNCAC) in 2014, and the Convention became applicable in the occupied Palestinian territory on 2 May 2014. The Convention outlines the control mechanisms and standards on which the member states build their integrity systems. According to UNCAC, States Parties are required to develop preventive policies to combat corruption and to put in place necessary measures to ensure accountability and integrity within the public sector.

Given Palestine's new obligations and guiding standards after its accession to the Convention, the Council of Ministers requested DCAF to assist in analysing the compliance of Palestinian security sector legislation with international anti-corruption standards. DCAF highly commends the Palestinian National Authority for taking this important step of signing the UN Convention against Corruption.

The government and citizens have developed a growing awareness that corrupt practices must be eliminated to build a more transparent and efficient public administration. This Working Paper strives to support ongoing reform efforts with specific recommendations.

Process

In response to the request by the Council of Ministers, DCAF designed a process to conduct a participatory review of Palestinian security sector legislation, and related anti-corruption practices, in light of the United Nations Convention Against Corruption. Specifically, DCAF:

- mandated a Palestinian legal expert to work with DCAF on the gap analysis of Palestinian security sector legislation;
- 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 and three workshops with members of the Higher National Committee of the Legislative Plan, gathering their opinions and recommendations;
- held a public consultation on the topic of anti-corruption and the findings of this report;

Problem statement

Many Palestinian citizens believe that corruption has a negative effect on service delivery by governmental and security agencies and that the Palestinian security sector legislation is in dire need for improvement and reform. A large number of security sector regulations were drafted and enacted under peculiar

circumstances and are not aligned with obligations outlined by international conventions and standards of good governance, in particular in the field of combatting corruption and building integrity. This has impacted the quality and cost-effective delivery of security and justice services to the Palestinian public.

Legal framework

A first requirement to implement the UNCAC is to review, assess and identify legal gaps in the Palestinian legislation, including legislation governing the security sector. For this reason, based on the request from the Council of Ministers, DCAF has reviewed three selected legislative texts and assessed whether they are in line with UNCAC and other relevant international standards of integrity, transparency, accountability, and community participation.

The analysis focused on the following three laws:

- Law of Service in the Palestinian Security Forces No. 8 of 2005
- Law on the General Intelligence No. 17 of 2005
- Law by Decree on the Preventive Security No. 11 of 2007

They were analysed in the context of the existing legal framework of the Palestinian security sector, which is composed of other important laws and regulations, included the Basic Law as the constitutional text:

- Amended Basic Law of 2003
- Bylaws of the Palestinian Legislative Council of 2000
- Law of Penal Procedure of 2001
- Law on the State Audit and Administrative Control Bureau of 2004
- Financial Regulation of Ministries and Public Institutions No. 43 of 2005
- Law on Illegal Gains No. 1 of 2005 and its amendments

- Law on Public Procurement No. 8 of 2014

The detailed analysis and findings have been documented in a separate report which was submitted to the Council of Ministers in April 2015.

Main findings

The analysis of the current legal framework of the Palestinian security sector with a view of its consistency with UNCAC's principles has found the following shortcomings:

1. **Lack of a definition of classified information:** the absence of a definition of what information can be classified in the interest of state security makes it easy for security agencies to refuse public access to information. This has led to weakening of public oversight and makes the system more vulnerable to corrupt practices.
2. **Absence of an effective and merit-based human resources management system:** currently, the security forces lack transparent hiring processes with objective and equitable criteria.
3. **Lack of officially approved and transparent organisational structures:** the existing structures of security agencies are opaque and lack a formal endorsement by their management and oversight bodies.
4. **Codes of conduct lack effective implementation:** while some security forces have developed internal codes of conducts, they lack implementation and a more comprehensive inclusion of issues that can be addressed by such codes.

5. **Reporting:** the security agencies do not (fully) comply with their legal obligations of producing and publishing regular administrative and financial reports.
6. **Weakness of the existing anti-corruption commission:** the existing anti-corruption body lacks the resources and authority to effectively handle reports of corruption.
7. **Complaints handling mechanisms:** the security forces lack a standardised complaints handling mechanism. Reporting and submission of complaints need to be based on clear legal provisions that establish clear procedures for reporting corrupt practices.

Main recommendations

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 Palestinian Legislative Council (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 Palestine does not restore a regular institutional process. 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 Palestine can adopt for implementing UNCAC.

Based on its analysis, DCAF recommends to the Palestinian authorities the following actions 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 Palestinian Legislative Council its legislative function and by enhancing the independence of the judiciary;
- To resume normal legislative process;
- 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 Palestinian Legislative Council 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 State Audit and Administrative Control Bureau (SAACB) from an advisory organ to a body, which can issue binding decisions;

- To upgrade the Independent Commission for Human Rights (ICHR) 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 Anti-Corruption Commission (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 organisations 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 resources 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. To 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 Agency;
- 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.

7. To 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;

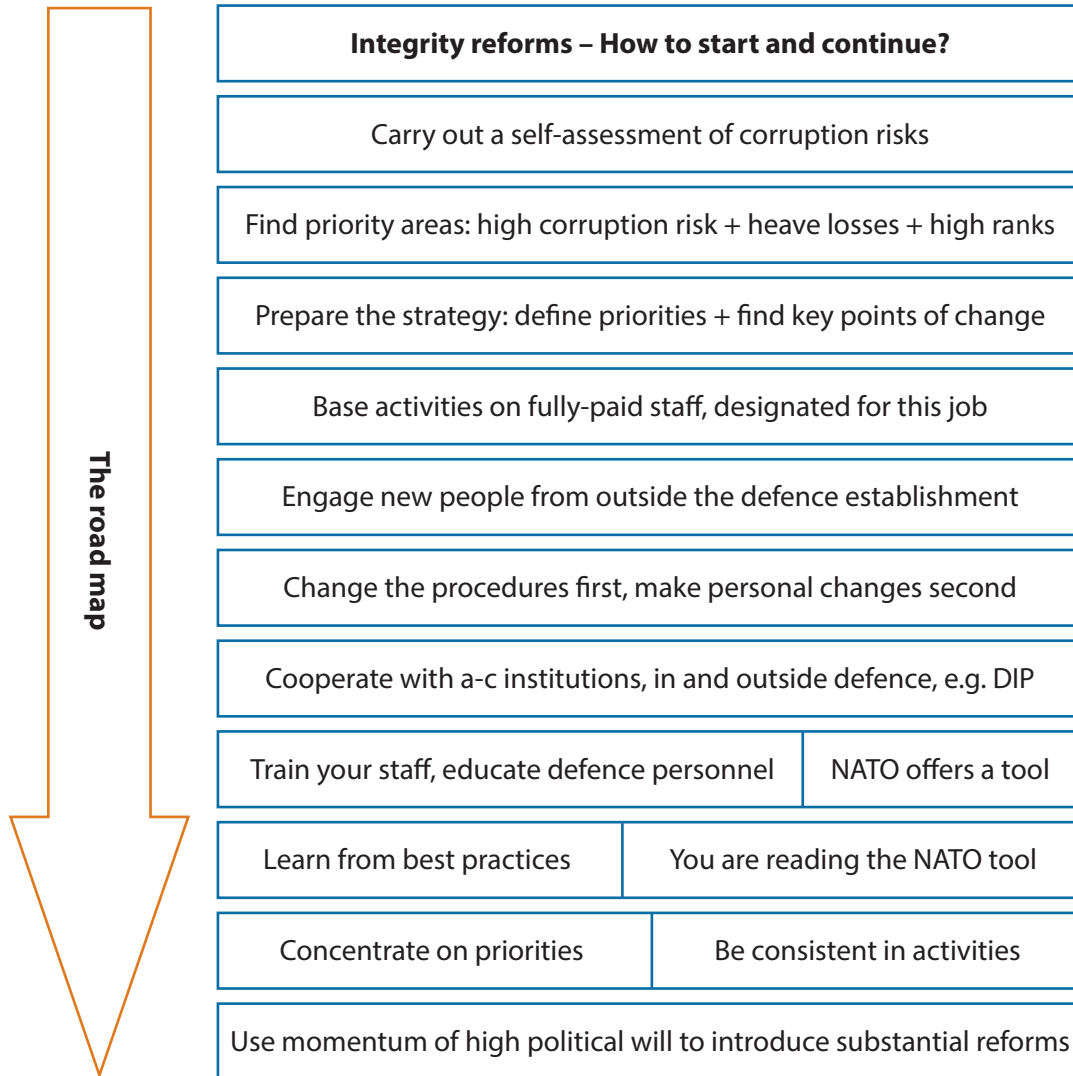
- To develop websites to enable public access to information, including on the structure and mandate of forces;
- To clarify regulations and protection for whistle-blowers in security agencies, facilitating the reporting of corrupt practices without fear of reprisals;
- To make the declaration of personal 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.

Conclusion

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.

This Working Paper summarises the main findings and recommendations of a more detailed report that DCAF submitted to the Council of Ministers. DCAF invites the Palestinian leadership to consider the opportunity to act upon these recommendations. A timely reform of the legal framework of the Palestinian security sector can serve as a model of inspiration to other sectors. The security sector has the unique opportunity to act as a leader in the political and legal reform process through combatting corruption and ensuring respect of integrity standards.

Practical reform approaches



Expected cost of corruption

The expected cost to a public official, military officer or defence contractor of engaging in corruption behaviour consists of two components:

EXPECTED COST = MORAL BURDEN + EXPECTED PUNISHMENT

Where: EXPECTED PUNISHMENT = (Probability of Detection) x (Probability of Conviction if Detected) x Penalty

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