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**Executive summary**

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## II. Executive summary

### The State of Palestine

#### 1. Introduction: Overview of the legal and institutional framework of the State of Palestine in the context of implementation of the United Nations Convention against Corruption

The State of Palestine (Palestine) acceded to the United Nations Convention against Corruption (the Convention) after depositing its instrument of accession with the Secretary-General of the United Nations on 2 April 2014.

There is no unified legal system in Palestine; rather the scope of application of certain laws differs between the West Bank and Gaza Strip. The laws issued by the Palestinian Authority are enforced in both the West Bank and the Gaza Strip, unlike the laws passed before 1967 and the subsequent military orders issued before the establishment of the Palestinian Authority, which treated the West Bank and the Gaza Strip as separate entities.

The anti-corruption framework draws on provisions set out in a number of different laws, including the Code of Criminal Procedure, the Anti-Money-Laundering Act and the Anti-Corruption Act, which are enforced in all Palestinian territories, in addition to Penal Code No. 16 of 1960, applicable in the West Bank, and Penal Codes No. 69 of 1953 and No. 74 of 1936, applicable in the Gaza Strip.

With regard to international law, Palestine can apply the self-executing provisions of international treaties directly. However, the position of such treaties in relation to Palestine's domestic law is not clear.

The courts are divided into ordinary courts, religious courts and special courts, in addition to the Supreme Court of Justice, which examines administrative cases. With regard to ordinary courts in the governorates of the West Bank, the Court of Cassation is the highest ordinary court and its decisions are morally binding on the courts of lower instance, under the civil law system. It also enforces all applicable legislation in the West Bank. In the governorates of Gaza, the Supreme Court is the highest ordinary court and its decisions are considered to set judicial precedents, under the common law system. It enforces all legislation that is in effect in Gaza.

Criminal proceedings are carried out under the accusatory system and consist of an investigation stage and a trial stage.

Palestine has established several institutions that are contributing to combating corruption, including the Palestinian Anti-Corruption Commission (PACC).

#### 2. Chapter III: Criminalization and law enforcement

##### 2.1. Observations on the implementation of the articles under review

###### *Bribery and trading in influence (arts. 15, 16, 18 and 21)*

Article 172 of the Penal Code applicable in the West Bank, read together with articles 170 and 171, criminalizes the bribery of an official where the bribe is accepted, and article 173 criminalizes such bribery where the bribe is not accepted. Article 107 bis of Penal Code No. 69 applicable in the Gaza Strip, read together

with articles 103, 103 bis, 104 and 104 bis, criminalizes the bribery of an official where the bribe is accepted, and article 109 bis criminalizes such bribery where the bribe is not accepted. The penalties specified in articles 172 and 107 bis are applicable to both the intervener and the intermediary, which thereby covers indirect bribery.

The solicitation and acceptance of bribes by officials are criminalized in Palestine under articles 170 and 171 of the Penal Code applicable in the West Bank and articles 103, 103 bis, 104 and 104 bis of Penal Code No. 69 applicable in the Gaza Strip, in addition to articles 106, 107, 108 and 110 of Penal Code No. 74, which is also applicable in the Gaza Strip. The punishment specified therein is applicable to both the intervener and the intermediary, which thereby covers indirect bribery.

Palestinian legislation does not criminalize the giving or receiving of bribes by foreign public officials or officials of international public organizations. A bill amending the Anti-Corruption Act has been drafted to criminalize such acts, however.

Current Palestinian legislation contains no provisions that criminalize the bribery of a public official or any other person in exchange for abusing his or her influence over an administration or a public authority, although such acts were previously criminalized in the Gaza Strip. Article 108 of Penal Code No. 74 applicable in the Gaza Strip criminalizes the acceptance of a bribe by any person in exchange for using his or her influence over a public official. A draft of the Palestinian Penal Code and a bill amending the Anti-Corruption Act have been prepared with a view to criminalizing the offering of bribes to a public official or any other person, and the acceptance of such bribes, in order that the public official or other person abuse his or her influence over an administration or a public authority.

Palestine does not criminalize the giving or receiving of bribes in the private sector. A bill amending the Anti-Corruption Act has been drafted to criminalize such acts, however.

*Money-laundering, concealment (arts. 23 and 24)*

Palestine has criminalized the laundering of criminal proceeds, including self-laundering, under article 2 of the Anti-Money-Laundering Act. Paragraph 1(d) of the same article criminalizes the different aspects of criminal participation, in addition to the act of attempting to commit such offences.

Palestine has adopted the list approach for determining predicate offences; according to article 3 of the Anti-Money-Laundering Act, the list covers twenty offences, including bribery, embezzlement, illegal gain, extortion, threats and intimidation. The list does not include all the offences established in accordance with the Convention; trading in influence and abuse of functions are, most notably, not included.

Predicate offences include offences committed both within and outside Palestine, on the condition the dual criminality applies.

Article 83 of the Penal Code applicable in the West Bank criminalizes as a separate offence the concealment of proceeds of a crime or felony. In the Gaza Strip, the provisions set out in article 2(1)(b) of the Anti-Money-Laundering Act are

applicable to the offence of money-laundering. The aforementioned draft Penal Code also provides for the criminalization of this act.

*Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)*

Article 174 of the Penal Code applicable in the West Bank criminalizes the act of embezzlement by a public official of anything entrusted to him or her by virtue of his or her position. This article does not explicitly cover embezzlement for the benefit of another person or entity, nor the acts of misappropriation or other diversion; these acts are covered by the provisions of article 422 of the same law, however, which criminalizes the abuse of trust in a comprehensive manner and applies to public officials where the provisions of article 174 do not apply. Articles 112 and 113 of Penal Code No. 69 applicable in the Gaza Strip criminalize the act of embezzlement by a public official of anything entrusted to him or her by virtue of his or her position, without explicitly covering the act of diversion.

Despite the lack of a comprehensive text that criminalizes the abuse of functions, articles 175 and 176 of the Penal Code applicable in the West Bank and articles 110 and 116 of Penal Code No. 74 applicable in the Gaza Strip criminalize a number of acts related to the abuse of functions by specific categories of public officials. A bill has been prepared to amend the Anti-Corruption Act in order to criminalize the abuse of functions in a comprehensive manner.

The Palestinian legislature has criminalized illicit enrichment under article 1 of Act No. 1 of 2005 on illicit gain (which was amended by Act No. 7 of 2010 to become the Anti-Corruption Act). The criminalization of illicit gain was later repealed, as it contradicted the principle of the presumption of innocence as enshrined in article 14 of the Basic Law. The legislator currently requires the public prosecution to provide evidence of the predicate offence which resulted in the illicit gain.

Palestine criminalizes embezzlement of property in the private sector under articles 422 and 423 of the Penal Code applicable in the West Bank and articles 312 and 313 of Penal Code No. 74 applicable in the Gaza Strip. The aforementioned draft Penal Code also provides for the criminalization of this act.

*Obstruction of justice (art. 25)*

Article 80 of the Penal Code applicable in the West Bank, read together with article 214, criminalizes incitement to give false testimony through the giving of money or gifts or through the use of threats, where the offender achieves his or her goal with regard to the false testimony. The law does not criminalize such acts where the offender does not achieve his or her goal, nor does it explicitly criminalize incitement through the use of physical force or the promise or offer of an undue advantage. In addition, the concept of money and gifts stipulated in the Code is narrower than the concept of undue advantage specified in the Convention.

Article 117 of Penal Code No. 74 applicable in the Gaza Strip criminalizes incitement to give false testimony where the offender achieves his or her goal with regard to the false testimony, which covers incitement through the promise, offering or giving of an undue advantage. The Code does not criminalize such acts where the offender does not achieve his or her goal, nor did it covers incitement through the use of physical force, threats or intimidation.

Palestine has not criminalized the act of incitement to provide evidence in proceedings related to the commission of offences established in accordance with the Convention.

Article 187 of the Penal Code applicable in the West Bank criminalizes the act of striking or assaulting public officials, treating them violently or harshly, or threatening them during the performance of their duties or because of the acts performed by them in the exercise of their duties. The text of this article carries a narrower definition than that in the Convention, since the offence must occur while the public official is performing his or her duties or because of the acts already performed by the public official. This article does not cover, for example, acts of interference carried out before the public official has exercised his or her duties. Penal Code No. 74 applicable in the Gaza Strip criminalizes some aspects of intervention in the exercise of a public official's duties (arts. 124 and 139).

*Liability of legal persons (art. 26)*

Article 9 of the Anti-Corruption Act provides for the criminal liability of legal persons with regard to the offences specified in the Act, where such offences are committed by the directors, board members, representatives or employees of the legal person, acting on its behalf or through its agency. Article 39 of the Act provides for the civil and criminal liability of legal persons with regard to money-laundering offences. Article 74 of the Penal Code applicable in the West Bank provides for the criminal liability of legal persons in general for offences committed by their directors, board members, representatives or employees acting on their behalf or through their agency.

Article 194 of Companies Act No. 12 of 1964, applicable in the West Bank, provides for the administrative liability of joint-stock companies with regard to serious violations of the Act.

The liability held by a legal person has no effect on the criminal liability held by the natural person who committed the offence.

Under Palestinian legislation, legal persons are subject to several types of sanctions as punishment for participating in offences established in accordance with the Convention. Those sanctions include cessation of work and dissolution (art. 9 of the Anti-Corruption Act), fines and confiscation (art. 74 of the Penal Code applicable in the West Bank), and fines and compensation in money-laundering cases (art. 39 of the Anti-Money-Laundering Act).

*Participation and attempt (art. 27)*

Participation is dealt with under articles 76, 80 and 81 of the Penal Code applicable in the West Bank, and under articles 23 to 27 and article 31 of Penal Code No. 74 applicable in the Gaza Strip.

While Penal Code No. 74, which is applicable in the Gaza Strip, criminalizes the act of attempting to commit an offence with regard to all offences (arts. 29 and 30), Penal Code No. 16, applicable in the West Bank, criminalizes the act of attempting to commit felonies only; the act of attempting to commit a misdemeanour is not criminalized except in cases provided for by the Code. The act of attempting to commit an offence established in accordance with the Convention is, therefore, not

criminalized in the West Bank, except in cases of criminal embezzlement, abuse of functions and money-laundering.

Acts committed in preparation for an offence are not criminalized.

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)*

Palestine has adopted penalties for offences established in accordance with the Convention. The penalties range from three months to fifteen years of imprisonment, according to the gravity of the offence. In addition, perpetrators of certain offences may be subject to a fine or deprived of the right to hold public office or may have their property confiscated.

Immunity does not appear to constitute an impediment to the effective prosecution of such offences. Under the Anti-Corruption Act, the following persons may be investigated, prosecuted and taken to trial: the President of the National Authority, his advisors and the heads of institutions of the presidency; the Prime Minister, members of the Council of Ministers and similar persons; the Speaker and members of the Palestinian Legislative Council; the members of the Judicial Authority; and the public prosecution and its officials (arts. 12 and 17).

Prosecution in Palestine follows the principle of legality (mandatory prosecution) in accordance with articles 1, 149, 151 and 152 of the Code of Criminal Procedure.

Pretrial detention can be applied for corruption offences (arts. 115–122 of the Code of Criminal Procedure). The accused may also be released on bail. The PACC has the authority to prevent the accused from travelling (art. 9 of the Anti-Corruption Act). Early release is possible for all persons sentenced to restricted freedom if they have served two thirds of their prison sentence.

The PACC can request the relevant authority to suspend the accused from office (art. 9 of the Anti-Corruption Act). Civil Service Act No. 4 of 1998 and its implementing regulations also provide for the suspension from work or reassignment of public officials who have been placed under investigation.

Under the Anti-Corruption Act, an offender may be disqualified from holding public office but not from working in an enterprise owned either in whole or in part by the State.

The imposition of administrative sanctions stipulated in the Civil Service Act does not prevent a civil servant from being held criminally accountable, or vice versa. A civil servant may be subject to disciplinary sanctions even if he or she is acquitted of all criminal acts (art. 95 of the implementing regulations of the Civil Service Act).

Palestine does not have a dedicated programme for the reintegration into society of convicted persons following their release from prison (aftercare). Such persons are given training in beneficial skills and professions during the period of their imprisonment, however.

Palestine has not adopted measures to grant immunity from prosecution to offenders who cooperate, although such cooperation may be taken into consideration. Under Palestinian law, any person who participates or who has participated in the commission of acts of corruption may be exempted from punishment where he or

she reports the offence or where his or her cooperation leads to the apprehension of the other perpetrators and the seizure of the criminal proceeds (arts. 25 and 27 of the Anti-Corruption Act, art. 38 of the Anti-Money-Laundering Act and art. 172 of the Penal Code applicable in the West Bank). Under article 27 of the Anti-Corruption Act, the punishment applied to the perpetrator of a corruption offence, or to an accomplice in such an offence, may be reduced where the perpetrator or accomplice cooperates during the investigation stage in order to uncover the offence and identify the perpetrators.

Palestine has not adopted sufficient measures to provide effective protection to offenders who collaborate with the justice authorities, in particular where the cooperation took place after the offence was uncovered.

Palestine can enter into ad hoc agreements to provide for the possibility of exempting from punishment persons who collaborate with the justice authorities where such persons are located abroad, in accordance with the applicable legal conditions.

*Protection of witnesses and reporting persons (arts. 32 and 33)*

Article 18 of the Anti-Corruption Act provides for legal, employment and personal protection for witnesses, experts and reporting persons. This article does not, however, provide for protection for the relatives of witnesses and experts, nor for other persons close to them.

Palestinian legislation does not provide for the possibility of giving testimony through the use of communications technology.

Palestine has not entered into agreements concerning the relocation of persons.

Palestinian legislation does not allow for the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders.

*Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

Article 40 of the Anti-Money-Laundering Act provides for the possibility of confiscating criminal proceeds derived from money-laundering offences or predicate offences, where such proceeds are owned directly or indirectly by a person convicted of any such offence, and of confiscating property of corresponding value, in addition to any property used to commit the offence. This article also applies to the offences of bribery and embezzlement. As regards all other offences established in accordance with the Convention, article 30 of the Penal Code applicable in the West Bank provides for the possibility of confiscating any property derived from a deliberate felony or misdemeanour, or used in or intended for use in the commission of such acts. The article does not explicitly provide for value-based confiscation. The legislation applicable in the Gaza Strip does not contain an equivalent text.

Items may be confiscated only on the basis of a conviction.

The Code of Criminal Procedure, the Anti-Money-Laundering Act and the Anti-Corruption Act provide for a wide range of investigative measures to identify, trace and freeze criminal proceeds and instrumentalities for the purpose of confiscation.

Palestine has a number of procedures and legislative provisions related to the administration of seized and confiscated items.

Article 40 of the Anti-Money-Laundering Act provides for the possibility of confiscating property into which criminal proceeds have been converted, for which they have been exchanged or with which they have been intermingled, in addition to income or other benefits derived from such proceeds, in cases involving money-laundering, bribery or embezzlement only; these provisions do not apply to other offences established in accordance with the Convention.

Under article 9 of the Anti-Corruption Act, the PACC can request any entity to provide documents or information of any kind, including confidential documents and information, in accordance with the applicable legal procedures.

The court can oblige an offender to provide evidence of the lawful origin of the proceeds of an alleged offence in cases involving money-laundering, bribery or embezzlement (art. 20 of the Anti-Money-Laundering Act).

The Code of Criminal Procedure (art. 289), the Anti-Money-Laundering Act (art. 41) and the Penal Code applicable in the West Bank (art. 30) provide for the protection of the rights of bona fide third parties.

The public prosecution, the PACC or the Financial Intelligence Unit (FIU) can, after obtaining a court ruling, request that bank records be made available or seized.

*Statute of limitations; criminal record (arts. 29 and 41)*

In accordance with article 33 of the Anti-Corruption Act, corruption cases and all related procedures are not subject to the statute of limitations.

Under Palestinian law, any previous convictions held by the accused in another State must not be taken into account during criminal proceedings carried out in Palestine.

*Jurisdiction (art. 42)*

Palestine has established its jurisdiction with regard to the circumstances referred to in article 42, with the exception of corruption offences committed against Palestine or against Palestinian citizens.

*Consequences of acts of corruption; compensation for damage (arts. 34 and 35)*

Palestine has not taken measures to address the consequences of corruption.

Under article 196 of the Code of Criminal Procedure, claims for the recovery of a civil right may be raised before the Court of First Instance at any stage of the criminal proceedings, up to the close of pleadings. Active personal jurisdiction is applicable in the West Bank only, and not in the Gaza Strip.

*Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)*

Palestine established the PACC, which is entrusted with law enforcement and prevention tasks. In 2010, it also established a court specialized in corruption offences and it assigned members of the public prosecution to a specialized anti-corruption prosecution department. Moreover, each security service has a



section specialized in financial crime and corruption, such as the institutional security offices of the Preventive Security Service and the General Intelligence Service, in addition to the Office for Combatting Corruption, Money-Laundering and Economic Crimes within the police force. Palestine has also established a financial intelligence unit, known as the Financial Monitoring Unit, and a national committee to combat money-laundering.

This structure, which is composed of various law enforcement agencies and criminal justice institutions, appears to be working effectively. Adequate training and resources appear to be provided for.

With regard to cooperation between national authorities, any public official who, during or subsequent to the performance of his duties, becomes aware that an offence has taken place must report the fact to the competent authorities, in accordance with article 25 of the Code of Criminal Procedure. Under article 19(1) of the Anti-Corruption Act, any public official who becomes aware that a crime of corruption has taken place must report the fact to the PACC. Article 9(4) of the same Act grants the PACC the right to request that any entity provide documents or information of any kind, including confidential documents and information, in accordance with the applicable legal procedures.

Under the Anti-Money-Laundering Act, a number of private-sector entities — including banks, currency-exchange companies and insurance companies — are obliged to report any suspicious transactions to the Financial Monitoring Unit and to provide any information that the Unit may request. Under article 24 of the Code of Criminal Procedure, any person who becomes aware that an offence has been committed has a moral obligation to report the fact to the competent authorities, although no corresponding sanctions are specified for failing to report an offence.

## **2.2. Successes and good practices**

The following points are highlights of the successful experiences and good practices achieved in the implementation of Chapter III of the Convention:

- The establishment of an anti-corruption commission and a court specialized in corruption offences (art. 36);
- Good cooperation among domestic institutions engaged in combating corruption (art. 38).

## **2.3. Challenges in implementation**

The following steps would allow existing anti-corruption measures to be enhanced further:

- Criminalize the act of offering bribes to foreign public officials and officials of international public organizations (art. 16(1));
- Continue to make efforts to criminalize the solicitation and acceptance of bribes by foreign public officials and officials of international public organizations (art. 16(2));
- Include provisions in the legislation applicable in the Gaza Strip to explicitly criminalize misappropriation by a public official of anything entrusted to him or her by virtue of his or her position. Taking into consideration the provisions

of article 422 of the Penal Code applicable in the West Bank, and in order to provide greater legal certainty, Palestine is encouraged to consider the possibility of amending article 174 of the Penal Code applicable in the West Bank in order to explicitly criminalize embezzlement, misappropriation or other diversion for the benefit of another person or entity (art. 17);

- Continue to make efforts to criminalize, across the entire Palestinian territory, the giving and receiving of bribes by a public official or any other person in exchange for abusing his or her influence over an administration or public authority (arts. 18(a) and (b));
- Continue to make efforts to criminalize the abuse of functions in accordance with the provisions set out in the Convention (art. 19);
- Continue to make efforts to criminalize the promise, offering, giving, requesting or receiving of bribes in the private sector (art. 21);
- Include all offences established in accordance with the Convention, including trading in influence and abuse of functions, as predicate offences for money-laundering (art. 23(2)(b));
- Criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with the Convention, regardless of whether the offender achieves his or her goal (art. 25(a));
- Criminalize the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official, in accordance with the provisions of the Convention (art. 25(b));
- Consider establishing procedures for the disqualification of persons convicted of corruption offences from holding office in an enterprise owned in whole or in part by the State (art. 30(7)(b));
- Adopt additional measures to promote the reintegration into society of persons convicted of corruption offences (art. 30(10));
- Allow, over the entire Palestinian territory, for the possibility of confiscating criminal proceeds derived from offences established in accordance with the Convention, or property of corresponding value, in addition to instrumentalities used in or destined for use in such offences, property into which such proceeds have been converted, for which they have been exchanged or with which they have been intermingled, and income or other benefits derived from such proceeds (beyond money-laundering, bribery and embezzlement) (arts. 31(1), (4), (5) and (6));
- Adopt additional measures to improve the way in which the administration of frozen, seized and confiscated property is regulated (art. 31(3));
- Adopt additional measures to provide effective protection for witnesses, including victims who act as witnesses, and for experts who give testimony concerning offences established in accordance with the Convention. Such

measures must also include protection for the relatives of such persons and for other persons close to them (art. 32(1), (2) and (4));

- Consider entering into agreements on the relocation of persons (art. 32(3));
- Enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders (art. 32(5));
- Take measures to address the consequences of acts of corruption, which could include considering corruption a relevant factor to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action (art. 34);
- Consider providing for the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with the Convention (art. 37(3));
- Adopt additional measures to provide effective protection to perpetrators who cooperate with justice authorities. Such measures must also include protection for the relatives of such persons and for other persons close to them (art. 37(4));
- Ensure that the legislation explicitly requires the public authorities to respond to requests made by the PACC (art. 38(b));
- Adopt measures to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector, beyond their anti-money-laundering obligations (art. 39(1));
- Consider establishing Palestine's jurisdiction over corruption offences committed against Palestine or its citizens, and consider expanding the scope of application of the principle of active personal jurisdiction so as to include all the Palestinian territories, including Gaza (art. 42(2)(a), (b) and (d)).

#### **2.4. Technical assistance needs identified to improve implementation of the Convention**

- Technical assistance to develop programmes to promote the reintegration into society of convicted persons (art. 30(10));
- Legislative drafting; Establishing programmes for building the capacities of authorities responsible for the administration of frozen, seized and confiscated property; Summary of good practices/lessons learned (art. 31(3));
- Technical assistance to prepare regulations on witness protection that specify the types and forms of legal, employment and physical protection that can be offered, the mechanisms for granting such protection and the unit responsible for making decisions concerning the granting of protection under certain conditions; Information on comparative experiences in this area in order to identify best practices (art. 32);
- Model legislation on the protection of witnesses and reporting persons (arts. 32 and 33);

- Specialized training courses to enhance the capabilities of staff members who work for the PACC, the anti-corruption prosecution department and all public institutions in order to increase integrity and combat corruption, in particular in the field of financial investigations (art. 36).

### **3. Chapter IV: International cooperation**

#### **3.1. Observations on the implementation of the articles under review**

Palestine is considered to be in an exceptional situation with regard to international cooperation, due to a number of circumstances including the fact that it does not possess full control over its external borders. To a certain extent, these circumstances present an obstacle to the legal and practical feasibility of Palestine cooperating at the international level. For instance, Palestine has not yet concluded any bilateral agreements on extradition or mutual legal assistance.

Palestine is a full member of the League of Arab States and has acceded to a number of regional multilateral treaties, including the Arab Convention against Corruption, the Arab Convention on Combating Money-Laundering and Terrorist Financing, and the Riyadh Arab Agreement for Judicial Cooperation (the “Riyadh Agreement”). For Palestine, the United Nations Convention against Corruption is the first international convention with global scope to regulate aspects of international cooperation.

Palestine can apply directly the self-executing provisions of international treaties; for example, wanted offenders have already been extradited on previous occasions on the basis of the Riyadh Agreement. In the absence of international treaties, Palestine can still provide assistance on the basis of the principle of reciprocity.

At domestic level, Palestine does not have a general act on the extradition of wanted offenders or on mutual legal assistance. The Extradition of Fugitives Act of 1927 is in force in the West Bank, however, and the Extradition of Fugitives Act of 1926 is in force in the Gaza Strip.

*Extradition; transfer of sentenced persons; transfer of criminal proceedings  
(arts. 44, 45 and 47)*

In matters of extradition, Palestine generally requires that dual criminality apply. However, in line with article 43(2) of the Convention, the principle of dual criminality is applied flexibly, i.e. dual criminality is assessed solely on the basis of the conduct underlying the offence. Furthermore, under article 40(b) of the Riyadh Agreement, it is not obligatory to extradite a wanted person if he or she is a citizen of the requesting State or of another State where the offence is punishable.

The Ministry of Justice is responsible for taking decisions on extradition cases, whereupon each case is referred to the public prosecution. The decision to extradite a person must be signed by the president, who has the final word on whether or not the extradition should be carried out.

Palestine allows extradition for related offences as set out in article 44(3) of the Convention. Offences established in accordance with the Convention are not considered political offences.

Palestine does not make extradition conditional on the existence of a treaty. Moreover, Palestine can use the Convention as a legal basis for extradition for corruption offences. The principle of reciprocity is also deemed to be a sufficient basis for extradition.

Extraditable offences are listed in an annex to the 1926 and 1927 Extradition of Fugitives Acts and include offences such as false testimony or perjury, theft, embezzlement, abuse of trust, fraud, receipt of property obtained as a result of the aforementioned offences, and bribery. These exhaustive lists do not cover all the offences established in accordance with the Convention, however.

The domestic extradition laws in force set out a few conditions required for extradition but contain no information on minimum penalty requirements, which are specified only in article 40 of the Riyadh Agreement. Under these laws, a request for extradition may be refused on the grounds that the case involves a political offence, but financial offences are not deemed to be an acceptable reason for refusal.

Any person within Palestinian territory whose extradition is sought can be taken into provisional custody.

While Palestinian nationals may not be extradited (art. 28 of the Basic Law), Palestine has jurisdiction over its nationals in the West Bank on the basis of the principle of active personal jurisdiction (art. 10 of Penal Code No. 16). Moreover, the principle of legality (mandatory prosecution) means that the person will be prosecuted even in the absence of a request from a foreign country. In Gaza, however, Penal Code No. 16 — and thus the principle of *aut dedere aut judicare* — does not apply.

The Penal Codes applicable in Palestine do not contain any provisions that provide for the direct enforcement of foreign rulings; this can be carried out on the basis of an international agreement, however.

Article 9 et seq. of the Basic Law enshrine fundamental rights and freedoms which also apply in extradition proceedings. Extradition decisions can be appealed in a common court of law, up to the Court of Cassation.

Although Palestinian legislation does not include any provisions on the subject, the obligation to conduct consultations emanates from the direct application of the Convention.

There is no legal basis for transferring sentenced persons or criminal proceedings.

*Mutual legal assistance (art. 46)*

The domestic legislation in Palestine does not contain any provisions to govern the issue of mutual legal assistance. Therefore, apart from the United Nations Convention against Corruption and the Arab Convention against Corruption, the Riyadh Agreement is the only written legal basis for mutual legal cooperation. However, Palestine does not make the provision of mutual legal assistance conditional on the existence of a treaty, as the principle of reciprocity is applied as a customary law. Palestine does not require that the principle of dual criminality apply when fulfilling judicial assistance requests.

Mutual legal assistance can be provided in relation to offences committed by legal persons. Palestine can, in principle, provide all the forms of legal assistance listed in article 46(3) of the Convention. All measures that can be applied at national level can also be used to fulfil requests for mutual legal assistance. A decision must be issued by the court in cases that involve the provision of access to bank records.

While spontaneous information-sharing is possible in principle, it does not fall within the framework of formal requests for mutual legal assistance. However, during interactions between different financial intelligence units and between different police forces, information is commonly shared in a spontaneous manner on the basis of article 45 of the Anti-Money-Laundering Act.

The confidential status of any information provided does not prevent Palestine from disclosing such information in the event that it is exculpatory to an accused person. Bank secrecy is also not considered to be acceptable grounds for declining to render mutual legal assistance. Requests are not refused solely on the grounds that they involve matters of a *de minimis* nature.

In the absence of domestic legislation on mutual legal assistance, the provisions set out in the Convention can be applied directly with regard to the transferral of persons who are being detained or serving a sentence for the purpose of providing testimony. Guarantees of safe conduct are granted on the same basis. The Code of Criminal Procedure does not generally permit hearings to take place by video conference, but it may be allowed where specified in the request for mutual legal assistance and with the consent of the person concerned.

The Ministry of Justice has been designated as the central authority for receiving requests for mutual legal assistance. Such requests, and any related communications, are transmitted directly to the central authority. All requests and related documents must be submitted in writing in Arabic or English. For outgoing requests, Palestine follows the procedures specified by the receiving country. Palestine fulfils requests in accordance with the procedures specified in the request unless such procedures conflict with national law. The rule of specialty is observed in practice. Requests can be treated confidentially.

In the absence of national legislation on mutual legal assistance, Palestine can refuse requests only on the basis of article 20(11) of the Arab Convention against Corruption or article 46(21) of the United Nations Convention against Corruption. Requests cannot be refused solely on the grounds that the offence involves financial matters.

No requests for mutual legal assistance have thus far been refused. Were Palestine to refuse such a request, however, it would, in direct application of the Convention, provide reasons for the refusal and hold consultations before refusing a request. Palestine indicated that the average response time for incoming requests was less than one month. The provision of assistance can be postponed by Palestine on the grounds that the request interferes with an ongoing investigation.

Ordinary costs related to rendering mutual legal assistance are borne by Palestine. Documents in the public domain can be provided upon request. Confidential documents or information can be provided to the requesting State where the requesting State provides guarantees that the confidentiality of the documents and information will be maintained.

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)*

Palestine considers the Convention to be a basis for mutual cooperation between law enforcement authorities.

The PACC cooperates only with other Arab anti-corruption commissions (such as those in Jordan) and is a member of the Arab network of anti-corruption commissions. No memoranda of understanding have been signed with other anti-corruption commissions thus far; draft memoranda have been drawn up with Malaysia and Morocco, however.

The FIU has signed memoranda of understanding with its counterparts in Jordan and the Russian Federation. It is not a member of the Egmont Group of Financial Intelligence Units, however. It currently uses encrypted e-mails to communicate.

Palestine has applied for membership to the Middle East & North Africa Financial Action Task Force (MENAFATF).

Palestine is an observer to INTERPOL. It has a national INTERPOL focal point, but it does not yet have access to the I-24/7 secure network.

Palestine can launch joint investigations under the framework of the United Nations Convention against Corruption and of the United Nations Convention on Transnational Organized Crimes, and on a case-by-case basis.

Articles 50 and 51 of the Code of Criminal Procedure govern the use of special investigative techniques, which include communication surveillance, covert observation and investigation, and controlled deliveries. Evidence obtained through the use of such techniques is admissible in court.

### **3.2. Successes and good practices**

The following points are highlights of the successful experiences and good practices achieved in the implementation of Chapter IV of the Convention:

- Despite the absence of international treaties, Palestine can still provide assistance on the basis of the principle of reciprocity;
- Current use of the Convention as the legal basis for making outgoing requests for mutual legal assistance.

### **3.3. Challenges in implementation**

The following steps would allow existing anti-corruption measures to be enhanced further:

- Explicitly include all offences established in accordance with the Convention in the national legislation as extraditable offences (art. 44(7));
- Extend the principle of *aut dedere aut judicare* to the entire territory of Palestine (including Gaza) (art. 44(11));
- Include clear provisions in the legislation that specify that extradition will be refused where there are substantial grounds to believe that the extradition request has been made with a view to prosecuting or punishing the person

concerned on account of that person's sex, race, religion, nationality, ethnic origin or political opinions (art. 44(15));

- Consider the possibility of transferring proceedings for the prosecution of offences established in accordance with the Convention in cases where the transfer would be in the interests of the proper administration of justice (art. 47);
- Endeavour to establish and enhance channels of communication with the competent law enforcement authorities, agencies and services in other countries (art. 48).

#### **3.4. Technical assistance needs identified to improve implementation of the Convention**

- Legislative assistance to draw up a law on international cooperation;
- Assistance with drafting requests for mutual legal assistance in general, and those concerning asset recovery in particular.

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