



**UNODC**

United Nations Office on Drugs and Crime

# **Country Review Report of the State of Palestine**

Review by Micronesia (Fed. States of) and the Sultanate of Oman of the implementation by the State of Palestine of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

## **I. Introduction**

1- The Conference of the States Parties to the United Nations Convention against Corruption (hereinafter, UNCAC or the Convention) was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

2- In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

3- The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

4- The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

5- The following review of the implementation of the Convention by the State of Palestine (Palestine) is based on: the comprehensive self-assessment checklist; supplementary information provided in accordance with paragraph 27 of the reference framework of the Review Mechanism; and the outcome of the constructive dialogue held between governmental experts from Micronesia and Oman by means of telephone conferences and e-mail exchanges and involving: from Oman: from the Public Prosecution: Assistant Attorney General/ Saeed Bin Mohammed Al Kalbani, from the State Audit Institution: Senior supervisory expert/ Mohammed bin Khamis AL Hajri, Senior supervisor/ Abdullah bin Khalfan Al Abri, from the Ministry of Justice: Dr./ Ibrahim bin Yahya Al Abri, from the Ministry of Legal Affairs: Senior Assistant Counsel/ Ahmed bin Khalifa Al Hosni; from Micronesia: Assistant Attorney General/ Caroline Rugero; and from the Secretariat: Mr. Badr El Banna and Mr. Oliver Landwehr.

6- A joint meeting, agreed to by Palestine, took place in Vienna from 8 to 10 June 2015.

### **III. Executive Summary**

#### ***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) following the deposit of 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 is different 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 subsequent military orders issued before the advent of the Palestinian Authority, which treated the West Bank and the Gaza Strip differently.*

*The anti-corruption framework comprises provisions from several laws including: the Criminal Procedure Code (CPC), the Anti-Money Laundering Law (AML Law) and the Anti-Corruption Law (ACL) which are enforced in all Palestinian territories; the Penal Code No. 16 of 1960 applicable in the West Bank and the Penal Codes No. 69 of 1953 and No. 74 of 1936 applicable in the Gaza Strip.*

*With respect to international law, Palestine can directly apply self-executing provisions of international treaties. However, the rank of these treaties in the domestic law is not clear.*

*Courts are divided into ordinary courts, religious courts and special courts, in addition to the Supreme Court of Justice which examines administrative litigations. With respect to ordinary courts in the West Bank governorates, the Court of Cassation is the highest ordinary court and its decisions are morally binding on courts of lower instances (Civil Law system). Additionally, it enforces applicable legislation in the West Bank. In the Gaza governorates, the Supreme Court is the highest ordinary court and its decisions are judicial precedents (Common Law system). It enforces the legislation that is effective in Gaza.*

*Criminal proceedings follow the accusatory system and consist of the investigation phase and the oral trial.*

*Palestine has established several institutions that contribute to the fight against 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, read together with articles 170 and 171 of the Penal Code applicable in the West Bank, criminalizes the bribery of an official if the bribe is accepted and article 173 thereof if the bribe is not accepted. Article 107 bis read together with articles 103, 103 bis, 104, and 104 bis of Penal Code No. 69 applicable in the Gaza Strip, criminalizes the bribery of an official if the bribe is accepted and article 109 bis thereof if the bribe is not accepted. The sentence for the mentioned articles (172) and (107) bis includes the intervener and the intermediary, which covers indirect bribery.*

*Palestine criminalizes the solicitation or acceptance of bribes by an official, pursuant to articles 170 and 171 of the Penal Code applicable in the West Bank and articles 103, 103 bis, 104, and 104 bis of the Penal Code No. 69 applicable in the Gaza Strip, in addition to articles 106, 107, 108, and 110 of the Penal Code No. 74 also applicable in the Gaza Strip. The sentence includes the intervener and the intermediary, which covers indirect bribery.*

*Palestine's legislation does not criminalize the bribery of foreign public officials or officials of public international organizations (active or passive). A bill amending the ACL has been drafted to criminalize the active and passive bribery of foreign public officials or officials of public international organizations.*

*There is no provision in the current Palestinian legislation criminalizing bribery of a public official or any other person to abuse his or her influence toward an administration or public authority, although this act was previously criminalized in the Gaza Strip. Article 108 of the Penal Code No. 74 applicable in the Gaza Strip criminalizes the passive bribery of anyone to use his influence toward a public official. A draft of the Palestinian Penal Code and a bill amending the ACL has been prepared to criminalize the active and passive bribery of a public official or any other person to abuse his or her influence toward an administration or public authority.*

*Palestine does not criminalize bribery in the private sector (active or passive). A bill amending the ACL has been drafted to criminalize the active and passive bribery the private sector.*

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

*Palestine criminalizes the laundering of proceeds of crime, including self-laundering, pursuant to article 2 of the AML Law. Paragraph 1 (d) of the same article criminalizes the different aspects of criminal participation as well the attempt.*

*Palestine adopted the list approach in determining the predicate offenses; according to article 3 of the Law, the list covers twenty offences including bribery, embezzlement, illegal gain, extortion, threats and intimidation offences. The list does not include all the offences established in accordance with the Convention, especially trading in influence and abuse of functions.*

*Predicate offences include offences committed both within and outside Palestine, on condition of dual criminality.*

*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 of the money laundering offense apply to that act pursuant to paragraph 1 (b) of article (2) of the AML Law. The 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 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 the embezzlement for the benefit of another person or entity nor the acts of misappropriation or other diversion. However, these acts are covered by the provisions of article 422 of the same law which criminalizes the abuse of trust in a comprehensive manner and applies to public officials in the case of non-applicability of the provisions of article 174.*

Articles 112 and 113 of the Penal Code No. 69 applicable in the Gaza Strip criminalize the embezzlement by a public official of anything entrusted to him or her because of his or her position without explicitly covering the act of misappropriation.

Despite the lack of a comprehensive text criminalizing the abuse of functions, articles 175 and 176 of the Penal Code applicable in the West Bank and articles 110 and 116 of the 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 amending the ACL has been prepared to criminalize the abuse of functions in a comprehensive manner.

The Palestinian legislator has criminalized illicit enrichment under article (1) of the Law No. 1 of 2005 on Illegal Gain (which was amended by Law No. 7 of 2010 to become the ACL), and then cancelled this criminalization because it contradicts the principle of presumption of innocence enshrined in article 14 of the Basic Law. The legislator currently requires that the public prosecution prove the predicate offence which resulted in the illegal 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 the Penal Code No. 74 applicable in the Gaza Strip. The draft Penal Code also provides for the criminalization of this act.

#### **Obstruction of justice (art. 25)**

Article (80) read together with article (214) of the Penal Code applicable in the West Bank criminalize incitement to perjury, by means of giving money or gift, or through the use of threats, when the offender reaches his or her goal, i.e. the false testimony. The law does not criminalize such acts when the offender does not reach 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 gift stipulated in the law is narrower than the concept of undue advantage provided for in the Convention.

Article 117 of the Penal Code No. 74 applicable in the Gaza Strip, criminalizes temptation to perjury, when the offender reaches his or her goal, i.e. the false testimony, which covers incitement through the promise, offering or giving of an undue advantage. The law does not criminalize such acts when the offender does not reach his or her goal, nor does it cover incitement through the use of physical force, threats or intimidation.

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

Article 187 of the Penal Code applicable in the West Bank criminalizes striking or assaulting a public official or treating them violently or harshly, or threatening them, while performing their duties or because of the acts performed by them in the exercise of their duties. The text of this article is narrower than the Convention, since the act should 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, the interference prior to the exercise of the public official's duties.

The Penal Code No. 74 applicable in the Gaza Strip criminalizes some aspects of the intervention in the exercise of the public official's duties (arts. 124 and 139).

#### **Liability of legal persons (art. 26)**

*Article (9) of the ACL provides for the criminal liability of legal persons for the offences covered by this law when committed, on its behalf or with its means, by its directors, board members, representatives, or employees.*

*Article (39) of the AML Law provides for the civil and criminal liability of legal persons for the 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, management members, representatives, or employees on behalf of or with the means of the said legal persons.*

*Article (194) of the Companies Law No. 12 of 1964, applicable in the West Bank provides for the administrative liability of joint stock companies for grave breaches of the law.*

*The liability of a legal person does not affect the criminal liability of the natural person who committed the offense.*

*Palestinian legislation subjects legal persons to several types of sanctions when participating in offenses established in accordance with the Convention, including cessation of work and dissolution (art. 9 of the ACL), fine and confiscation (art. 74 of the Penal Code applicable in the West Bank), in addition to fine and compensation in money laundering cases (art. 39 of the AML Law).*

#### ***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 articles 23-27 and 31 of the Penal Code No. 74 applicable in the Gaza Strip.*

*While the Penal Code No. 74 applicable in the Gaza Strip criminalizes the attempt for all offences (arts. 29 and 30), the Penal Code No. 16 applicable in the West Bank, only criminalizes the attempt for felonies but the attempt to commit misdemeanors is not criminalized except in cases provided for by law. Accordingly, the attempt to commit offences covered by the Convention cannot be sanctioned in the West Bank, except in criminal embezzlement, abuse of functions and money laundering cases.*

*The preparatory acts for an offence are not criminalized.*

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

*Palestine adopted penalties for corruption offences that range from three months to up to fifteen years of imprisonment, taking into account the gravity of the offence. In addition, fines, deprivation from holding public office and confiscation are applicable for certain offences.*

*Immunities do not seem to constitute an impediment to the effective prosecution of such offences. The ACL provides for the investigation, prosecution and trial procedures of the President of the National Authority, his advisors and heads of Presidency institutions; the Prime Minister, cabinet members and persons with a similar status; the Speaker and members of the Palestinian Legislative Council; and the Members of the Judicial Authority and the Public Prosecution (arts. 12 and 17).*

*Prosecution in Palestine follows the principle of legality (mandatory prosecution) pursuant to articles 1, 149, 151, and 152 of the CPC.*

*Preventive detention can be applied for corruption offences (arts. 115-122 of the CPC). Release pending trial is possible with bail. The PACC can also prevent the accused from*

*travelling (art. 9 of the ACL). Early release is possible if two thirds of the prison sentence has been completed.*

*The PACC can request from the relevant authority the suspension from office of the accused (art. 9 of the ACL). The Civil Service Law No. (4) of 1998 and its implementing regulations also provide for the suspension or reassignment of a public official when placed under investigation.*

*The ACL contains the sanction of disqualification from holding public office but not from holding office in an enterprise owned in whole or in part by the State.*

*The imposition of administrative sanctions stipulated in the Civil Service Law does not preclude holding a civil servant criminally accountable or vice versa. A civil servant may incur disciplinary sanction even if he is criminally acquitted (art. 95 of the Implementing Regulations of the Civil Service Law).*

*Palestine does not have a dedicated reintegration programme for convicted persons after their release from prison. However, these persons are trained to acquire beneficial skills or professions during the period of their imprisonment.*

*Palestine has not adopted measures to grant immunity from prosecution to cooperating offenders, although such cooperation may be taken into account. The Palestinian legislation allows to exempt from punishment persons who participate or who have participated in the commission of acts of corruption in case of reporting or in case their cooperation has led to the apprehension of the other perpetrators and the seizure of the the proceeds of crime (arts. 25 and 27 of the ACL, art. 38 of the AML Law and art. 172 of the Penal Code applicable in the West Bank). Article 27 of the ACL provides for the mitigation of the punishment of the perpetrator of a crime of corruption or the accomplice who cooperate during the investigation to uncover the crime and the offender.*

*Palestine has not adopted sufficient measures to provide effective protection to crime perpetrators who collaborate with justice, especially if the cooperation took place after the discovery of the crime.*

*Palestine can enter into ad hoc agreements to provide for the possibility to exempt from punishment persons collaborating with justice located abroad, within the applicable legal conditions.*

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

*Article 18 of the ACL provides for legal, job, and personal protection of witnesses, experts, and reporting persons. However, this article does not provide for the protection of the relatives of witnesses and experts, and other persons close to them.*

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

*Palestine did not enter into any agreements with respect to the relocation of persons.*

*Palestine's legislation does not enable 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 AML Law provides for the possibility of confiscation of proceeds of crime derived from a money laundering or a predicate offence, which are owned directly or indirectly by a person convicted of the crime of money laundering or a predicate offence, or property of corresponding value of such proceeds in addition to the means. Hence this article also applies to bribery and embezzlement. As for the rest of the offences established in accordance with the Convention, article 30 of the Penal Code applicable in the West Bank provides for the possibility of confiscation of all items derived from, used in, or intended for the commission of a deliberate felony or misdemeanour. It does not explicitly provide for value-based confiscation. There is no similar text in the legislation applicable in the Gaza Strip.*

*Confiscation is conviction-based.*

*The CPC, the AML Law and the ACL provide for a wide range of investigative measures available for the tracing and freezing of criminal proceeds and instrumentalities for the purpose of confiscation.*

*Palestine has some procedures and legislative provisions relating to the administration of seized and confiscated items.*

*Article (40) of the AML Law provides for the possibility of confiscation of transformed, converted or intermingled property and income or other benefits derived from such proceeds in money laundering, bribery, and embezzlement cases, but not for other Convention offences.*

*Article (9) of the ACL provides that the PACC can request, from anybody, any documents or information, including the confidential one, and this according to the applicable legal procedures.*

*The court may require that an offender demonstrate the lawful origin of alleged proceeds of crime in money laundering, bribery and embezzlement cases (art. 20 of the AML Law).*

*The CPC (art. 289), the AML Law (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 prosecutor, the PACC or the FIU may request that bank records be made available or seized, after obtaining a court ruling.*

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

*According to article 33 of the ACL, corruption cases and all related procedures are not subject to the statute of limitations.*

*Palestinian legislation does not provide for the possibility of taking into account previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings.*

#### ***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 a Palestinian citizen. Moreover, active personal jurisdiction applies only to West Bank, but not to Gaza strip.*

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

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

*Pursuant to article 196 of the CPC, claims for the recovery of a civil right may be raised before the court of first instance at any stage of the penal action and until the close of pleadings.*

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

*Palestine established an Anti-Corruption Commission (PACC) entrusted with law enforcement and prevention tasks. It also established in 2010 a Court specialized in corruption offences and assigned members of the public prosecution to take over the tasks of a specialized anti-corruption prosecution. Moreover, each security service has specialized sections in financial crime and corruption, including: the "security of the institutions" office in the Preventive Security Service and in the General Intelligence Service, in addition to the Office of the Fight against Corruption, Money Laundering and Economic Crimes of the police. Palestine has also established a Financial Intelligence Unit (FIU), called the Financial Follow-up Unit and a National Committee to combat money laundering.*

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

*Regarding cooperation between national authorities, article 25 of the CPC establishes the obligation on any public official who, in the performance of his duties or by reason of the performance thereof, becomes aware of a crime, to report it to the competent authorities. Article (19/1) of the ACL establishes the obligation on any public official who becomes aware of a crime of corruption to report it to the PACC. Article (9/4) of the ACL gives the PACC the right to request from any body, any documents or information, including the confidential one, and this according to the applicable legal procedures.*

*The AML Law establishes the obligation of a number of private sector entities, including banks, money-dealers and insurance companies to report to the FIU any suspicious transactions and to provide it with any information that the FIU may request. Article 24 of the CPC creates an ethical duty of those who become aware of a crime to report it, although there are no corresponding sanctions for failure to report.*

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

*In general, the following are highlights of the successful experiences and good practices in the implementation of Chapter III of the Convention:*

- The establishment of an Anti-Corruption Commission and an Anti-Corruption Court (art. 36);*
- Good cooperation among the domestic institutions engaged in anti-corruption (art. 38).*

## ***2.3. Challenges in implementation***

*The following steps would allow further enhancement of existing anti-corruption measures:*

- Criminalizing the active bribery of foreign public officials and officials of public international organizations (art. 16, para. 1);*

- *Palestine is encouraged to continue its efforts to criminalize the passive bribery of foreign public officials and officials of public international organizations (art. 16, para. 2);*
- *Including in the legislation applicable in the Gaza Strip an explicit criminalization of the act of 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 for greater legal certainty, Palestine is encouraged to consider the possibility of amending article (174) of the same law to explicitly cover the embezzlement for the benefit of another person or entity and the acts of misappropriation or other diversion (art. 17);*
- *Palestine is encouraged to continue its efforts to criminalize, over its entire territory, the active and passive bribery of a public official or any other person to abuse his or her influence toward an administration or public authority (art. 18, subparas. (a) and (b));*
- *Palestine is encouraged to continue its efforts to criminalize the abuse of functions in accordance with the provisions of the Convention (art. 19);*
- *Palestine is encouraged to continue its efforts to criminalize active and passive bribery in the private sector (art. 21);*
- *Include as predicate offences for money laundering all offences established in accordance with the Convention, including trading in influence and abuse of functions (art. 23, subpara. 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, whether the offender reaches or not his or her goal (art. 25, subpara. (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, subpara. (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, subpara. 7(b));*
- *Palestine is encouraged to adopt additional measures to promote the reintegration into society of persons convicted of corruption offences (art. 30, para. 10);*
- *allow, over the entire Palestinian territory, for the possibility of confiscation of proceeds of crime 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 and transformed, converted or intermingled property and income or other benefits derived from such proceeds (beyond money laundering, bribery and embezzlement) (art. 31, paras. 1, 4, 5 and 6);*
- *adopt additional measures to improve the regulation of administration of frozen, seized and confiscated property (art. 31, para. 3);*

- *Adopt additional measures to provide effective protection for witnesses, including victims insofar as they are witnesses, and experts who give testimony concerning offences established in accordance with the Convention, and include their relatives and other persons close to them in such protection (art. 32, paras. 1, 2 and 4);*
- *Consider entering into agreements for the relocation of persons (art. 32, para. 3);*
- *Enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders (art. 32, para. 5);*
- *Take measures to address 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, para. 3);*
- *Adopt additional measures to provide effective protection to perpetrators who cooperate with justice, and to include their relatives and other persons close to them in such protection (art. 37, para. 4);*
- *Palestine is encouraged to ensure that the legislation explicitly requires the public authorities to respond to requests from the PACC (art. 38, subpara. b);*
- *Adopt measures to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector, beyond the anti money-laundering obligations (art. 39, para. 1);*
- *Palestine is encouraged to consider establishing its jurisdiction over corruption offences committed against Palestine or a Palestinian citizen 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 paras. 2(a), 2(b) and 2(d)).*

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

- *Technical assistance in the development of programs to promote the reintegration into society of convicted persons (art. 30, para. 10);*
- *Legislative drafting; Establishing programs for building capacities of authorities responsible for the administration of frozen, seized and confiscated property; Summary of good practices/lessons learnt (art. 31, para. 3);*
- *Technical assistance in the preparation of witness protection regulations that determine the types and forms of legal, job, and physical protection that can be offered, as well as the mechanisms to grant such protection and the unit that will decide the granting of the protection under certain conditions; Information on comparative experiences in this area 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 capacities of the staff of the PACC, the Anti-Corruption Prosecution, and all public institutions to enhance integrity and combat corruption, especially 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 (MLA).*

*Palestine is a full member of the League of Arab States and has acceded to a number of regional multilateral treaties, including the Arab Anti-Corruption Convention, the Arab Convention on Combating Money Laundering and Terrorist Financing, and the Riyadh Arab Agreement on Judicial Cooperation (the ‘Riyadh Agreement’). For Palestine, UNCAC was the first international convention with a global scope that regulates aspects of international cooperation.*

*Palestine can directly apply self-executing provisions of international treaties. Indeed, extraditions have already been carried out on the basis of the Riyadh Agreement. In the absence of international treaties, Palestine can still provide assistance on the basis of reciprocity.*

*Domestically, Palestine does not have a general Extradition Act or Mutual Legal Assistance Act. There is, however, the Law on the Extradition of Fugitives of 1927, in force in the West Bank, and the Law on the Extradition of Fugitives of 1926, in force in the Gaza Strip.*

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

*In extradition matters, Palestine generally requires dual criminality. However, in line with Art. 43(2) UNCAC, the principle of dual criminality is applied flexibly, i.e. the underlying conduct is decisive for the assessment of dual criminality. Moreover, on the basis of Article 40(b) of the Riyadh Agreement, dual criminality would not be required if the person sought is a citizen of the requesting party or another State where the act is punishable.*

*The Ministry of Justice takes the decision to extradite and then refers the case to the public prosecution. Such decision must be signed by the president, who has the final word whether or not to extradite.*

*Palestine allows “accessory” extradition, i.e. extradition for connected offences as laid down in Art. 44(3) UNCAC. Convention offences are not considered political offences.*

*Palestine does not make extradition conditional on the existence of a treaty. Moreover, Palestine can use UNCAC as the legal basis of extradition for corruption offenses. Finally, reciprocity is also sufficient as a basis for extradition.*

*Extraditable offences are provided in an annex to the 1926 and 1927 Laws on the Extradition of Fugitives, and include offenses such as false testimony or perjury, theft, embezzlement, abuse of trust, fraud, receipt of property obtained as a result of the former listed crimes, and bribery. These exhaustive lists do not cover all Convention offences.*

*The domestic extradition laws in force only stipulate few conditions for extradition and are silent on minimum penalty requirements, which are only contained in Art. 40 of the Riyadh Agreement. The laws only mention political crimes as grounds for refusal of an extradition request. The fact that the offence involves fiscal matters is not a ground for refusal.*

*Palestine can take a person whose extradition is sought and who is present in its territory into provisional custody or detention.*

*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 active personality principle (Art. 10 of Penal Law 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, the Penal Law No. 16 – and thus the principle “aut dedere, aut iudicare” – does not apply.*

*The Penal Codes applicable in Palestine do not contain any provisions that provide for the direct enforceability of a foreign ruling. However, this could be done on the basis of an international agreement.*

*Art. 9 et seq. of the Basic Law enshrine fundamental rights and freedoms which also apply in extradition proceedings. The decision to extradite can be appealed in a court of law, up to the Court of cassation.*

*While there is nothing in the legislation, the obligation to consult flows from the direct application of the Convention.*

*There is no legal basis for the transfer of sentenced persons or criminal proceedings.*

#### ***Mutual legal assistance (art. 46)***

*There is no domestic legislation that governs mutual legal assistance (MLA) in Palestine. Therefore, apart from UNCAC and the Arab Convention against Corruption, the Riyadh Agreement is the only written legal basis for mutual legal cooperation. However, Palestine does not require a treaty to render MLA, and the principle of reciprocity is also applied as customary law. Palestine does not apply the principle of dual criminality when fulfilling judicial assistance requests.*

*MLA can be afforded in relation to offences committed by legal persons. Palestine can, in principle, afford all the forms of legal assistance listed in Art. 46(3) UNCAC. All measures that can be taken nationally can also be used in fulfilling MLA requests. As far as access to bank records is concerned, a court decision is needed.*

*While spontaneous information sharing is possible in principle, it is not practiced in formal MLA. However, in FIU to FIU and police to police relations, it is applied frequently on the basis of Art. 45 of the AML Law.*

*The confidentiality of the information provided will not prevent Palestine from disclosing it when such information is exculpatory for an accused person. Bank secrecy is not a ground for*

*refusing to render MLA. Requests are not refused on the sole ground that they involve matters of a de minimis nature.*

*In the absence of internal MLA legislation, the transfer of a person being detained or serving a sentence for the purpose of testimony is possible on the basis of the Convention, which is directly applicable. Safe conduct is granted on the same basis. The CPC does not generally permit hearings to take place by video conference. However, its use is possible if the MLA request asks for it and the person concerned consents to it.*

*The Ministry of Justice has been designated as the central authority for receiving MLA requests. MLA requests and any related communications can be directly transmitted to the central authority. Requests and the related documents have to be submitted in writing in Arabic or English. For outgoing MLA requests, Palestine follows the procedure specified by the receiving country. Palestine fulfils requests in accordance with the procedure specified in the request unless such procedure conflicts with national law. The rule of specialty is observed in practice. Requests can be treated confidentially.*

*In the absence of national MLA legislation, Palestine would only refuse MLA requests on the basis of Art. 20(11) of the Arab Anti-Corruption Convention or Art. 46(21) UNCAC. MLA will not be refused on the sole ground that the offence is also considered to involve fiscal matters.*

*No MLA request has been refused so far. However, in direct application of the Convention, Palestine would provide reasons for doing so, if it ever were to refuse a request, and prior to that, consultations would be held. Palestine indicated that the average length of response to incoming MLA requests was less than one month. Assistance may be postponed by Palestine on the ground that it interferes with an ongoing investigation.*

*Ordinary costs related to rendering MLA 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 to respect confidentiality.*

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

*Palestine considers the Convention as a basis for mutual law enforcement cooperation.*

*The PACC has cooperation only with other Arab anti-corruption commissions (e.g. Jordan) and is a member of the network of Arab anti-corruption commissions. No MoUs with other anti-corruption commissions have been signed so far. However, there are draft MoUs with Malaysia and Morocco*

*The FIU has concluded MoUs with its Jordanian and Russian counterparts. It is not a member of the Egmont Group of FIUs. As means of communication, it currently uses encrypted e-mails.*

*Palestine has applied for membership in the MENAFATF.*

*Palestine is an observer to INTERPOL. There is a national INTERPOL focal point, but it has no access yet to the I-24 secure network.*

*Palestine could establish joint investigations in the framework of UNCAC, the United Nations Conventions on Transnational Organized Crimes (UNTOC), as well as on a case-by-case basis.*

*Special investigation methods are governed by Art. 51 and 51 of the CPC (surveillance of communication, observation, covert investigation, controlled delivery). Evidence obtained through the use of such techniques is admissible in court.*

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

- *In the absence of international treaties, Palestine can still provide assistance on the basis of reciprocity;*
- *The actual use of UNCAC as the legal basis for an MLA request sent to another State party.*

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

*The following steps could further strengthen existing anti-corruption measures:*

- *Expressly include in the legislation all Convention offences as extraditable offences (Art. 44(7));*
- *Extend the principle “aut dedere, aut iudicare” to the entire territory of Palestine (including Gaza) (Art. 44(11));*
- *Clarify in the legislation that extradition will be refused if Palestine has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person 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 a Convention offence in cases where such transfer is considered to be in the interests of the proper administration of justice (Art. 47);*
- *Endeavour to establish and enhance channels of communication with foreign competent law enforcement authorities, agencies and services (Art. 48).*

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

- *Legislative assistance for the elaboration of the International Cooperation Law;*
- *On MLA request drafting generally and in particular with regard to asset recovery.*

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

7- Palestine acceded to the Convention following the deposit of its instrument of accession to the Convention with the Secretary-General of the United Nations on 2 April 2014. (Depositary Notification C.N.374.2014.TREATIES-XVIII.14<sup>1</sup>)

### **B. The Legal System in Palestine**

8- The legal status in Palestine, in comparison with the countries of the world, is both complex and rare. This is due to the multiplicity of actors that ruled Palestine throughout history, which in turn led to a diversity of legal systems that prevailed in this country. All this has had an impact on the political and legal structure in Palestine. There is no unified legal system in Palestine; rather the scope of application of certain laws is different 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 subsequent military orders issued before the advent of the Palestinian Authority, which treated the West Bank and the Gaza Strip differently.

9- At the legal level, the President of the Palestinian Authority issued his first decision on 20 May 1994, which provided that the legislation and laws that were effective before 5 June 1967 in the West Bank and Gaza Strip would remain in force. Since the summer of 1994, the Council of the Palestinian Authority (the Executive Authority from 5 July 1994, and then the Palestinian Legislative Council from 7 March 1996) took over the power to promulgate legislation that regulates the various aspects of public life of the Palestinian society. The new legislation (which totalled until the summer of 2000, 48 laws and 200 pieces of legislation) aims to regulate Palestinian life and establish a consolidation of laws between the West Bank and Gaza Strip.

10- This legislation is published in the Palestinian Official Gazette "Al Waqae". In addition to legislation, the Official Gazette also publishes non-legislative texts. The first issue of the Palestinian Official Gazette was published on 20 November 1994. A quick review of the new legislation shows that it basically focuses on administrative, regulatory, commercial, and financial matters, land, health and education services, and political issues (elections, transfer of powers and authorities, etc.).

11- On the judicial side, the High Judicial Council was established in accordance with the decision of the President of the Palestinian Authority issued on 1 June 2000. It is composed of a group of senior judges in the West Bank and Gaza governorates. There are different types of courts: ordinary courts, religious courts, special courts, in addition to the Supreme Court of Justice which examines administrative litigations.

12- A small number of new courts have also been established in some Palestinian governorates. However, the regulation of courts remained as it was during previous periods. With respect to ordinary courts in the West Bank governorates, the Court of Cassation is the highest ordinary court and its decisions are morally binding on courts of lower instances (Civil Law system). Additionally, it enforces applicable legislation in the West Bank.

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<sup>1</sup> <https://treaties.un.org/doc/Publication/CN/2014/CN.374.2014-Eng.pdf>

13- In the Gaza governorates, the Supreme Court is the highest ordinary court and its decisions are judicial precedents (Common Law system). It enforces the legislation that is effective in Gaza. It should be noted that the difference between the laws in the West Bank and those in Gaza Strip is beginning to decrease thanks to the harmonization of the legislation and is bound to vanish completely in the future.

14- The laws on the management of public funds have been harmonized. Uniform laws are now enforced in both parts of the country. The same goes for the Criminal Procedure Code, the Anti-Money Laundering Law, the Law on Illegal Gain, which was amended by Law No. 7 of 2010 to become Anti-Corruption Law No. 1 of 2005.

15- The Palestinian National Authority has established, since its creation, many regulatory institutions that contribute to the fight against corruption, including: The Palestinian Anti-Corruption Commission (PACC), the State Audit and Administrative Control Bureau (SAACB), the Financial Follow-Up Units, Complaints Units, in addition to Internal Audit Units. The Authority also created the positions of comptroller and administrative auditor in all government institutions to ensure compliance with the provisions of the laws governing the management of public funds and employment.

### **C. Implementation of Selected Articles**

## **Chapter III: Criminalization and Law Enforcement**

### **Article 15 - Bribery of National Public Officials**

#### **Paragraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

#### **(a) Summary of information relating to the review of implementation of paragraph (a) of Article 15**

16- Palestine implemented the reviewed provision. Applicable laws - such as the Anti-Corruption Law, as amended, or the penal laws enforced in the West Bank and the Gaza Strip - criminalize the promise or offer made by a public official of an undue advantage in order that this official performs an act or refrains from performing an act, whether such advantage is accepted or not accepted, in Article 172, read together with Articles 170 and 171 of the Penal Code applicable in the West Bank, if the bribe is accepted, Article 173 thereof if the bribe is not accepted, Article 107 bis read together with Articles 103, 103 bis, 104, and 104 bis of Penal Code No. 69 of 1953 applicable in the Gaza Strip, if the bribe is accepted, and Article 109 bis thereof if the bribe is not accepted.

17- Palestine also explained that the Anti-Corruption Law is the Law on Illegal Gain. Indeed, the Anti-Corruption Law, as amended, was issued under Decree Law No. 7 of 2010 amending Law on Illegal Gain No. 1 of 2005. This law applies to the entire Palestinian territories. 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 subsequent military orders issued before the advent of the Palestinian Authority, which treated the West Bank and the Gaza Strip differently. Now, all the laws issued by the Palestinian National Authority apply to all Palestinian territories as a single geographical area.

18- Palestine referred to the following provisions:

#### **Decree Law No. 7 of 2010 amending Law on Illegal Gain No. 1 of 2005**

**Article 1:** For the purposes of the implementation of this law, the following acts shall be considered as corruption:

1. Crimes prejudicial to the duties of public office and to public trust as provided for in applicable Penal Codes;
2. Crimes resulting from money laundering as provided for in the anti-money laundering law;
3. Any act prejudicial to public funds;
4. Abuse of authority contrary to the provisions of the law;
5. Acceptance of nepotism and favouritism that suppresses a right and establishes a wrong;
6. illegal gain; and
7. All criminal acts provided for in the Arab and International Anti-Corruption Conventions signed or ratified by the National Authority.

**Penal Code No. 16 of 1960, applicable in the West Bank**

**Article 170:** Any official and any person entrusted with a public service, whether elected or appointed, and any person entrusted with an official mission, as an arbitrator, expert, or trustee, who requests or accepts, for himself or for another person, a gift or promise, or any other benefit to perform a legal act in the exercise of his duties, shall be punishable with imprisonment of not less than two (2) years and a fine equal to the value of what he requested or accepted, whether in cash or in kind.

**Article 171:**

1. Any person mentioned in the previous article who requests for himself or for another person a gift or promise or any other benefit in order that he performs an illegal act or refrains from performing an act in the exercise of his duties, shall be punishable with hard labour for a fixed period and a fine equivalent to the value of what he requested or accepted, whether in cash or in kind.
2. The same penalty shall be applicable to a lawyer if he commits such acts.

**Article 172:**

1. The briber shall be punishable with the same penalties stipulated in the two preceding articles.
2. The briber and the intermediary shall be exempted from punishment if they report the matter to the competent authorities or confess before the case is referred to the court.

**Article 173:** Any person who offers to the persons mentioned in Article 170 a gift or other benefit or promises the same to them to perform an illegal act or refrain from performing an act in the exercise of his duties shall be punishable - if the offer or promise is not accepted - with imprisonment of not less than three (3) months and a fine of ten (10) dinars to two hundred (200) dinars.

**Penal Code No. 69 of 1953 amending Law No. 58 of 1937, applicable in the Gaza Strip under Order No. 272 of 1953**

**Article 103:** Any public official who requests for himself or for others, or accepts or takes a promise or a gift to perform an act in the exercise of his duties shall be considered as a bribed, and shall be punishable with hard labour for life and a fine of not less than one thousand (1,000) pounds and not more than what he was given or promised.

**Article 103 bis:** Any public official who requests for himself or for other persons or takes a promise or a gift to perform an act he alleges falls within his duties or refrains from performing the same shall be considered as a bribed and shall be punishable with the same sentence set forth in the preceding article

**Article 104:** Any public official who requests for himself or another person, or accepts or takes a promise or gift to refrain from acting in the exercise of his duties or to breach his duties or to be rewarded for such behaviour is punishable with hard labour for life and double the fine mentioned in Article 103 herein.

**Article 104 bis:** Any public official who requests for himself or another person, or accepts or takes a promise or gift to act or refrain from acting in the exercise of his duties or alleges that it is in the exercise of his duties shall be punishable with the penalty provided for bribery in the preceding three articles, as the case may be, even he intended not to perform or refrain from performing such act.

**Article 107 bis:** The briber and the intermediary shall be punishable with the penalty prescribed for the bribed. However, the briber or intermediary shall be exempted from punishment if he reports the offence to the authorities or confess to it.

**Article 108:** If the purpose of the bribery is the commission of an offence punishable with a penalty more severe than that prescribed for bribery, the briber, the bribed, and the intermediary shall incur the penalty prescribed for such act in addition to the fine prescribed for bribery. The briber or intermediary shall be exempted from punishment if he reports the offence to the authorities in accordance with the last paragraph of Article 48 herein.

**Article 109:** Any person who uses force, violence, or threat against a public official or employee to obtain the performance of an undue act or so that the public official or employee refrains from acting in the performance of his duties, shall incur the penalties prescribed for bribery, as the case may be.

**Article 109 bis:** Imprisonment and a fine of not less than five hundred (500) pounds shall be inflicted on whoever offers a bribe and the bribe is not accepted from him, if the offer is made to a public official / civil servant. If the offer is made to other than a public official / civil servant, the penalty shall be imprisonment for a period not exceeding two (2) years or a fine not exceeding two hundred (200) pounds.

**Article 110:** In all cases, the ruling shall order the confiscation of what is paid by the briber or intermediary as a bribe in accordance with the preceding articles.

**Article 111:** In applying the provisions of this chapter, the following shall be considered as officials:

- Employees of departments that are attached to the government or placed under its control;
- Members of public or local houses of representatives, whether elected or appointed;
- Arbiters or experts, trustees in bankruptcy, and referees and receivers in bankruptcy;
- Physicians, surgeons, and midwives with regard to what they give as data or certificates on pregnancy, illness, disability, or death;
- Any person in charge of public service.

**Penal Code No. 74 of 1936 as amended by Law No. 41 of 1944, applicable in the Gaza Strip**

**Article 107:** Whoever accepts from someone, for himself or for another person, a gift of any kind, or obtains it, or agrees to accept it, or tries to obtain it, as an incentive or reward to entice a public official through bribery or illegal means to perform an official act, or refrain from performing such act, or to show favouritism or antipathy towards someone, during the performance of his duties, or provide a service for someone, or refrain from providing such service, or try to provide a service for someone or try to refrain from the same, with the government or with a public official in that capacity, shall be guilty of a misdemeanour, and shall be punished with imprisonment of three (3) years, or a fine of five hundred (500) pounds, or both penalties.

19- Palestine also explained that the term ‘gift’ mentioned in the aforesaid Penal Code articles means any benefit received by the bribed or the person he designated for that purpose or who was aware of it and approved it, whatever its name, kind, or value, whether rightfully or wrongly, if such acceptance or offering is linked with the performance by the official of an act in the exercise of his duties. The meaning of the term ‘gift’ in the said article is broader in scope (as it does not need to be undue) than an undue advantage because it includes due and undue advantages, and therefore, its concept is broader than the concept of undue advantage.

20- Palestine also referred to the following examples:

- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 15/2010.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 10/2000.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 34/1999.

- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 1399/1999.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 1141/1998.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 1118/1998.
- The Judgment on Lawsuit No. 3/2012 issued by the Corruption Crimes Court.

The Court decides to convict the first defendant (M. J.) on charges of requesting and accepting bribes in violation of Articles 170 and 171 of the Penal Code No. 16 of 1960, and imprisonment of the accused (M. J.) for two (2) years, including the period he spent in custody pending lawsuit and a fine of two hundred (200) Jordanian dinars.

- The Judgment on Lawsuit No. 25/2012 issued by the Corruption Crimes Court.

Amendment of the first charge against the accused, which is the offence of corruption in violation of Articles 1 and 25 of Anti-Corruption Law No. 1 of 2005, as amended, consisting in requesting and accepting a bribe in violation of Articles 170 and 171 of the Penal Code, into the offence of corruption in violation of Articles 1 and Article 25 of Anti-Corruption Law No. 1 of 2005, as amended, consisting in obtaining a personal benefit from the transactions carried out by the administration to which he belongs, which is punishable under Article 176 of the Penal Code.

2. The defendant (H.) is convicted on the amended charge, at the time of committing the act, which is the charge the offence of corruption in violation of Articles 1 and 25 of Anti-Corruption Law No. 1 of 2005, as amended, consisting in obtaining a personal benefit from the transactions carried out by the administration to which he belongs, which is punishable under Article 176 of the Penal Code of 1960, and sentenced to six (6) months in prison and a fine of two hundred (200) dinars.

- Judgment on Lawsuit No. 11/2012 issued by the Corruption Crimes Court.

The acts committed by the first defendant - which is the abuse of position and tracking citizens' transactions and receiving fees for this activity and impeding the transactions he was not in charge of tracking, thereby taking advantage of the needs of citizens to complete their transactions as soon as possible - constitute the elements of the crime of illegal gain. An illegal gain is any money earned by one of the persons subject to the provisions of the Anti-Corruption Law (the first defendant is one of them) for themselves or for other persons through the abuse of office or capacity or as a result of a behaviour contrary to a legal text or public morals or in any illegal way, even if it does not constitute an offence, and every increase in wealth that arises after taking office. The request and acceptance of bribery in violation of Articles 170 and 171 of the Penal Code No. 16 of 1960, and the abuse of position for personal benefit in violation of Articles 175 and 176 of the Penal Code No. 16 of 1960 are elements of the crime of illegal gain. Accordingly, in view of the above, the court decides that the second and third defendants are innocent of the charges brought against them. Whereas the Public Prosecutor granted permission for the trial of the first defendant (Exhibit No. 3), the court in all conviction and equanimity decides, pursuant to Article 274 of Criminal Procedure Code No. 3 of 2001, to convict the first defendant (Y.) of the charges of illegal gain in violation of Article 1 pursuant to Article 25, as amended by Article 14 of Anti-Corruption Law No. 1 of 2005, as amended; and to declare that he was not guilty of requesting and accepting a bribe in violation of Articles 170 and 171 and abuse of office for personal benefit in violation of Articles 175 and 176 of the Penal Code No. 16 of 1960 as one of the elements of the charge of illegal gain in violation of Article 1 pursuant to Article 25, as amended by Article 14 of Anti-Corruption Law No. 1 of 2005, as amended. The court decides to sentence the convict (Y.) to hard labour for three (3) years and a fine of ten thousand (10,000) Jordanian dinars, and pursuant to Article 279 of Criminal Procedure Code No. 3 of 2001, requires the convict to pay an amount of five hundred (500) Jordanian dinars as fees and expenses of the trial.

- Judgment on Lawsuit No. 12/2012 issued by the Corruption Crimes Court.

1. The first defendant (S.) is convicted of committing the offence of corruption, in violation of Articles 1 and 25 of Anti-Corruption Law No. 1 of 2005, as amended, and convicted of charges of requesting and accepting a bribe, in violation of Articles 170 and 171 of Penal Code No. 16 of 1960, and shall be imprisoned for two (2) years and pay a fine of two hundred (200) Jordanian dinars.

2. The first defendant is convicted of the charge of neglect in the performance of duties in violation of Articles 175 and 183/2 of the Penal Code of 1960, and shall be punishable with imprisonment of three (3) months, and pursuant to Article 72 of the Penal Code of 1960, the penalties shall be combined and the harsher one shall be imposed on the first defendant, which is imprisonment of two (2) years and a fine of two hundred (200) Jordanian dinars.

- Judgment on Lawsuit No. 16/2012 issued by the Corruption Crimes Court.

1. Pursuant to Article 274/2 of Criminal Procedure Code No. 3 of 2001, the first defendant (B.) is convicted of committing the offence of corruption in violation of Articles 1 and 25 of Anti-Corruption Law No. 1 of 2005, as amended, consisting in the amended charge of embezzlement in violation of Article 174/2 of the Penal Code of 1960.

2. The second defendant (S.) is convicted of committing the offence of corruption in violation of Articles 1 and 25 of Anti-Corruption Law No. 1 of 2005, as amended, consisting in requesting a bribe in violation of Article 171 of Penal Code No. 16 of 1960. In addition to the conviction, the court decides to: 1. Sentence the first defendant (B.) to hard labour for three (3) years. Whereas it has been proven that the first defendant assisted in detecting manipulation of accounts and returned the amounts he took on 12 September 2011, the date of exoneration (document No. 1) while the case was referred to trial on 23 May 2012, therefore, pursuant to Article 25/2 of Anti-Corruption Law No. 1 of 2005, as amended by Law No. 7 of 2010, and whereas the first defendant returned the amounts subject of the crime, we decide to exempt the first defendant (B.) of the prescribed penalty and sentence him to pay the amount of three hundred (300) Jordanian dinars as court fees. 2 - The second defendant (S.) is sentenced to imprisonment, on the charge of requesting a bribe in violation of Article 171, paragraph 1, of Penal Code No. 16 of 1960, of one (1) year and a fine of one hundred (100) Jordanian dinars and payment of the amount of three hundred (300) dinars as court fees and expenses.

- Judgment on Lawsuit No. 4/2011 issued by the Corruption Crimes Court.

21- Palestine also pointed out that according to the data provided to the Committee by the High Judicial Council during the years 2010, 2011, and 2012, a total of 76 rulings on bribery were issued by the Palestinian courts, 14 of them related to offers of bribes in violation of Article 172 of Penal Code No. 16 of 1960, pursuant to Articles 170, 176.

**(b) Observations on the implementation of the article**

22- Article 172, read together with Articles 170 and 171 of the Penal Code No. 16 of 1960 applicable in the West Bank, criminalizes the bribery of an official if the bribe is accepted and Article 173 thereof if the bribe is not accepted. Article 107 bis read together with Articles 103, 103 bis, 104, and 104 bis of Penal Code No. 69 of 1953 applicable in the Gaza Strip, criminalizes the bribery of an official if the bribe is accepted and Article 109 bis thereof if the bribe is not accepted. The sentence for the mentioned Articles (172) and (107) bis includes the intervener and the intermediary, which covers indirect bribery.

**Article 15 - Bribery of National Public Officials**

**Paragraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relating to the review of implementation of paragraph (b) of Article 15**

23- Palestine implemented the reviewed provision. Applicable laws - such as the anti-corruption law, as amended, or the penal laws enforced in the West Bank and the Gaza Strip - criminalize the request by any official and any person entrusted with a public service, whether elected or appointed, and any person entrusted with an official mission, for himself or for another person, of a gift, promise, or any other benefit in order that this official or person performs a legal act in the exercise of his duties, or performs an illegal act, or refrains from acting in the exercise of his duties, in accordance with 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 of 1953 applicable in the Gaza Strip, and Articles 106, 107, 108, and 110 of Penal Code No. 74 of 1936 applicable in the Gaza Strip.

**Penal Code No. 74 of 1936, as amended by Law No. 41 of 1944, applicable in the Gaza Strip:**

**Article 106:** Any person who is a public official, or expected to be a public official, who accepts from another person, for himself or for another person, a gift of any kind, other than the legal remuneration, or obtains such gift, or accepts to receive the same, or tries to obtain it, as an incentive or reward to perform an official act, or refrain from performing such act, or to show favouritism or antipathy to someone, or refrain from showing favouritism or antipathy to someone, during the performance of his duties, or to provide a service for someone, or refrain from providing such service, or try to provide a service for someone or try to refrain from performing the same, with the government or with a public official in that capacity, shall be considered as having committed a misdemeanour, and shall be punishable with imprisonment of three (3) years, or a fine of five hundred (500) pounds, or both penalties.

**Article 108:** If the purpose of the bribery is the commission of an offence punishable with a penalty more severe than that prescribed for bribery, the briber, the bribed, and the intermediary shall incur the penalty prescribed for such act in addition to the fine prescribed for bribery. The briber or intermediary shall be exempted from punishment if he reports the offence to the authorities in accordance with the last paragraph of Article 48 herein.

**Article 108 bis:** Any person designated to take a gift or a benefit, or who is known and approved by a bribed, or who takes or accepts anything of that kind, while being aware of the cause, shall be punishable with imprisonment of not less than one (1) year and a fine equal to the value of what was given or promised to him, if he was not an intermediary in the bribery.

**Article 109:** To avoid any doubt, a person who accepts or receives a gift, or agrees to accept or receive a gift or tries to receive the same as an incentive or reward for acting or refraining from acting or undertaking to act or refrain from acting, as the case may be, according to the provisions of Article 106, 107, or 108 shall be considered as having committed an offence in violation of Articles 106, 107, or 108, as appropriate, even though he did not intend or did not perform the act or refrain from acting in return for the said gift.

**Article 109 bis a:** Any public official, who accepts for himself or for another person, anything of value without compensation, or for a compensation he knows is inadequate, or receives it, or agrees to accept it, or tries to obtain it from someone he knows is linked with proceedings or a transaction he carried out, or is about to carry out, or that is relevant to his official duties, or the duties of any other public official who is his subordinate or supervisor, or a person with a relationship, or likely to have a relationship, or a person who knows that he has a relationship with one of the persons above, shall be guilty of a misdemeanour punishable with imprisonment of one (1) year or a fine of two hundred (200) pounds, or both penalties, and in every trial of a crime committed in violation of this article, it is

supposed that there is no compensation, unless it is proven that compensation exists and its type is determined.

**Article 110:** In all cases, the amount paid by the briber or intermediary as a bribe shall be confiscated in accordance with the preceding articles.

24- Palestine mentioned the following examples:

- Judgment in Case No. (Criminal Case 8/2011) issued by the Corruption Crimes Court: sentence of imprisonment for two (2) years, including the period in detention, and a fine of two hundred (200) Jordanian dinars.
- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 211/2011.
- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 49/2009.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 923/1998.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 10/2000.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 34/1999.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 1399/1999.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 1141/1998.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 1118/1998.
- The Judgment on Lawsuit No. 3/2012 issued by the Corruption Crimes Court.
- The Judgment on Lawsuit No. 25/2012 issued by the Corruption Crimes Court.
- The Judgment on Lawsuit No. 12/2012 issued by the Corruption Crimes Court.
- The Judgment on Lawsuit No. 11/2012 issued by the Corruption Crimes Court.

25- Palestine also indicated that according to the data provided to the Committee by the High Judicial Council, in 2010, 2011, 2012, a total of 76 judgements on corruption were issued by the Palestinian courts, 62 of which were related to requests of bribes.

**(b) Observations on the implementation of the article**

26- Palestine criminalizes the solicitation or acceptance of bribes by an official, pursuant to 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 of 1953 applicable in the Gaza Strip, in addition to Articles 106, 107, 108, and 110 of Penal Code No. 74 of 1936 also applicable in

the Gaza Strip. The sentence includes the intervener and the intermediary, which covers indirect bribery.

## **Article 16 - Bribery of Foreign Public Officials and Officials of Public International Organizations**

### **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

### **(a) Summary of information relating to the review of implementation of paragraph 1 of Article 16**

27- Palestine indicated that it did not implement the provision under review, because applicable penal laws do not criminalize the bribing of foreign employees, even though the anti-corruption law in force, as amended, applies to any non-Palestinian person holding an office in any institution of the national authority, whether in the legislative, executive, or judicial branches, and any person exercising a public function in any public agency, public entity, or civil organization of a foreign country or public international organization, in accordance with paragraph 13 of Article 2 of the Anti-Corruption Law, as amended. However, the offence of bribery under applicable penal laws, referred to in the Anti-Corruption Law, applies to persons who commit bribery and are public officials as defined by domestic law. This being said, the State of Palestine will work to include the implementation of the reviewed provision relating to the bribery of foreign public officials in the amendments to the anti-corruption law.

28- Palestine also explained that Article 109 bis of Law No. 69 of 1953 applicable in the Gaza Strip (dealing with non-public officials) does not cover this provision, because Article 111 of the said law defined the official for the purpose of establishing the offence of bribery and did not mention the foreign official in its definition. It stipulates that:

In applying the provisions of this chapter, the following shall be considered as officials:

- Employees of departments that are attached to the government or placed under its control;
- Members of the parliamentary or local councils, whether appointed or elected.
- Arbiters or experts, trustees in bankruptcy, and referees and receivers in bankruptcy;
- Physicians, surgeons, and midwives with regard to what they give as data or certificates on pregnancy, illness, disability, or death;
- Any person in charge of public service.

29- Palestine explained that the bribery of officials of public international organizations is not criminalized. These officials are only subject to the procedural provisions of the anti-corruption law. The anti-corruption law, as amended, did not modify the general elements of the offences provided for in the Penal Code. It only specified the offences and their elements, and the offences that fall under the jurisdiction of the

Corruption Crimes Court. It also defined the categories of persons subject to the law. Therefore, if a person subject to the law commits an offence, whose establishment requires a specific capacity, the offence shall only be established if the perpetrator possesses that capacity, such as the capacity of a public official, unless such offence has a different legal description that does not require such capacity, and such offence is defined by the anti-corruption law and the perpetrator is subject to its provisions, such as the offence of breach of trust. Therefore, if an official of an international organization committed such offence, he would be subject to the Anti-Corruption Law and would be tried by the corruption crimes court (even though the staff of international institutions are criminally liable of any crimes committed in the Palestinian territory and are tried by ordinary courts unless they enjoy diplomatic immunity). If an offence is committed by a person not subject to the Anti-Corruption Law, the offence can be established, but the case is tried by an ordinary criminal court and not by the corruption crimes court.

**(b) Observations on the implementation of the article**

30- Palestine's legislation does not criminalize the active bribery of foreign public officials or officials of public international organizations. A bill amending the anti-corruption law, has been drafted to criminalize the active and passive bribery of foreign public officials or officials of public international organizations.

31- To implement the provision under review, Palestine should criminalize the active bribery of foreign public officials and officials of public international organizations.

**Article 16 - Bribery of Foreign Public Officials and Officials of Public International Organizations**

**Paragraph 2**

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relating to the review of implementation of paragraph 2 of Article 16**

32- Palestine indicated that it implemented the provision under review. It is considering amending the anti-corruption law, as amended, so make foreign officials and officials of international institutions subject to this law. The amendment will criminalize the request by a foreign official and an official of an international institution of a bribe in exchange for acting or refraining from acting in the exercise of his official duties. A bill amending the anti-corruption law, as amended, has been drafted and debated in workshops with the participation of legal specialists, and will be enacted as soon as possible.

**(b) Observations on the implementation of the article**

33- Palestine's legislation does not criminalize the passive bribery of foreign public officials or officials of public international organizations. A bill amending the anti-corruption law, has been drafted to criminalize the active and passive bribery of foreign public officials or officials of public international organizations.

34- The reviewers encourage Palestine to continue its efforts to criminalize the passive bribery of foreign public officials and officials of public international organizations.

## **Article 17 - Embezzlement, Misappropriation or other Diversion of Property**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

### **(a) Summary of information relating to the review of implementation of Article 17**

35- Palestine indicated that it is compliant with the article under review. The legislation applicable in the West Bank and Gaza Strip criminalizes embezzlement, misappropriation, or other diversion of property by a public official.

36- In addition to considering the offence of embezzlement as an offence of corruption according to Article 1 of Decree Law No. 7 of 2005, amending the Law on Illegal Gain No. 1 of 2005, Palestine referred to the following provisions:

#### **Penal Code No. 16 of 1960 applicable in the West Bank**

##### **Article 174:**

1. Any public official who appropriates a property whose management, collection, or preservation is placed under his responsibility on account of his position, whether such property is cash or other property belonging to the State or to a person, shall be punishable with imprisonment of six (6) months to three (3) years and a fine of ten (10) to one hundred (100) dinars.
2. If the act described in the preceding paragraph is done by inserting false entries in records or registers, or falsifying, deleting, or destroying accounts, documents, or other securities, or in general, through any ploy to prevent the discovery of embezzlement, the perpetrator shall be punishable with hard labour for a fixed period or a prison term.

**Article 175:** Any person who is entrusted with selling, purchasing, or managing movables or immovables for the State or for a public administration, and commits fraud in one of these acts or violates the provisions that apply to them, either to draw a personal benefit or to favour one party or harm another party or to harm the public administration shall be punishable with imprisonment of six (6) months to three (3) years and a fine of not less than the value of the damage caused.

**Article 422:** Any person who is handed over for safekeeping or representation other people's property, funds, objects, or any document including a pledge or discharge, and in general, any person in possession of similar objects, for presentation and return, or for use in a specific way, or for conservation or for performing a work - with or without remuneration - and such person hides such object or replaces it or disposes of it as its owner, or consumes it, or performs any other act considered as an infringement, or refuses to hand it over to the person to whom it must be handed over, shall be punishable with imprisonment of two (2) months to two (2) years and a fine of ten (10) dinars to a hundred (100) dinars.

**Article 423:**

- 1- If the perpetrator of the acts described in the previous article is a wage earner, an apprentice, a secretary, or an employee, and the damage resulting from such act is inflicted on his employee, the period of imprisonment shall not be less than one (1) year.
- 2- The punishment shall not be less than three (3) months if the perpetrator of the acts mentioned above is one of the persons mentioned below:
  - a. Director of a charity and any person responsible for its operation;
  - b. Guardian of a minor or an incapacitated person;
  - c. Executor of a will or a marriage contract;
  - d. Lawyer or notary; and
  - e. Any person delegated by the authority to manage or protect funds belonging to the State or to individuals.

**Penal Code No. 69 of 1953 amending Law No. 58 of 1937, applicable in the Gaza Strip under Order No. 272 of 1953**

**Article 112:** Any public official or employee who embezzles public funds, securities, or property entrusted to him on account of his position shall be punishable with hard labour for a fixed period; the punishment shall be hard labour for life if the perpetrator is a collector, a collector delegate, a trustee on deposits, or a treasurer in charge of accounts, and embezzles anything handed to him in this capacity.

**Article 113:** Any public official who unlawfully takes possession of funds belonging to the State or to a public body or facilitates such act for another person, shall be punishable with hard labour for a fixed period.

**Article 114:** Any public official whose work is related to the collection of fees, fines, revenues, taxes, or similar work, who knowingly requests or takes what is not due or more than what is due, shall be punishable with hard labour for a fixed period.

**Article 115:** Any public official in charge of preserving the interest of the State or a public body in a transaction, operation, or case, and harms such interest to obtain a profit for himself or for another person, shall be punishable with hard labour for a fixed period.

**Article 118:** In addition to the penalties imposed according to the value of the funds, benefits, or profit deriving from the embezzlement or misappropriation, the perpetrator shall pay a fine of not less than five hundred (500) pounds.

37- Palestine also indicated that the law partly deals with embezzlement for the benefit of another person or entity and the acts of diversion and misappropriation in Article 175 in the case of an official entrusted with selling, managing or purchasing any moveables or other property for the benefit of the State. Article 422 applies to all, whether a public official or a non-public official, and whether the entrusted object is public money or other things.

38- Palestine also explained that Article 113 deals with diversion, as it criminalizes misappropriation of public funds, whether such funds are taken by the official himself or this latter facilitates such act for another person.

39- Palestine mentioned the following examples:

- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 43/2011.
  - The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 211/2011.
  - The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 211/2011.
  - The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 50/2010.
  - The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 587/1998.
  - The Judgment on Lawsuit No. 3/2014 issued by the Corruption Crimes Court.
  - The Judgment on Lawsuit No. 16/2013 issued by the Corruption Crimes Court.
  - The Judgment on Lawsuit No. 15/2013 issued by the Corruption Crimes Court.
  - The Judgment on Lawsuit No. 18/2012 issued by the Corruption Crimes Court.
  - The Judgment on Lawsuit No. 19/2012 issued by the Corruption Crimes Court.
  - The Judgment on Lawsuit No. 11/2011 issued by the Corruption Crimes Court.
  - The Judgment on Lawsuit No. 13/2011 issued by the Corruption Crimes Court.
- 40- Palestine indicated that according to the data provided to the Committee by the High Judicial Council, 183 judgements were issued by the courts of the northern provinces in the last three years, and all of them relate to embezzlement, whether criminal embezzlement according to paragraph 2 or embezzlement that constitutes a misdemeanour according to paragraph 1 of Article 174 of Penal Code No. 16 of 1960.

**(b) Observations on the implementation of the article**

41- Article 174 of the Penal Code applicable in the West Bank criminalizes the 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 the embezzlement for the benefit of another person or entity nor the acts of misappropriation or other diversion. However, these acts are covered by the provisions of Article (422) of the same law which criminalizes the abuse of trust in a comprehensive manner and applies to public officials in the case of non-applicability of the provisions of Article (174). During the joint meeting, Palestinian authorities have indicated that there are precedent cases in which article (422) has been applied to public officials. Articles (112) and (113) of the Penal Code No. (69) of 1953 applicable in the Gaza Strip criminalize the embezzlement by a public official of anything entrusted to him or her because of his or her position without explicitly covering the act of misappropriation.

42- To implement the provision under review, Palestine should include in its legislation applicable in the Gaza Strip an explicit criminalization of the act of misappropriation by a public official of anything entrusted to him or her by virtue of his or her position.

43- Taking into consideration the provisions of Article (422) of the Penal Code applicable in the West Bank, and for greater legal certainty, the reviewers encourage Palestine to consider the possibility of amending article (174) of the same law to explicitly cover the embezzlement for the benefit of another person or entity and the acts of misappropriation or other diversion.

## **Article 18. Trading in Influence**

### **Sub-paragraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

### **(a) Summary of information relating to the review of implementation of sub-paragraph (a) of Article 18**

44- Palestine indicated that it is compliant with the article under review. Indeed, though Palestinian law currently in force does not provide for such an offence, whether in the Penal Code of 1960, applicable in the West Bank or in the Palestinian Anti-Corruption Law, this act was criminalized in the past in the Gaza Strip under the Order issued by the Egyptian military Governor No. 555 of 1957 (repealed), and is still criminalized in accordance with the case provided for in paragraph (b) of Article 18 of the Convention against Corruption, under Article 108 of the Penal Code No. 74 of 1936, as amended by Law No. 41 of 1944, applicable in the Gaza Strip.

#### **Penal Code No. 74 of 1936 as amended by Law No. 41 of 1944, applicable in the Gaza Strip**

**Article 108:** Whoever accepts from someone, for himself or for another person, a gift of any kind, or obtains it, or agrees to accept it, or tries to obtain it, as an incentive or reward to entice a public official by using his personal influence, to perform an official act, or refrain from performing an act, or to show favouritism or antipathy towards someone, in the exercise of his duties, or provide a service for someone, or refrain from providing a service, or try to provide a service for someone or try to refrain from the same, with the government or with a public official in that capacity, shall be guilty of a misdemeanour, and shall be punished with imprisonment of one (1) year, or a fine of two hundred (200) pounds, or both penalties.

45- Palestine also indicated that it is considering criminalizing such acts through legislative amendments, as they are stipulated in [Article] 286 of the draft Palestinian Penal Code of 2011, which states:

- 1- Any person who requests for himself, or for another person, or accepts or takes a promise or gift to use real or alleged influence, to obtain, or attempt to obtain from any public authority, or entity under its supervision, an advantage of any kind, shall be considered as a bribed.
- 2- If such person is a public official, he shall be punishable with the penalty provided for in Article 283 herein; in other cases, he shall be punishable with imprisonment and a fine of not more than what he was given, or promised, or either penalty. Any entity under the supervision of a public authority shall be considered as a public authority.

- 3- Any person who offers a gift or benefit to a person who has an influence, and this person refuses such gift or benefit, shall be considered as a briber and shall be punishable with the same penalty prescribed for the complete crime,
- 4- If the purpose of trading in influence, in return for a gift or promise, relates to the commission of an offence punishable with a penalty more severe than the penalty for trading in influence, the harsher punishment shall be applied to the person who trades in influence, and the person who gives the gift or promise, or the intermediary, in addition to the fine prescribed for trading in influence stipulated in the first paragraph.

46- Besides, the same act (trading in influence) is criminalized under the first article of the draft anti-corruption law submitted to the Palestinian legislative bodies.

**(b) Observations on the implementation of the article**

47- There is no provision in the current Palestinian legislation criminalizing bribery of a public official or any other person to abuse his or her influence toward an administration or public authority, although this act was previously criminalized in the Gaza Strip. A draft of the Palestinian Penal Code and a bill amending the anti-corruption law, has been prepared to criminalize the active and passive bribery of a public official or any other person to abuse his or her influence toward an administration or public authority.

48- The reviewers encourage Palestine to continue its efforts to criminalize the active bribery of a public official or any other person to abuse his or her influence toward an administration or public authority.

**Article 18 - Trading in Influence**

**Sub-paragraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

**(a) Summary of information relating to the review of implementation of sub-paragraph (b) of Article 18**

49- Palestine indicated that it is compliant with the article under review and referred to its previous answer.

**(b) Observations on the implementation of the article**

50- Article 108 of the Penal Code No. 74 of 1936 applicable in the Gaza Strip criminalizes the passive bribery of anyone to use his influence toward a public official. A draft of the Palestinian Penal Code and a bill amending the anti-corruption law, has been prepared to criminalize the active and passive bribery of a public official or any other person to abuse his or her influence toward an administration or public authority.

51- The reviewers encourage Palestine to continue its efforts to criminalize, over its entire territory, the passive bribery of a public official or any other person to abuse his or her influence toward an administration or public authority.

## **Article 19 - Abuse of Functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

### **(a) Summary of information relating to the review of implementation of Article 19**

52- Palestine indicated that it is compliant with the article under review. The legislation applicable in the West Bank and Gaza Strip criminalizes the abuse of functions. In addition, the offence of abuse of power is considered as a corruption offence in accordance with Article 1 of Decree Law No. 7 of 2005, amending Law on Illegal Gain No. 1 of 2005.

53- Palestine also added that the criminalization of abuse of functions in general was considered during the discussions that preceded the adoption of the anti-corruption law, as amended, in 2010, and in the proposals prepared by the Anti-Corruption Commission to amend the said law. Moreover, it was considered specifically through the criminalization of nepotism and favouritism under Article 1 of the Anti-Corruption Law of 2010.

54- Palestine referred to the following provisions:

#### **Penal Code No. 16 of 1960 applicable in the West Bank**

##### **Article 171:**

1. Any person mentioned in the previous article who requests for himself or for another person a gift or promise or any other benefit in order that he performs an illegal act or refrains from performing an act in the exercise of his duties, shall be punishable with hard labour for a fixed period and a fine equivalent to the value of what he requested or accepted, whether in cash or in kind.
2. The same penalty shall be applicable to a lawyer if he commits such acts.

**Article 175:** Any person who is entrusted with selling, purchasing, or managing movables or immovables for the State or for a public administration, and commits fraud in one of these acts or violates the provisions that apply to them, either to draw a personal benefit or to favour one party or harm another party or to harm the public administration shall be punishable with imprisonment of six (6) months to three (3) years and a fine of not less than the value of the damage caused.

**Article 176:** The following shall be punishable with six (6) months to two (2) years and a fine of at least ten (10) dinars:

1. Any official who obtains a personal benefit from a transaction made by the administration to which he belongs, whether he performed the act directly or indirectly, or through the use of false instruments;
2. Representatives of the administration, police and gendarmerie officers, and all agents in charge of public police, who openly trade, or use false instruments, directly or indirectly, in the area in which they exercise authority, in grains and all other staples other than the ones produced in their property.

**Penal Code No. 74 of 1936, applicable in the Gaza Strip**

**Article 110:**

- 1- Any official in the public service entrusted, on account of his position, with judicial or administrative duties related with private funds or with the exercise of an industry, business, or activity with a private character, and who appropriates for himself, directly or indirectly, a share of those funds, industry, business, or activity, and performs such duties with respect to those funds, industry, business, or activity in which he owns a share, or with respect to the conduct of any person thereon, shall be guilty of a misdemeanour and shall be punishable with imprisonment for one (1) year.
- 2- No lawsuit shall be filed under this article unless by the Attorney General or with his consent.

**Article 116:** Any public official whose work is related to the management of contracting or procurement or works related to the State or to any public bodies or the supervision thereof, and who obtains or tries to obtain for himself or for another person in any way whatsoever a profit from the said work shall be punishable with hard labour for a fixed period.

55- Palestine mentioned the following examples:

- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 104/2012.
- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 211/2011.
- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 41/2011.
- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 190/2010.
- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 12/2010.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 1118/1998.
- The Judgment on Lawsuit No. 13/2013 issued by the Corruption Crimes Court.
- The Judgment on Lawsuit No. 3/2012 issued by the Corruption Crimes Court.
- Judgment on Lawsuit No. 12/2012 issued by the Corruption Crimes Court.
- Judgment on Lawsuit No. 11/2012 issued by the Corruption Crimes Court.
- Judgment on Lawsuit No. 4/2011 issued by the Corruption Crimes Court.

**(b) Observations on the implementation of the article**

56- Despite the lack of a comprehensive text in Palestinian legislation criminalizing the abuse of functions, articles (175) and (176) of the Penal Code No. 16 of 1960 applicable in the West Bank and articles (110) and (116) of the Penal Code No. (74) of 1936 applicable in the Gaza Strip, criminalize a number of acts related to the abuse of

functions by specific categories of public officials. A bill amending the anti-corruption law, has been prepared to criminalize the abuse of functions in a comprehensive manner.

57- The reviewers encourage Palestine to continue its efforts to criminalize the abuse of functions in accordance with the provisions of the Convention.

## **Article 20 - Illicit Enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

### **(a) Summary of information relating to the review of implementation of Article 20**

58- Palestine indicated that it is compliant with the paragraph under review. The Palestinian legislator criminalized this act, then cancelled such criminalization as it contradicts the principle of presumption of innocence enshrined in the Constitution.

59- The criminalization of illicit enrichment was done through the enactment of Law on Illegal Gain No. 1 of 2005, which provides in its first article that "*illegal gain is: Any funds obtained by one of the persons, who are subject to the provisions of this Law, for himself or for another person by exploiting his position or capacity, or as a result of a conduct that violates a legal provision or public morality, or in any other illegal manner, even though it does not constitute an offence; Any increase in the wealth of a person, subject to this law, or of his spouse or minor children, occurring after such person takes office or acquires a capacity, if such increase does not correspond to his resources and he fails to provide evidence of a legitimate source thereof, shall also be deemed an illegal gain; Any funds acquired by any natural or legal person by means of collusion with any person subject to this Law who abuses his position or capacity shall also be deemed an illegal gain.*" Article 25 thereof states that, "*Any person who acquires, for himself or for another person, or facilitates to such person the acquisition of, an illegal gain shall be punishable with: 1. A prison term; 2. Restitution of the value of the illegal gain and any financial assets in his possession proven to be acquired illegally. 3. A fine equal to the value of the illegal gain.*"

60- However, the Palestinian legislator cancelled this criminalization in the terms advocated by the UN Convention against Corruption because imposing the burden of proof on the defendant is contrary to the principle of presumption of innocence enshrined in Article 14 of the Palestinian Basic Law of 2003, as amended, which states that, "*the defendant is innocent until proven guilty ...*", under Decree Law No. 7 of 2005, amending Law on Illegal Gain No. 1 of 2005, which criminalizes illegal gain as an offence of corruption without mentioning the elements of this offence, under Article 1 thereof (referred to in the review of Article 15 of the Convention) and Article 20 thereof, which stipulates that, "*If the Commission determines that the complaint is serious, it shall request the person whose wealth is contested to disclose the source of such wealth. If the Commission is not satisfied that the source of the wealth is legitimate, it shall prove through investigations the lack of the legitimacy of such wealth.*"

61- Thus, the Palestinian legislator referred to Article 14 of the Basic Law and determined the unconstitutionality of this article, which considers the official's inability to prove the source of any increase in wealth as an offence and evidence that the source of such increase is an illegal gain on the grounds that this paragraph puts the burden of proving the source of the increase in wealth on the defendant, whereas it was up to the public prosecutor to prove that it came from the defendant's abuse of his office and that it is an illegal gain. The argument is that the law cannot impose legal evidence to prove the charge or impose the burden of proof on the defendant, because this contradicts the fact that the defendant is not obligated to prove his innocence on account of the principle of innocence. Besides, if the legal presumption can be justified in civil cases, it is not possible to justify them in criminal cases, because the rules of evidence are based on the principle of the presumption of innocence, which is an important pillar of procedural legitimacy and a fundamental element of penal procedure related to a human rights.

62- Palestine also explained that the principle of presumption of innocence is not incompatible with Article 40-2 of Anti-Money Laundering Law No. 9 of 2007, as amended, which provides that, "The court may confiscate the property - referred to in paragraph 1 of this article - owned directly or indirectly by a person convicted of the offence of money laundering or a predicate offence, if such property was acquired at least ten (10) years before the person was charged with the offence, if there are reasonable grounds that such property constitutes the proceeds of the crime for which the person was convicted, and the person is unable to prove that the property was obtained legally", because this provision is limited to the confiscation of property after the defendant is convicted of the offence of money laundering or a predicate offence which resulted in money laundering.

63- Palestine also indicated that illegal gain was not decriminalized in 2005, but what was cancelled is the principle of exempting the public prosecution from proving the predicate offence which resulted in the illegal gain. The offence of illegal gain is still criminalized in the anti-corruption law of 2010, as amended, but proving it is the responsibility of the public prosecutor. Whereas these judgements were issued on the basis of the proof of the predicate offence, which resulted in illegal gain; whereas the Corruption Crimes Court continues to enforce this provision whose constitutionality is challenged; and whereas the Supreme Court is yet to determine the constitutionality of the challenged provision, this latter remains in force to the extent defined by the anti-corruption law.

64- Palestine pointed to the following examples:

- The Judgment on Lawsuit No. 13/2013 issued by the Corruption Crimes Court.
- The Judgment on Lawsuit No. 16/2013 issued by the Corruption Crimes Court.
- The Judgment on Lawsuit No. 9/2012 issued by the Corruption Crimes Court.
- The Judgment on Lawsuit No. 18/2012 issued by the Corruption Crimes Court.

**(b) Observations on the implementation of the article**

65- The Palestinian legislator has criminalized illicit enrichment under Article (1) of the Law No. 1 of 2005 on Illegal Gain, and then cancelled this criminalization because it contradicts the principle of presumption of innocence enshrined in Article 14 of the Basic

Law. The legislator currently requires that the public prosecution prove the predicate offence which resulted in the illegal gain.

## **Article 21 - Bribery in the Private Sector**

### **Sub-paragraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

### **(a) Summary of information relating to the review of implementation of sub-paragraph (a) of Article 21**

66- Palestine indicated that it is compliant with the paragraph under review. It has considered criminalizing bribery in the private sector through the draft law on the fight against corruption, as amended, by adopting a comprehensive definition of the official, which includes all persons subject to the Anti-Corruption Law, and in particular the presidents and members of the boards of directors of public joint-stock companies and the employees of these companies, the presidents and members of boards of directors of civil bodies that have independent legal personality, financial and administrative autonomy, parties, trade unions, and persons who have a similar capacity, the employees in any of these bodies, even if they do not receive subsidies from the public budget, and are therefore subject to the same provisions that criminalize bribery in the public sector, already mentioned above. The draft law is still being considered by the Palestinian legislative bodies.

67- Palestine also explained that Article 109 bis of Law No. 69 of 1953 applicable in the Gaza Strip (*act committed by a non-public official*) deals with the persons entrusted with a public service but who are not officials. Article 111 of the said law identifies the persons who are considered as officials for the purposes of the implementation of those articles. However, the offence of bribery by a public official in Law No. 69 of 1953 or the Penal Code No. 16 of 1960 exclusively relates to any person entrusted with a public service or public officials. The persons entrusted with a public service are the members and staff of municipalities and the persons who hold a similar position. The legislator made a broad interpretation of the term official, but did not include employees in the private sector such as companies, banks, and others.

### **(b) Observations on the implementation of the article**

68- Palestine does not criminalize active bribery in the private sector. A bill amending the anti-corruption law, has been drafted to criminalize active and passive bribery the private sector.

69- The reviewers encourage Palestine to continue its efforts to criminalize active bribery the private sector.

## **Article 21 - Bribery in the Private Sector**

### **Sub-paragraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

### **(a) Summary of information relating to the review of implementation of sub-paragraph (b) of Article 21**

70- Palestine indicated that it is compliant with the paragraph under review and referred to its previous answer.

### **(b) Observations on the implementation of the article**

71- Palestine does not criminalize passive bribery in the private sector. A bill amending the anti-corruption law, has been drafted to criminalize active and passive bribery the private sector.

72- The reviewers encourage Palestine to continue its efforts to criminalize passive bribery the private sector.

## **Article 22 - Embezzlement of Property in the Private Sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

### **(a) Summary of information relating to the review of implementation of Article 22**

73- Palestine indicated that it is compliant with the paragraph under review and referred to the following provisions:

#### **Penal Code No. 16 of 1960 applicable in the West Bank**

**Article 422:** Any person who is handed over for safekeeping or representation other people's property, funds, objects, or any document including a pledge or discharge, and in general, any person in possession of similar objects, for presentation and return, or for use in a specific way, or for conservation or for performing a work - with or without remuneration - and such person hides such

object or replaces it or disposes of it as its owner, or consumes it, or performs any other act considered as an infringement, or refuses to hand it over to the person to whom it must be handed over, shall be punishable with imprisonment of two (2) months to two (2) years and a fine of ten (10) dinars to a hundred (100) dinars.

**Article 423:**

- 3- If the perpetrator of the acts described in the **previous article** is a wage earner, an apprentice, a secretary, or an employee, and the damage resulting from such act is inflicted on his employee, the period of imprisonment shall not be less than one (1) year.
- 4- The punishment shall not be less than three (3) months if the perpetrator of the acts mentioned above is one of the persons mentioned below:
  - f. Director of a charity and any person responsible for its operation;
  - g. Guardian of a minor or an incapacitated person;
  - h. Executor of a will or a marriage contract;
  - i. Lawyer or notary; and
  - j. Any person delegated by the authority to manage or protect funds belonging to the State or to individuals.

**Penal Code No. 74 of 1936, applicable in the Gaza Strip**

**Article 312:** Any person entrusted with funds and who destroys such funds with the purpose of fraud or diverts them with the purpose of fraud to a purpose other than the one for which it was intended, is guilty of an offence punishable with imprisonment of seven (7) years. For the purposes of this article the expression "person entrusted with" shall exclusively include the following persons:

- a. Persons entrusted with awqaf explicitly established with a deed, a testamentary instrument, or a written instrument of a public or private entity, or a charity;
- b. Persons entrusted and appointed by law for any of these purposes;
- c. Persons to whom the responsibility of supervision of the above awqaf is transferred; and
- d. Executors of wills and custodians of legacies.

**Article 313:** Any person who is:

- a. A director or an employee of a registered body or company and who receives, on account of his position, any funds belonging to such body or company, not intended for the payment of a debt or amounts due by such body or company, and fraudulently omits to record such funds in their totality in the books and accounts of such body or company, or does not cause such record to be performed or does not give instructions for that purpose;
- b. A director, an employee, or a member of a registered body or company and who commits one of the following acts with a fraudulent purpose, i.e.:
  - 1- Destroys, modifies, distorts, or falsifies any record, book, document, or instrument of value, or account belonging to the said body or company, or any entry in its books, documents, or accounts, or was an accomplice in the act;
  - 2- Makes a false entry in the records, documents, or accounts of the said body or company, or was an accomplice in the act, or
  - 3- Omits to record an essential entry in the registers, books, or accounts of the said body or company or was an accomplice in the act;

is guilty of an offence punishable with imprisonment of seven (7) years.

74- Palestine also referred to the following provisions of the draft Palestinian Penal Code of 2011, which is yet to be enacted:

**Palestinian Draft Penal Code of 2011**

**Article 604:** Whoever takes possession of a movable property belonging to another person, by virtue of a trust, loan, rent, mortgage, agency, or any other contract binding him to preserve the property and return it in kind, or to use it in a certain manner for the benefit of the owner or any other person, and to provide an account for such use, or in accordance with a binding legal text or court verdict, but who appropriates it for himself, disposes thereof for his own account, deliberately destroys it, or perpetrates any act of infringement with respect to such property, shall be punishable with imprisonment and a fine not exceeding one thousand (1,000) dinars, or by either penalties.

The meaning of property in the above paragraph shall apply to the documents proving a right of its owner or exonerating him from a right.

Conciliation may be made at any stage of the lawsuit and after the judgment has become final. Conciliation shall cause the criminal case to be abated, and the public prosecution shall order the suspension of execution of the sentence if conciliation has taken place during the execution thereof. Conciliation shall have no effect on the rights of the injured party.

**Article 605:** The same sentence, prescribed in the preceding article, shall apply to an owner who is appointed as receiver for his judicially or administratively distrained movable properties, if he embezzles anything therefrom.

Conciliation may be made at any stage of the lawsuit and after the judgment has become final. Conciliation shall cause the criminal case to be abated, and the public prosecution shall order the suspension of execution of the sentence if conciliation has taken place during the execution thereof. Conciliation shall have no effect on the rights of the injured party.

**Article 606:** Whoever is entrusted with a signed paper, or a paper stamped in blank, and commits a breach of trust and writes in the blank space before the signature or stamp, contrary to what is agreed, a debenture or acquittal or other different debentures and writings that result in causing prejudice to the person who signed or stamped the paper, shall be punishable with imprisonment.

If the paper that is signed or stamped in blank has not been handed to the offender, but this latter obtained it by any means whatsoever, the offender shall be punishable with imprisonment for a period not exceeding five (5) years.

Conciliation may be made with respect to the first paragraph of this article at any stage of the lawsuit and after the judgment has become final. Conciliation shall cause the criminal case to be abated, and the public prosecution shall order the suspension of execution of the sentence if conciliation has taken place during the execution thereof. Conciliation shall have no effect on the rights of the injured party.

75- Palestine mentioned the following cases of embezzlement of property in the private sector:

- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 21/2012.
- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 93/2012.
- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 5/2011.
- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 32/2011.

- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 168/2010.
- The Judgment of the Court of Cassation issued in Ramallah on criminal case No. 208/2010.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 1030/1999.
- The Judgment of the Court of Appeal issued in Ramallah on criminal case No. 1111/1998.
- The Judgment on Lawsuit No. 2/2013 issued by the Corruption Crimes Court.
- The Judgment on Lawsuit No. 16/2012 issued by the Corruption Crimes Court.
- The Judgment on Lawsuit No. 26/2012 issued by the Corruption Crimes Court.
- The Judgment on Lawsuit No. 6/2012 issued by the Corruption Crimes Court.
- The Judgment on Lawsuit No. 9/2012 issued by the Corruption Crimes Court.
- The Judgment on Lawsuit No. 20/2011 issued by the Corruption Crimes Court.

**(b) Observations on the implementation of the article**

76- Palestine criminalizes embezzlement of property in the private sector under articles (422) and (423) of the Penal Code No. 16 of 1960 applicable in the West Bank and articles (312) and (313) of the Penal Code No. 74 of 1936, applicable in the Gaza Strip. The draft Penal Code also provides for the criminalization of this act.

**Article 23 - Laundering of Proceeds of Crime**

**Sub-paragraph 1 (a) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

**(a) Summary of information relating to the review of implementation of sub-paragraph 1 (a) (i) of Article 23**

77- Palestine indicated that it is compliant with the paragraph under review as the Palestinian legislation, and in particular, Decree Law No. 9 of 2007, criminalizes the offence of money laundering and considers the conversion or transfer of property while knowing that they are proceeds of crime for the purpose of concealment or disguise as a money laundering offence.

78- Palestine also referred to the following provision:

**Anti-Money Laundering Decree-Law No. 9 of 2007**

**Article 2**

- 1- Any person who commits any of the following acts shall be considered as having committed the crime of money laundering:
  - a. Conversion or transfer of property with the knowledge that the property is the proceeds of a crime to thereby conceal or disguise the illegal source of the property or to aid a person complicit in the commission of a predicate offence to escape the legal consequences of his acts;
  - b. Concealment or disguising of the actual nature, source, location, disposition, movement, or ownership of property or rights to property with the knowledge that such property constitutes the proceeds of a crime;
  - c. Acquisition, possession, or use of property with the knowledge, at the time of the receipt of such property, that the property constitutes the proceeds of a crime; and
  - d. Participating in, aiding, abetting, conspiring in, providing advice or counsel on, facilitating, colluding in, concealing, or attempting to commit any of the acts stipulated in this article.
2. Knowledge, intent, or aim—given that they are basic elements necessary for [establishing] the crime—shall be derived from factual, objective circumstances to establish the concealed source of proceeds without the need to obtain evidence of the predicate offence.
3. The laundering of property obtained from any predicate offence committed inside or outside the National Authority's territories shall be considered a crime, provided the predicate offence is criminalized under the law in effect in the country where the crime occurred. The crime of money laundering shall also apply to persons who commit the predicate offence.

79- Palestine referred to the following example:

- The Judgment on Lawsuit No. 13/2012 issued by the Corruption Crimes Court.

80- Palestine also pointed out that according to the data provided to the Committee by the High Judicial Council during the years 2009, 2010, and 2011, a total of 82 rulings were issued by Palestinian courts on money laundering offences committed in violation of Article 37 of the Anti-Money Laundering Law.

**(b) Observations on the implementation of the article**

81- Palestine has implemented the provision under review.

**Article 23 - Laundering of Proceeds of Crime**

**Sub-paragraph 1 (a) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

- (a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

**(a) Summary of information relating to the review of implementation of sub-paragraph 1 (a) (ii) of Article 23**

82- Palestine indicated that it is compliant with the paragraph under review as Anti-Money Laundering Decree-Law No. 9 of 2007 criminalizes the various acts described in this paragraph in Article 2, paragraph 1 (b) thereof, previously quoted.

**(b) Observations on the implementation of the article**

83- Palestine has implemented the provision under review.

**Article 23 - Laundering of Proceeds of Crime**

**Sub-paragraph 1 (b) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

**(a) Summary of information relating to the review of implementation of sub-paragraph 1 (b) (i) of Article 23**

84- Palestine indicated that it is compliant with the paragraph under review. Anti-Money Laundering Law No. 9 of 2007 criminalizes the various acts described in this paragraph in Article 2, paragraph 1 (c) thereof, previously quoted.

**(b) Observations on the implementation of the article**

85- Palestine has implemented the provision under review.

**Article 23 - Laundering of Proceeds of Crime**

**Sub-paragraph 1 (b) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

**(a) Summary of information relating to the review of implementation of sub-paragraph 1 (b) (ii) of Article 23**

86- Palestine indicated that it is compliant with the paragraph under review as Anti-Money Laundering Decree-Law No. 9 of 2007 criminalizes the various acts described in this paragraph in Article 2, paragraph 1 (d) thereof, previously quoted.

**(b) Observations on the implementation of the article**

87- Palestine has implemented the provision under review.

**Article 23 - Laundering of Proceeds of Crime:**

**Sub-paragraph 2 (a)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

**(a) Summary of information relating to the review of implementation of paragraph 2 (a) of Article 23**

88- Palestine indicated that it is compliant with the paragraph under review and referred to the following legislation:

**Anti-Money Laundering Decree-Law No. 9 of 2007**

**Article 3:** Any property obtained from the following crimes shall be considered illegal property and the object of a money laundering crime:

1. Participation in a criminal group or an organized fraud group;
2. Human trafficking and migrant smuggling;
3. Sexual exploitation of children and women;
4. Illegal trafficking in narcotic drugs and psychotropic substances;
5. Illegal trafficking in arms and ammunition;
6. Illegal trafficking in stolen and other goods;
7. ***Bribery and embezzlement;***
8. Fraud;
9. Counterfeiting of currency and official documents;
10. Counterfeiting and infringement of intellectual property;
11. Crimes committed in violation of the Environment Law;
12. Killing or serious harm;
13. Abduction, holding captive, or hostage taking;
14. Burglary and theft;
15. Smuggling;
16. ***Extortion, threat, or intimidation;***

17. Forgery;
18. All types of piracy;
19. Manipulation of financial markets; and
20. *Illegal gain.*

**(b) Observations on the implementation of the article**

89- Palestine adopted the list approach in determining the predicate offenses for money laundering; according to article 3 of the Anti-Money Laundering Decree-Law No. 9 of 2007, the list covers twenty offences including bribery, embezzlement, Illegal gain, extortion, threats and intimidation offences. The list did not include all the offences established in accordance with the Convention, especially trading in influence and abuse of functions.

**Article 23 - Laundering of Proceeds of Crime**

**Sub-paragraph 2 (b)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

**(a) Summary of information relating to the review of implementation of paragraph 2 (b) of Article 23**

90- Palestine indicated that it is compliant with the paragraph under review and referred to its previous answer.

**b) Observations on the implementation of the article**

91- Palestine adopted the list approach in determining the predicate offenses for money laundering; according to article 3 of the Anti-Money Laundering Decree-Law No. 9 of 2007, the list covers twenty offences including bribery, embezzlement, illegal gain, extortion, threats and intimidation offences. The list does not include all the offences established in accordance with the Convention, especially trading in influence and abuse of functions.

92- To implement the provision under review, Palestine should include as predicate offences for money laundering all offences established in accordance with the Convention, including trading in influence and abuse of functions.

**Article 23 - Laundering of Proceeds of Crime**

**Sub-paragraph 2 (c)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

**(a) Summary of information relating to the review of implementation of paragraph 2 (c) of Article 23**

93- Palestine indicated that it is compliant with the paragraph under review as Anti-Money Laundering Decree-Law No. 9 of 2007 criminalizes the various acts described in this paragraph in Article 2, paragraph 3 thereof, previously quoted.

**(b) Observations on the implementation of the article**

94- Predicate offences include offences committed both within and outside Palestine, on condition of dual criminality.

**Article 23 - Laundering of Proceeds of Crime**

**Sub-paragraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

**(a) Summary of information relating to the review of implementation of paragraph 2 (d) of Article 23**

95- Palestine has furnished copies of its laws in accordance with the provision under review, pursuant to a Note Verbale sent by its Permanent Observer mission to the United Nations Office and International Organizations in Vienna, dated 15 June 2015.

**(b) Observations on the implementation of the article**

96- Palestine has furnished copies of its laws in accordance with the provision under review.

**Article 23 - Laundering of Proceeds of Crime**

**Sub-paragraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

**(a) Summary of information relating to the review of implementation of paragraph 2 (e) of Article 23**

97- Palestine indicated that it is compliant with the paragraph under review as Anti-Money Laundering Decree-Law No. 9 of 2007 criminalizes the various acts described in this paragraph in Article 2, paragraph 3 thereof, previously quoted (the offence of money laundering applies to the persons who commit any of those crimes).

98- Palestine and explained that the persons who commit the predicate offence are criminally liable for the offence of money laundering, provided that the act is criminalized in the country where it was committed, according to Article 2-3 of Anti-Money Laundering Law No. 9 of the 2007.

**(b) Observations on the implementation of the article**

99- Palestine criminalizes self-laundering.

**Article 24 – Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

**(a) Summary of information relating to the review of implementation of Article 24**

100- Palestine indicated that it is compliant with the paragraph under review. The laws applicable in Palestine criminalize the concealing of proceeds of crime while knowing that they result from any of the criminal acts of corruption, whether these acts are considered as an offence or as a misdemeanour.

101- Palestine also referred to the following provisions:

**Penal Code No. 16 of 1960 applicable in the West Bank**

**Article 83:** Except for the instances stipulated in Article 80/e of this Law, whoever knowingly hides the stolen or embezzled property of any other person or acquires such property through the commission of a felony or misdemeanour, shall be punishable with imprisonment for a period not exceeding two (2) years and a fine not exceeding fifty (50) dinars.

**Anti-Money Laundering Decree-Law No. 9 of 2007**

**Article 2**

1- Any person who commits any of the following acts shall be considered as having committed the crime of money laundering:

...

b. Concealment or disguising of the actual nature, source, location, disposition, movement, or ownership of property or rights to property with the knowledge that such property constitutes the proceeds of a crime;

...

#### **Palestinian Draft Penal Code of 2011**

**Article 40:** Any person who participates in a crime, as a primary accomplice, shall incur the penalty prescribed for that crime, unless otherwise provided. The accessory accomplice in a crime shall incur a penalty not exceeding two-thirds of the maximum penalty prescribed for the perpetrator. With the exception of the cases provided for in items 4, 5, and 6 of Article 38 of this law, whoever hides a person, or helps such person evade justice, while knowing that such person committed a crime, or conceals, or disposes of misappropriated property through criminal acts while knowing about them, or unlawfully draws a benefit for himself or for another person from the commission of the crime while being aware of such crime, shall not be considered as an accessory accomplice but a principal perpetrator of a separate crime punishable with imprisonment and a fine. The spouse, ascendants, descendants, relatives, in-laws up to the second degree, of the defendant, who shelter him, shall be exempted from punishment.

#### **(b) Observations on the implementation of the article**

102- Article 83 of the Penal Code No. 16 of 1960 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 of the money laundering offense apply to that act pursuant to paragraph 1 (b) of Article (2) of the Anti-Money Laundering Decree-Law No. 9 of 2007. The draft penal code also provides for the criminalization of this act.

#### **Article 25 - Obstruction of Justice**

##### **Sub-paragraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) 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 this Convention;*

#### **(a) Summary of information relating to the review of implementation of sub-paragraph (a) of Article 25**

103- Palestine indicated that it is compliant with the paragraph under review, as it implemented the reviewed provision through its applicable legislation that criminalizes the inducing of false testimony or interfering in the giving of testimony or the production of evidence in proceedings relating to the commission of all offences and misdemeanours, including the offences of corruption, whether through the use of physical force, threat, intimidation, or promise or offer or giving of an undue advantage, as false testimony is considered as an offence, and abetting or interfering in it is punishable.

104- Palestine referred to the following provisions:

**Penal Code No. 16 of 1960 applicable in the West Bank**

**Article 214:**

1. Whoever gives false testimony before a judicial authority or an official or authority which has the power to hear witnesses under oath, or denies the truth or conceals some or all facts of the case he is being asked about, shall be punishable with imprisonment of three (3) months to three (3) years. The previous rule is applicable regardless of whether he is a person whose testimony is acceptable or not or his testimony is accepted or not.
2. If he commits such an act in the course of an offence investigation or trial, he shall be punished by temporary imprisonment with hard labour. If the false testimony results in a death or life sentence, the penalty shall not be less than ten (10) years of imprisonment with hard labour.
3. If the testimony is given without the witness taking the oath, the penalty shall be reduced by half.

**Article 215:** The following shall be exempted from punishment:

1. The witness who gives a testimony in a criminal investigation and retracts his false statements before the conclusion of the investigation and before a complaint against him has been filed; and
2. The witness who gives testimony before any court and retracts his false testimony before any judgment concerning the subject matter of the case is issued even if such a judgment is not a final one.

**Article 216:**

1. The following shall be exempted from punishment:
  - a. The witness who may suffer –if he tells the truth –a grave harm, which affects his liberty or honour or might expose his spouse, even if divorced, or one of his ascendants, descendants, siblings, or in-laws, of the same degrees, to such harm; and
  - b. The person who gives his name, title, and family name before the court and is not under a legal obligation to be heard as a witness, or should have been told that he may refrain from testifying if he wants to.
2. In the previous two instances, if the false testimony exposes another person to legal prosecution or a judgment, the penalty shall be reduced from one half to two thirds.

**Article 217:** The penalty shall be halved for the person who induces false testimony if the witness necessarily exposes him if he tells the truth, or exposes one of his relatives to harm like the one described in paragraph 1 of the previous article.

**Article 222:** Any person who intentionally conceals or destroys a document or any other paper, whatever its type, and spoils it to the extent that it becomes illegible or that it is not possible to recognize it, while knowing that it is necessary in any judicial proceeding, intending by so doing to prevent its use as an evidence, shall be punishable with imprisonment of not more than one (1) year or a fine not exceeding fifty (50) dinars, or both penalties.

**Article 80:**

1. Whoever incites another person to commit an offence, by means of giving or offering money or gift, exercising influence through threat or deceit, disbursing money, or abusing authority, shall be considered as an instigator.
2. Any of the following persons is considered as an accomplice in an offence or a misdemeanour:
  - a. Whoever provides assistance in the commission of an offence with his guidance;
  - b. Whoever provides the perpetrator with a weapon or tools or any other item that may help the commission of the offence;

- c. Whoever is present at the place where the offence is committed with the intent to terrorize resistants, strengthen the will of the principal perpetrator, or ensure the commission of the intended offence;
- d. Whoever helps the perpetrator in carrying out the acts that prepare, facilitate, or complete the commission of the offence;
- e. Whoever agrees with the perpetrator or the accomplices in the offence prior to its commission and participates in concealing its marks, or hiding or disposing of all or some of the items resulting from it, or hiding any person(s) who participated in the commission of the offence to escape justice; and
- f. Whoever had prior knowledge of the criminal history of bandits who have a history of committing acts of banditry or violence against State security and public safety or against persons and property, and provides them with shelter, food, hideout, or place to meet.

**Article 81:**

- 1. An instigator or accomplice shall be punishable with the following penalties:
  - a. Hard labour from fifteen (15) to twenty (20) years if the perpetrator is punishable with the death penalty.
  - b. Hard labour from seven (7) to fifteen (15) years if the perpetrator is punishable with perpetual hard labour or a life sentence.
- 2. In other instances, the instigator and accomplice shall be punishable with the same penalty as the perpetrator after it is reduced from one sixth to one third.

**Penal Code No. 74 of 1936, applicable in the Gaza Strip**

**Article 117:**

- 1. Any person who gives in any judicial proceedings a false statement that affects any essential aspect related to those proceedings, while knowing that the testimony is false, is guilty of committing an offence called 'perjury'.

It is immaterial whether the testimony was given under oath or in any other form permitted by law, or is given as a mere informative statement.

The forms and ceremonies used in administering an oath or compelling the witness in any other way to tell the truth are immaterial if the witness accepts such forms and ceremonies.

It is immaterial whether or not the court or judicial council were set up in the right manner or held in the right place, as long as they are held properly or as a court or judicial council to examine the procedure according to which the testimony was given.

It is immaterial whether the person who gave testimony is a person whose testimony is acceptable or not or whether his testimony is accepted in the proceedings or not.

- 2. Any person who incites another person to give false testimony - and the latter gives such false testimony on the basis of such incitement - shall be considered as having committed an offence called 'subornation'

**Article 118:** Any person who gives false testimony or incites another to do so shall be punishable with imprisonment of seven (7) years.

**Article 25:**

- 1. If a person incites another person to commit an offence, and that other person actually commits such offence as a result of such incitement, it is immaterial whether the offence actually committed is the same as the one that was instigated or a different one, or whether the offence is committed as it was instigated or in a different way, provided that the facts constituting the offence actually committed in either case are a probable consequence of the incitement.

2. In either case, the inciter is deemed to have incited the perpetrator to commit the actual offence:

Unless the person who incited another person or prompted him in any other way to commit an offence retracts and disavows the incitement, he shall not be held responsible for the offence if it occurs subsequently.

**Article 124:** Any person who:

- a. Conspires with another person to accuse a person falsely of any offence or to do anything to obstruct, prevent, thwart or divert the course of justice;
- b. Persuades any person - lawfully obligated to appear as a witness to give testimony - to not appear and give testimony or hinders or prevents such person from that or attempts to do so with the purpose of hindering the course of justice, or
- c. Obstructs or interferes in any way with the execution of any legal procedure, whether juristical or criminal, or knowingly prevents its execution,

shall be considered as having committed a misdemeanour.

**Article 26:**

1. Any person who harbours another person, other than his father, mother, son, daughter, or spouse, or helps him to evade justice, while knowing that such person committed an offence, shall be considered as an accomplice in the offence after its occurrence:

The wife is not considered as an accomplice in the offence after its occurrence if she harbours or helps, in her husband's presence and under his authority, another person who committed with her husband an offence, to enable that other person to escape punishment.

2. Any person who is considered as having committed the offence referred to in paragraph 1 herein shall be liable, after being found guilty, to:
  - a. Imprisonment of not more than three (3) years, if the offence committed by the principal perpetrator whom he harboured or assisted entails, after conviction, a death sentence or imprisonment of not more than three (3) years.
  - b. Imprisonment of not more than half of the sentence incurred by the principal perpetrator, if the offence committed by the principal perpetrator entails, after conviction, a penalty of imprisonment of three years (3) or less.

**Article 31:** Any person who attempts to prompt, incite, or entice another person to act or refrain from acting, in Palestine or elsewhere, and that act or refraining from acting, if it occurred, is considered as an offence under the laws of Palestine, or the laws of the country where the act or refraining from acting occurred, shall be considered as having committed the same offence and liable to the same punishment as if he had himself attempted to commit the same act or refraining from acting in Palestine, whether the act or refraining from acting were committed by him or by the other person he prompted, incited, or enticed:

Provided that: if the act or refraining from acting was intended to be performed outside Palestine, the punishment shall not exceed that which he would have incurred under the laws in force in the country where the act or refraining from acting was intended to be performed, if he had himself attempted to act or refrain from acting; and

Provided that: in this latter case, a prosecution shall not be instituted except at the request of the Government of the country having jurisdiction in the place where the act or refraining from acting was intended to be performed.

105- Palestine also indicated that the concept of threat provided for in Article 80 of Penal Code No. 16 of 1960 in force in the West Bank includes the use of physical force if the use or threat of use of force is for incitement to false testimony. Indeed, the threat includes intimidation of the victim by any means to force him to do something, whether it be

lawful or unlawful. In addition, the threat of use of physical force is one of the known forms of threat and is more specific and narrower than threat, whereas the use of physical force is considered either an execution of the threat in the event of refusal of the victim to obey, and is criminalized as an independent crime. The concepts of money and gift mentioned in the same article include all forms of undue advantage. Such advantage is necessarily an advantage unduly provided to influence the witness. The legislator, through Article 80 of the Penal Code, included this case, whether this advantage is due or undue. Subsequent articles on interfering, when read in conjunction with the provision on inducing, cover all cases covered by the offering of an undue advantage.

106- Palestine also explained that Article 117 of Penal Code No. 74 of 1936, applicable in the Gaza Strip, does not cover the use of physical force, threat, or intimidation, but deals with inducement by offering an advantage defined by law as temptation. However, Article 31 of the said law covers these cases and criminalizes any attempt to incite another person to commit any offence punishable in Palestine or abroad. The phrase "whoever attempts to incite another person" is broader in scope than the cases mentioned and implicitly includes threat, intimidation, or the use of physical force or other means that the offender may use to incite another person to commit any criminal offence, whether this act is false testimony or any other criminal offence. The concept of temptation covers the promise, offering, or giving of an undue advantage, as the object of temptation includes a promise of any matter, advantage, or thing.

107- Palestine pointed to the following examples:

- The Judgment of the Court of Cassation issued in Ramallah on Case No. 78/2012
- The Judgment of the Court of Cassation issued in Ramallah on Case No. 151/2011
- The Judgment of the Court of Cassation issued in Ramallah on Case No. 212/2010
- The Judgment of the Court of Appeals issued in Ramallah on Case No. 366/1997
- The Judgment of the Court of Appeals issued in Ramallah on Case No. 611/1997

**(b) Observations on the implementation of the article**

108- Article (80) read together with article (214) of the Penal Code No. 16 of 1960 applicable in the West Bank criminalize incitement to perjury, by means of giving money or gift, or through the use of threats, when the offender reaches his or her goal, i.e. the false testimony. The law does not criminalize such acts when the offender does not reach his or her goal. The law does not 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 gift stipulated in the law is narrower than the concept of undue advantage provided for in the Convention.

109- Article 117 of the Penal Code No. 74 of 1936, applicable in the Gaza Strip, criminalizes temptation to perjury, when the offender reaches his or her goal, i.e. the false testimony, which covers incitement through the promise, offering or giving of an undue advantage. The law does not criminalize such acts when the offender does not reach his or

her goal, nor did it covers incitement through the use of physical force, threats or intimidation.

110- Palestine has not criminalized incitement to provide evidence in a proceeding related to the commission of offences established in accordance with the Convention.

111- To implement the provision under review, Palestine should 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, whether the offender reaches or not his or her goal.

## **Article 25 - Obstruction of Justice**

### **Sub-paragraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

### **(a) Summary of information relating to the review of implementation of sub-paragraph (b) of Article 25**

112- Palestine indicated that it is compliant with the paragraph under review. Palestinian law punishes the use of physical force, threat, or intimidation to interfere with any judicial officer or law enforcement official in the exercise of his duties, whether this relates to corruption or other crimes.

113- Palestine referred to the following provisions:

#### **Penal Code No. 16 of 1960, applicable in the West Bank**

##### **Article 185:**

1. Whoever attacks or violently resists a public official who enforces applicable laws or regulations, who collects fees or taxes set by law, or who executes a judicial decision or order or any other order issued by a competent authority, shall be punishable with imprisonment of at least six (6) months, if armed, and of three (3) months to one (1) year if unarmed.
2. The penalty shall be doubled if there are three (3) or more perpetrators.

**Article 186:** Any active or passive resistance that halts a lawful act carried out by one of the persons described in the previous article shall be punishable with imprisonment of one (1) to six (6) months or a fine of ten (10) to fifty (50) dinars.

##### **Article 187:**

1. Any person who strikes or assaults a public official with another act, or treats him violently or harshly, or threatens him, or draws a weapon in his face while the public official is performing his duties or because of the acts performed by the public official in the exercise of his duties, shall be punishable with imprisonment of six (6) months to two (2) years;
2. If the act is directed against a judge, the penalty shall range from one (1) to three (3) years;

3. The penalties stipulated in the previous two paragraphs shall be increased by one third to one half if the acts of violence are committed on purpose, or committed by more than one person or result in an injury or illness; and
4. If the acts of violence, injury, or illness require, because of their seriousness, a penalty more severe than ones prescribed in the preceding paragraphs, the sentence incurred by the perpetrator under this law shall be increased by one third to one half.

**Penal Code No. 74 of 1936, applicable in the Gaza Strip**

**Article 124:** Any person who:

- a. Conspires with another person to accuse a person falsely of any offence or to do anything to obstruct, prevent, thwart or divert the course of justice;
- b. Persuades any person - lawfully obligated to appear as a witness to give testimony - to not appear and give testimony or hinders or prevents such person from that or attempts to do so with the purpose of hindering the course of justice; or
- c. Obstructs or interferes in any way with the execution of any legal procedure, whether juridical or criminal, or knowingly prevents its execution.

shall be considered as having committed a misdemeanour.

**Article 139:** Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court, is guilty of a misdemeanour, and shall be punishable with imprisonment of one (1) year.

114- Palestine pointed to the following examples:

- Judgment of the Court of Cassation issued in Ramallah on Case No. 78/2012
- Judgment of the Court of Cassation issued in Ramallah on Case No. 25/2009
- Judgment of the Court of Appeals issued in Ramallah on Case No. 662/1999
- Judgment of the Court of Appeals issued in Ramallah on Case No. 405/1998

**(b) Observations on the implementation of the article**

115- Article 187 of the Penal Code No. 16 of 1960 applicable in the West Bank criminalizes striking or assaulting a public official or treating him or her violently or harshly, or threatening him or her, while the public official is performing his or her duties or because of the acts performed by the public official in the exercise of his or her duties. The text of this article is narrower than what is stipulated in the Convention, since the act should occur while the public official is performing his or her duties or because of the acts performed by the public official in the exercise of his or her duties..This article does not cover, for example, the interference prior to the exercise of the public official's duties.

116- The Penal Code No. 74 of 1936, applicable in the Gaza Strip, criminalizes some aspects of the intervention in the exercise of of the public official's duties (Articles 124 and 139).

117- To implement the provision under review, Palestine should 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.

## Article 26 - Liability of Legal Persons

### Paragraphs 1 and 2

1. *Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

2. *Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

### (a) Summary of information relating to the review of implementation of paragraph 1 of Article 26

118- Palestine indicated that it is compliant with the paragraph under review. The law allows the prosecution of a legal person and its conviction, taking into account the penalties which may be imposed on it (fine and confiscation). Article 5 of Penal Code No. 74 of 1936, as amended, applicable in the Gaza Strip, defines a legal person in these words, "*the two terms 'person' and 'owner', and similar terms when used in respect of money, include government bodies of all kinds, and any group of people who may possess money ...*" Besides, Article 2 of Interpretative Law No. 9 of 1945 defines a person as "*every company or association or body of persons, whether a legal person or not.*"

119- Palestine referred to the following provisions:

#### **Penal Code No. 16 of 1960 applicable in the West Bank**

##### **Article 74:**

1. A punishment may only be imposed on a person if that person commits an act consciously and wilfully;
2. Legal persons are criminally liable for offences committed by their directors, management members, representatives, or employees on behalf of or with the means of the said legal persons;
3. Legal persons can only be sentenced with fines and confiscation;
4. If the law provides for an original penalty other than a fine, a fine shall replace the said penalty, which shall be inflicted on the legal entities within the limits specified in Articles 22 through 24 thereof.

#### **Penal Code No. 74 of 1936, as amended, in force in the Gaza Strip:**

##### **Article 27:**

Any person considered under this Law as an accomplice in an offence after its commission, may be tried and convicted in accordance with this Law, whether the principal perpetrator with whom he participated in the commission of the offence is convicted of that offence or not, and whether or not it is possible to take legal actions against him and enforce the sentence rendered against him with respect to that offence. Such person may be prosecuted either individually or along with the principal perpetrator or with any other persons involved in the commission of the offence.

#### **Anti-Corruption Law No. 1 of 2005**

**Article 9:** If a director, board member, representative, or employee of any company, association, national body, union, or other legal entity that is subject to this Law - except for public

administrations - commits on behalf or with the means of such entity a crime specified in this Law, the Commission may request the court, as the case may be, to suspend the activity of such entity, or dissolve it, or liquidate its funds, and prevent anybody linked to the crime from establishing any similar entity, or sit on its board, or be a director of same for a period of at least one (1) year and at most five (5) years.

#### **Anti-Money Laundering Decree-Law No. 9 of 2007**

##### **Article 39:**

1. A legal entity that commits the crime of money laundering shall be punishable, without prejudice to the liability of a natural person who belongs to such legal entity, with a fine of JD10,000 - JD 200,000 or the equivalent in currencies in circulation.
2. A person responsible for the actual management of an offending legal entity shall be punished by the penalty stipulated in paragraphs 1 and 2 of Article 37 of this law if his knowledge of the crime is demonstrated, or if the offence occurred as a result of his breach of the duties of his office.
3. A legal entity shall be jointly liable for payment of adjudicated fines and damages if the crime that occurred in violation of this law is committed by one of its employees on its behalf and for its benefit.

120- Moreover, the Companies Law and the Law on Banks addressed administrative sanctions imposed on legal persons, including dissolution, closure, and liquidation.

#### **Companies Law No. 12 of 1964, applicable in the West Bank**

##### **Article 194:**

The court may decide the compulsory liquidation of a joint stock company

- a. If the company makes a decision to conduct liquidation.
- b. If it commits grave breaches of the law or its regulations.
- c. If it does not start its business within one year of registration or stops its business for a full year.
- d. If the number of its shareholders drops below two persons in a private joint stock company and below seven in any other company.
- e. If it is unable to pay its debt.

#### **Banking Law No. 9 of 2010**

##### **Article 54:**

1. The Monetary Authority has the right to cancel the license and liquidate the bank in the following cases:
  - a. If the license was granted on the basis of incorrect information contained in the license application or the accompanying documents.
  - b. If the bank does not commence its business during the period specified in Article 8 herein.
  - c. If it appears to the Monetary Authority from the documents and field control that the bank's assets are insufficient to meet its liabilities.

- d. If the bank stops for more than three (3) months from receiving deposits or other money payable on demand from the public or stops granting various forms of credit or funding.
  - e. If it makes changes affecting the nature of its activities and business that are contrary to the terms of its license.
  - f. If it no longer possesses the minimum capital and reserves as defined by the Monetary Authority or is no longer able to fulfil its obligations towards its creditors.
  - g. If the bank repeatedly fails to comply to the provisions contained in this Law and the regulations, instructions, and decisions issued pursuant thereto, constituting thereby a threat to the interests of the depositors or to the stability of the banking system in Palestine.
  - h. If the bank merges with, or its ownership is or transferred to another bank or part of its assets are sold without the prior written consent of the Monetary Authority.
  - i. If the license of another bank, which owns 50% or more of the shares of this bank, is cancelled.
  - j. At the request of the General Assembly of the Bank by the voting majority required.
2. The Monetary Authority has the right, upon a court decision, to seize the assets of the chairman of the board of directors of the bank or any of its members or any principal officers or employees of the bank if it is proven that they are personally responsible for the losses suffered by the bank as part of the liquidation process.
  3. The Monetary Authority has the right to cancel the license of the branches of a foreign bank in the cases specified in paragraph 1 above, in addition to the following cases:
    - a. If the license of its general management and its main office in the mother country is cancelled.
    - b. If it is proven that it is unable to continue its business.
    - c. If it fails to meet the public demand for their deposits in Palestine.
    - d. If its management and head office fail to meet the public demand for their deposits in Palestine or in the mother country.
  5. The Monetary Authority shall specify, in the decision to cancel the license grant by it, the date and time on which the decision becomes effective. As of such date, the bank shall not engage in any banking activity. Nevertheless, the bank remains subject to the provisions of this Law and any regulations, instructions, or decisions issued thereunder, until it fulfils all of its the obligations in accordance with the instructions issued by the Monetary Authority.
  6. All the decisions of the Monetary Authority on this matter shall be published in the Official Gazette and in two widely circulated daily newspapers in Palestine, or in any other information media deemed appropriate by the Monetary Authority. If the local bank has branches outside Palestine, the host regulation authorities shall be notified of the cancellation decision so that they may take appropriate action in this respect.
  7. The bank whose license was cancelled by a decision of the Monetary Authority, shall only engage in any banking business after the issuance of a final decision by the competent court.

**Article 59:**

The Monetary Authority may decide to liquidate a bank in either of the following conditions:

1. If a decision is made to cancel the bank's license pursuant to Article 53, paragraph 1, item (q.), or Article 55, or Article 56, paragraph 4 hereof.
2. If the extraordinary general assembly of the bank decides, by a majority of not less than 75% of the shares represented at the meeting, recommends to the Monetary Authority to liquidate the bank.

**Article 64:**

1. The Monetary Authority has the right to issue a decision to merge a bank or a part of it in one or more other banks with the consent of the general assembly and the plenary meeting of the bank with which the merge is made, and regardless of the approval of the bank and the plenary meeting of the bank subjected to the merger decision, in any of the following cases:
  - a. Inability of the bank to meet the requirement of the Monetary Authority regarding the minimum capital and reserves, or if it is no longer able to meet its obligations.
  - b. Non compliance of the board of directors or the executive management of the bank with the provisions of this Law, and the instructions and decisions issued pursuant thereunder, after exhausting the procedures set forth in Article 53 hereof.
  - c. If the bank repeatedly violates the provisions of this Law, or any regulations, instructions, or decisions issued thereunder, and these irregularities lead to losses that adversely affect the financial position of the bank and constitute a threat to the interests of depositors or a threat to the stability of the banking system in Palestine.
  - d. The related parties exploit or misappropriate the bank funds and do not comply with correction, through access to facilities without the prior written consent of the Monetary Authority, or access to preferential terms in grants compared with the terms applicable to the bank's clients, or exceed the terms set by the Monetary Authority concerning facilities granted to related parties, or failure to repay non-performing facilities granted to related parties.
  - e. Misuse of bank funds through high risk investments exposing the bank to the risk of heavy losses in its portfolio that negatively impacts the financial position of the Bank.
  - f. The bank violates the rules of ownership rates specified pursuant to this Law and relevant regulations, instructions, and decisions without the prior written consent of the Monetary Authority.
  - g. The bank stops for more than three (3) months from receiving deposits, or other reimbursable funds, from the public, or stops granting various types of credit and funding.
  - h. Upon the recommendation of the appointed administrator.
  - i. The Monetary Authority deems it necessary, in the public interest, and to enhance the solidity and security of the banking system.
2. The Monetary Authority shall adopt appropriate procedures and mechanisms for the completion of the merger.
3. The Monetary Authority has the right to choose advisers and experts to assess the bank whose merger is considered.

121- Palestine also added that the legal person assumes civil liability, because the victim of an offence is entitled to claim compensation for the material damage he suffers either through direct civil action or through criminal and civil action against the natural person or the legal person.

122- Palestine pointed to the following examples:

- Judgement on case No. 13/2012 issued by the Corruption Crimes Court.

This provision is an example of success in the implementation of the liability of legal persons for participation in corruption crimes. A company was considered as one of the defendants in a case involving illegal gain, money laundering, interference in

criminal embezzlement, and prejudice to public funds through credit fraud and abuse. It was sentenced to dissolution and a fine of five million (5,000,000) US dollars.

- Judgement issued by the Court of Appeals of Ramallah on Case No. 98/1999

**(b) Observations on the implementation of the article**

123- Article (9) of the Anti-Corruption Law provides for the criminal liability of legal persons for the offences covered by this law when committed, on its behalf or with its means, by its directors, board members, representatives, or employees. Article (39) of the AML Law provides for the civil and criminal liability of legal persons for the money laundering offences. Article 74 of the Penal Code No. 16 of 1960 applicable in the West Bank provides for the criminal liability of legal persons in general for offences committed by their directors, management members, representatives, or employees on behalf of or with the means of the said legal persons.

124- Article (194) of the Companies Law No. 12 of 1964, applicable in the West Bank provides for the administrative liability of joint stock companies for grave breaches of the law.

**Article 26 - Liability of Legal Persons**

**Paragraph 3**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

**(a) Summary of information relating to the review of implementation of paragraph 3 of Article 26**

125- Palestine indicated that it is compliant with the paragraph under review. Palestinian jurisprudence determined that “Article 74-2 of the Penal Code of 1960 established the basis of liability. It considers legal persons as criminally liable for the acts of their directors, members of management, and representatives when they commit criminally punishable acts on its behalf and with one of its means as a legal person. Therefore, the legislator intended to put an end to the doctrinal debate on whether or not a legal person had volition as man, and whether someone other than man could be held to account criminally. So, the legislator established a specific provision to punish a legal person when the element of liability exists as it has a legal existence and has to bear all the legal implications of its acts, including punishment according to the rules prescribed by the law, in addition to the liability of the person who committed the offence. So, when a natural person commits a punishable act, he deserves to be punished, in addition to the punishment of the legal person” (Appeal No. 98/99 issued on 14 May 2000 by the court of Ramallah on a criminal case).

126- The Palestinian jurisprudence and judiciary established that the punishment of a company pursuant to Article 74 referred to above does not preclude the punishment of the

perpetrator, even if this latter commits the act on behalf of a legal person. This is enshrined in Article 39-1 of Anti-Money Laundering Decree Law No. 9 of 2007, "1. *A legal entity that commits the crime of money laundering shall be punished, without prejudice to the liability of a natural person who belongs to that legal entity ...*" This is enshrined in Article 27 of Penal Code No. 74 of 1936.

**(b) Observations on the implementation of the article**

127- Palestine has implemented the provision under review. The liability of a legal person does not affect the criminal liability of the natural person who committed the offense.

**Article 26 - Liability of Legal Persons**

**Paragraph 4**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

**(a) Summary of information relating to the review of implementation of paragraph 4 of Article 26**

128- Palestine indicated that it is compliant with the paragraph under review. On the basis of the legal and actual existence of a legal person and the absence of contradiction between the liability of such legal person and the rule of the personal character of punishment, as well as the possibility of imposing a punishment of a particular kind on a legal person, many provisions of the Palestinian legislation enshrined the criminal liability of a legal person, in a clear and explicit manner, in all crimes except those that are of course incompatible with the character of a legal person.

129- Palestine referred to the following provisions:

**Penal Code No. 16 of 1960 applicable in the West Bank**

**Article 74:** (already quoted above)

**Article 36:** Any union, company, association, and any legal entity, except for public administration entities, may be suspended if any of its directors, board members, representatives or employees commit on its behalf an intentional offence or misdemeanour punishable with imprisonment of at least two (2) years.

**Article 37:** Entities mentioned in the previous article may be dissolved:

- a. If they do not abide by their legal articles of incorporation.
- b. If their incorporation objectives are contrary to applicable laws or if they pursue in effect such objectives.
- c. If they commit any act that constitutes grounds for dissolution.
- d. If they are suspended under a final judgment issued before less than five years.

**Article 38:**

1. Even if the name of the entity is changed and the directors or board members replaced, the legal entity shall be suspended for a minimum period of one (1) month and a maximum of two (2) years. Such suspension shall halt all the functions of the legal entity and prevent the transfer of the entity's quarters and title provided that the rights of others acting in good faith are protected.
2. The dissolution requires the liquidation of the assets of the legal entity, and all directors, board members and liable persons shall lose legal competence to establish or manage similar entities.

### **Anti-Money Laundering Decree-Law No. 9 of 2007**

#### **Article 39:**

1. A legal entity that commits the crime of money laundering shall be punishable, without prejudice to the liability of a natural person who belongs to such legal entity, with a fine of JD10,000 - JD 200,000 or the equivalent in currencies in circulation.
2. A person responsible for the actual management of an offending legal entity shall be punished by the penalty stipulated in paragraphs 1 and 2 of Article 37 of this law if his knowledge of the crime is demonstrated, or if the offence occurred as a result of his breach of the duties of his office.
3. A legal entity shall be jointly liable for payment of adjudicated fines and damages if the crime that occurred in violation of this law is committed by one of its employees on its behalf and for its benefit.

130- Palestine referred to its answer on the previous paragraph with regard to administrative sanctions against companies and banks.

131- Palestine pointed to the following examples:

- The Judgement on case No. 13/2012 issued by the Corruption Crimes Court.
- The Judgement issued by the Court of Appeals of Ramallah on Case No. 98/1999

#### **(b) Observations on the implementation of the article**

132- Palestinian legislation subjects legal persons to several types of sanctions when participating in offenses established in accordance with the Convention, including cessation of work and dissolution (Article 9 of the Anti-Corruption Law), fine and confiscation (Article 74 of the Penal Code No. 16 of 1960 applicable in the West Bank), in addition to fine and compensation in money laundering cases (Article 39 of the Decree Law No. 9 of 2007 on combating money laundering).

### **Article 27 - Participation and Attempt**

#### **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

**(a) Summary of information relating to the review of implementation of paragraph 1 of Article 27**

133- Palestine indicated that it is compliant with the paragraph under review. The Penal Code includes general provisions that criminalize partners, accomplices, and instigators in the commission of misdemeanours or offences, including crimes of corruption.

134- Palestine referred to the following provisions:

**Penal Code No. 16 of 1960 applicable in the West Bank**

**Article 76:** If several persons collectively commit an offence or misdemeanour, or if the offence or misdemeanour is made up of several acts and each person of them commits one or more such acts with the intent to commit such an offence or misdemeanour, they shall all be considered as partners in committing the offence and each one of them shall be punishable with the penalty prescribed by law as if he were a single perpetrator.

**Article 80:**

- 1- Whoever incites another person to commit an offence, by means of giving or offering money or gift, exercising influence through threat or deceit, disbursing money, or abusing authority, shall be considered as an instigator
- 2- Any of the following is considered as an accomplice in an offence or a misdemeanour:
  - a. Whoever provides assistance in the commission of an offence with his guidance;
  - b. Whoever provides the perpetrator with a weapon or tools or any other item that may help the commission of the offence;
  - c. Whoever is present at the place where the offence is committed with the intent to terrorize resistants, strengthen the will of the principal perpetrator, or ensure the commission of the intended offence;
  - d. Whoever helps the perpetrator in carrying out the acts that prepare, facilitate, or complete the commission of the offence;
  - e. Whoever agrees with the perpetrator or accomplices in the offence prior to its commission and participates in concealing its features, or hiding or disposing of all or some of the items resulting from it, or hiding any person(s) who participate in the commission of the offence to escape justice; and
  - f. Whoever had prior knowledge of the criminal history of bandits who have a history of committing acts of banditry or violence against State security and public safety or against persons and property, and provides them with shelter, food, hideout, or place to meet.

**Article 81:**

- 1- An instigator or accomplice shall be punishable with the following penalties:
  - a. Hard labour from fifteen (15) to twenty (20) years if the perpetrator is punishable with the death penalty.
  - b. Hard labour from seven (7) to fifteen (15) years if the perpetrator is punishable with perpetual hard labour or a life sentence.
- 2- In other instances, the instigator and accomplice shall be punishable with the same penalty as the perpetrator after it is reduced from one sixth to one third.

**Penal Code No. 74 of 1936, applicable in the Gaza Strip**

**Article 23:**

1. When an offence is committed, each of the following persons shall be deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it:
  1. Any person who effectively performs an act or refrains from performing an act that constitutes an offence.
  2. Any person who performs an act or refrains from performing an act intentionally to enable or help another person to commit an offence.
  3. Any person who helps another person in committing an offence, whether he is present when the offence was committed or not.
 

Whoever is present at the place where the offence is committed with the intent of terrorizing resistants, strengthen the will of the principal perpetrator, or ensure the commission of the intended offence shall be considered to have helped the offender.
  4. Any person who prompts or incites another person to commit an offence, whether he is present when the offence is committed or not.
2. In the case mentioned in paragraph 1 (d) hereof, a person may be charged either with committing the offence himself or with prompting or inciting its commission.
3. If a person is convicted of prompting or inciting the commission of an offence, in any event he shall bear the same consequences as if he were the original perpetrator of the offence.
4. Any person who prompts another person to perform an act or refrain from performing an act shall be considered as an original perpetrator and shall incur the same penalty as if he had himself performed the act or refrained from performing the act and may be charged with performing the act or refraining from performing the act.

**Article 24:** When two or more persons agree to execute an unlawful act jointly, and in the course of the execution of the act one or more offences are committed as a probable result of such an act, all those persons who are present during the commission of the act shall be deemed to have committed the offence.

**Article 25:**

1. If a person incites another person to commit an offence, and that other person actually commits such offence as a result of such incitement, it is immaterial whether the offence actually committed is the same as the one that was instigated or a different one, or whether the offence is committed as it was instigated or in a different way, provided that the facts constituting the offence actually committed in either case are a probable consequence of the incitement.
2. In either case, the inciter is deemed to have incited the perpetrator to commit the actual offence:

If the person who incited another person or prompted him in any other way to commit an offence retracts and disavows the incitement, he shall not be held responsible for the offence if it occurs subsequently.

**Article 26:**

1. Any person who harbours another person, other than his father, mother, son, daughter, or spouse, or helps him to evade justice, while knowing that such person committed an offence, shall be considered as an accomplice in the offence after its occurrence:
 

The wife is not considered as an accomplice in the offence after its occurrence if she harbours or helps, in her husband's presence and under his authority, another person who committed with her husband an offence, to enable that other person to escape punishment.
2. Any person who is considered as having committed the offence referred to in paragraph 1 herein shall be liable, after being found guilty, to:

- a. Imprisonment of not more than three (3) years, if the offence committed by the principal perpetrator whom he harboured or assisted entails, after conviction, a death sentence or imprisonment of more than three (3) years.
- b. Imprisonment for a term not exceeding half of the sentence incurred by the principal perpetrator, if the offence committed by the principal perpetrator entails, after conviction, a penalty of imprisonment of three years (3) or less.

**Article 27:** Any person considered under this Law as an accomplice in an offence after its commission, may be tried and convicted in accordance with this Law, whether the principal perpetrator with whom he participated in the commission of the offence is convicted of that offence or not, and whether or not it is possible to take legal actions against him and enforce the sentence rendered against him with respect to that offence. Such person may be prosecuted either individually or along with the principal perpetrator or with any other persons involved in the commission of the offence.

**Article 31:** Any person who attempts to prompt, incite, or entice another person to act or refrain from acting, in Palestine or elsewhere, and that act or refraining from acting, if it occurred, is considered as an offence under the laws of Palestine, or the laws of the country where the act or refraining from acting occurred, shall be considered as having committed the same offence and liable to the same punishment as if he had himself attempted to commit the same act or refraining from acting in Palestine, whether the act or refraining from acting were committed by him or by the other person he prompted, incited, or enticed:

Provided that: if the act or refraining from acting was intended to be performed outside Palestine, the punishment shall not exceed that which he would have incurred under the laws in force in the country where the act or refraining from acting was intended to be performed, if he had himself attempted to act or refrain from acting; and

Provided that: in this latter case, a prosecution shall not be instituted except at the request of the Government of the country having jurisdiction in the place where the act or refraining from acting was intended to be performed.

#### **Anti-Money Laundering Decree-Law No. 9 of 2007**

**Article 2-1-d:** 1. Any person who commits any of the following acts shall be considered to have committed the crime of money laundering: ... d. Participating in, aiding, abetting, conspiring in, providing advice or counsel on, facilitating, colluding in, concealing, or attempting to commit any of the acts stipulated in this article.

**Article 37-3 of the Anti-Money Laundering Law stipulates:** Without prejudice to any more severe penalty stipulated in the Penal Code or any other law, a person who commits the crime of money laundering shall be punished by the following penalties:.. 3. If he attempts to commit the crime of money laundering, or aids, abets, facilitates, or consults regarding the commission of this crime, he shall be punished by one-half of the penalty imposed on the primary perpetrator.

#### **(b) Observations on the implementation of the article**

135- Palestine has implemented the provision under review. Criminal participation is dealt with under articles 76, 80 and 81 of the Penal Code No. 16 of 1960 applicable in the West Bank, and articles 23-27 and 31 of the Penal Code No. 74 of 1936, applicable in the Gaza Strip.

### **Article 27 - Participation and Attempt**

#### **Paragraph 2**

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

**(a) Summary of information relating to the review of implementation of paragraph 2 of Article 27**

136- Palestine indicated that it is compliant with the paragraph under review. Penal Code No. 16 of 1960, applicable in the West Bank, contains general provisions that criminalize the attempt with regard to the commission of all offences and some misdemeanours, including crimes of corruption. Besides, Penal Code No. 74 of 1936, applicable in the Gaza Strip, criminalizes the attempt with regard to all crimes.

137- Palestine referred to the following provisions:

**Penal Code No. 16 of 1960 applicable in the West Bank**

**Article 68:** An attempt means: To begin executing one of the acts, which appear to lead to the commission of an offence or misdemeanour. If the perpetrator is unable to complete the acts needed to commit such offence or misdemeanour for reasons beyond his will, and unless the law provides otherwise, he shall be punished as follows:

1. Perpetual hard labour or labour for a fixed period for seven (7) to twenty (20) years if the penalty prescribed for the attempted offence is death, and at least five (5) years of said penalty if the original penalty is perpetual hard labour or a life sentence.
2. Any other original temporary penalty shall be reduced from one half to two thirds.

**Article 70:** If the acts needed to complete the offence were performed but because of impediments beyond the perpetrator's control, the intended offence was not completed, the perpetrator shall be punished as follows:

1. perpetual hard labour or hard labour for ten (10) to twenty (20) years if the attempted offence is punishable with the death penalty, and seven (7) to twenty (20) years of the same penalty if the original penalty is perpetual hard labour or hard labour for a fixed period.
2. Any other penalty shall be reduced by one third to one half.
3. The penalties mentioned in this article shall be reduced by up to two thirds if the perpetrator voluntarily stops short from carrying out the offence he intended to commit.

**Article 71:** An attempt to commit a misdemeanour is only punishable in the cases explicitly stipulated by the law.

**Penal Code No. 74 of 1936, applicable in the Gaza Strip**

**Article 29:**

Any person who attempts to commit an offence shall be punishable with the following penalties except in cases where this law prescribes a specific penalty:

- a. Life imprisonment, if the attempted offence entails, upon conviction, the death penalty.
- b. Imprisonment for a term not exceeding fourteen (14) years, if the attempted offence is manslaughter.
- c. Imprisonment for a term not exceeding ten (10) years, if the attempted offence is any other offence entailing a penalty of life imprisonment.

d. Imprisonment for a term not exceeding half the maximum penalty which may be inflicted upon the perpetrator after he is found guilty, in any other case.

**Article 30:**

1. When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is deemed to have attempted to commit the offence.
2. It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by impediments beyond his control, or whether he desists of his own motion from the further prosecution of his intention.
3. It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

**Anti-Money Laundering Decree-Law No. 9 of 2007**

**Article 2-1-d:** 1. Any person who commits any of the following acts shall be considered to have committed the crime of money laundering: ... d. Participating in, aiding, abetting, conspiring in, providing advice or counsel on, facilitating, colluding in, concealing, or attempting to commit any of the acts stipulated in this article.

**Article 37-3:** Without prejudice to any more severe penalty stipulated in the Penal Code or any other law, a person who commits the crime of money laundering shall be punished by the following penalties: .. 3. If he attempts to commit the crime of money laundering, or aids, abets, facilitates, or consults regarding the commission of this crime, he shall be punished by one-half of the penalty imposed on the **primary** perpetrator.

138- Palestine prepared the following table, which includes offences and their description in accordance with the laws applicable in the West Bank, not those applicable in the Gaza Strip. In Gaza, all offences and misdemeanours are punished in accordance with the legislation previously mentioned.

Offence	Penalty	Description	Is attempt punishable?
Acceptance of a bribe Art. 170	Imprisonment of 6 months to 2 years and a fine of 10 to 200 dinars	Misdemeanour	No
Requesting a bribe Article 171	Imprisonment of 1 year to 3 years and a fine of 20 to 200 dinars	Misdemeanour	No
Offering a bribe Article 173	Imprisonment of at least 3 months and a fine of 10 to 200 dinars	Misdemeanour	No
Embezzlement Article 174, parag. 1	Imprisonment of 6 months to 3 years and a fine of 10 to 100 dinars	Misdemeanour	No
Criminal embezzlement Article 174, parag. 2	Hard labour for a fixed period or a prison term	Felony	Yes

Abuse of Office Article 175	Imprisonment of 6 months to 3 years and a fine not less than the value of the resulting prejudice	Misdemeanour	No
Obtaining a personal benefit and illicit trafficking Article 176	Imprisonment of 6 months to 2 years and a fine of at least 10 dinars	Misdemeanour	No
Obstruction to the enforcement of law or to judicial decisions or to the collection of duties and taxes Article 182	Imprisonment of 1 month to 2 years	Misdemeanour	No
Neglect of duties of office Article 183	A fine of 10 to 50 dinars, or imprisonment of 1 week to 3 months. If the interests of the State are harmed as a result of such neglect, the official shall be punishable with imprisonment of 1 month to 1 year and shall bear the cost of such harm.	Misdemeanour	No
Failure to comply with the requests of the administrative or judicial authority Article 184	Imprisonment of 1 week to 1 year or a fine of 5 to 50 dinars or both penalties	Misdemeanour	No
Fraud in violation of Article 262	Hard labour for 5 years at least	Misdemeanour	No
Falsification of official documents Article 265	Hard labour for a fixed period or imprisonment	Felony	Yes
False authentication in violation of Article 266	Imprisonment of 1 month to 1 year	Misdemeanour	No
Falsification of private documents in violation of Article 271	Imprisonment of 1 to 3 years	Misdemeanour	No
Abuse of authority in violation of Article 1 of the Anti-Corruption law	3 to 15 years and a fine equal to the value of the funds subject of the offence, or either penalty and the return of the funds resulting from the offence	Felony	Yes
Acceptance of intermediacy and favouritism that suppresses a right and establishes a wrong. in violation of Article 1 of the Anti-Corruption law	3 to 15 years and a fine equal to the value of the funds subject of the offence, or either penalty and the return of the funds resulting from the offence	Felony	Yes

Illegal gain in violation of Article 1 of the Anti-Corruption law	3 to 15 years and a fine equal to the value of the funds subject of the offence, or either penalty and the return of the funds resulting from the offence	Felony	Yes
Offences resulting from money laundering provided for in the Anti- Money laundering law in violation of Article 1 of the Anti-Corruption law	3 to 15 years and a fine equal to the value of the funds subject of the offence, or either penalty and the return of the funds resulting from the offence	Felony	Yes
Abuse of trust and embezzlement in the private sector in violation of Article 422	Imprisonment of 2 months to 2 years and a fine of 10 to 100 dinars; the prison sentence shall be at least 1 year if the perpetrator is a wage earner, an apprentice, an office worker, or an employee	Misdemeanour	No
Fraud in the transactions of the administration to draw a benefit for oneself or for other persons or to favour one party in violation of Article 175	Imprisonment of 1 to 3 years and a fine	Misdemeanour	No
Obstruction of justice and assault on a judge, in violation of Article 187-1	Imprisonment of 1 to 3 years	Misdemeanour	No
Assault on any judicial employee or law enforcement agent in violation of Article 187-2	Imprisonment of 6 months to 2 years	Misdemeanour	No
False testimony in violation of Article 214-1-2	Imprisonment of 3 months to 3 years in the case of a misdemeanour and a more severe sentence of hard labour for a fixed period in the case of an offence	Misdemeanour	No

**(b) Observations on the implementation of the article**

139- While the Penal Code No. 74 of 1936, applicable in the Gaza Strip criminalizes the attempt for all offences (articles 29 and 30), the Penal Code No. (16) of 1960 applicable in the West Bank, only criminalizes the attempt for felonies but the attempt to commit misdemeanors is not criminalized except in cases provided for by law. Accordingly, the attempt to commit UNCAC offences cannot be sanctioned in the West Bank, except in criminal embezzlement, abuse of functions and money laundering cases.

## **Article 27 - Participation and Attempt**

### **Paragraph 3**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

### **(a) Summary of information relating to the review of implementation of paragraph 3 of Article 27**

140- Palestine noted that the preparation for a crime is only punishable if it constitutes in itself a crime.

141- Palestine referred to the following provisions:

#### **Penal Code No. 16 of 1960 applicable in the West Bank**

**Article 69:** The mere intention to commit an offence or the preparation to commit an offence are not considered an attempt. Whoever attempts to carry out an act and willingly stops short from carrying out criminal acts, shall only be punished for the act(s) committed, if on their own they constitute an offence.

#### **Penal Code No. 74 of 1936, applicable in the Gaza Strip**

##### **Article 30:**

1. When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is deemed to have attempted to commit the offence.
2. It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by impediments beyond his control, or whether he desists of his own motion from the further prosecution of his intention.
3. It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

**Article 32:** Any person who knowingly manufactures or acquires any explosive substance, or dangerous or deadly tool or equipment, or any other dangerous or deadly substance of any kind in order to commit an offence, or enable another person to use it for such purpose, shall be considered as having committed a misdemeanour and shall be punishable with imprisonment of three (3) years.

### **(b) Observations on the implementation of the article**

142- The preparatory acts for an offence are not criminalized under Palestine's legislation.

## **Article 28 - Knowledge, Intent and Purpose as Elements of an Offence**

*Knowledge, intent or purpose required as an element of an offence established in accordance with this convention may be inferred from objective factual circumstances.*

**(a) Summary of information relating to the review of implementation of Article 28**

143- Palestine indicated that the Penal Code and the Criminal Procedure Code do not include express legal provisions on how to demonstrate *mens rea*, which is an essential element in the penal act, from the circumstances or objective conditions. But all the legal texts that deal with criminal intent, and the judgements issued by the Palestinian penal justice, including the Palestinian Court of Cassation decisions, emphasize that the judge may infer from objective factual circumstances the existence of the elements of knowledge, intent, or purpose. One of these decisions is Decision No. 125/2011 of the Palestinian Court of Cassation, which rules that: "*Whereas the intention to kill - and to commit all other intentional offences - is an inward matter that the offender conceals in his mind and does not shown, but is inferred from the apparent acts and evidence shown by the offender while committing the crime,*"

144- As well as Decision No. 145/2010 of the Palestinian Court of Cassation: "*The criminal character of the instrument used to kill does not prove the occurrence of the act but is used to infer the existence of mens rea (criminal intent) which is intentional murder.*" and Decision No. 93/1995: "*The demonstration of mens rea relies on the circumstances of the act in relation to the means of execution and the type of instrument used and the location and gravity of the injury.*" It also ruled in its Decision No. 108/85 217 of 1986: "*The use of a lethal instrument and the wounding of the victim in a mortal spot is enough to provide an indication of the intent to kill.*" Many other judicial decisions were issued in this regard. They may be accessed by reviewing Palestinian judicial rulings published either on the Qistas website, the Muqtafi website, or the High Judicial Council website, or other websites specialized in Palestinian judicial issues.

145- Palestine also referred to the following provision:

**Decree Law No. 9 of 2007 on Anti-Money Laundering**

**Article 2-2:** Knowledge, intent, or aim — given that they are basic elements necessary for [establishing] a crime — shall be inferred from factual, objective circumstances to establish the concealed source of proceeds without the need to obtain evidence of the predicate offence.

**(b) Observations on the implementation of the article**

146- Palestine has implemented the provision under review.

**Article 29 - Statute of Limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

**(a) Summary of information relating to the review of implementation of Article 29**

147- Palestine indicated that it is compliant with the paragraph under review. Anti-Corruption Law No. 1 of 2005, as amended, stipulates, in Article 33 thereof, that the cases of corruption and related cases are not subject to the prescription procedures. This provision is applicable to all crimes discovered after the entry into force of the Decree-Law, which was published in the Official Gazette of 26 June 2010. The offences not provided for in the Anti-Corruption Law are subject to Criminal Procedure Code No. 3 of 2001, which stipulates that criminal proceedings are prescribed after ten (10) years for offences and after three (3) years for misdemeanours. The prescription period in all cases runs from the date of the last action in those proceedings. It also stipulates that the period after which criminal proceedings become invalid in crimes involving public servants begins from the date of the discovery of the crime, or the end of service, or the end of capacity.

148- Palestine referred to the following provisions:

**Anti-Corruption Law No.1 of 2005, as amended**

**Article 33:** Corruption cases and all related procedures are not subject to prescription.

**Criminal Procedure Code No. 3 of 2001**

**Article 12:** Prescription in Criminal Lawsuits and Civil Lawsuits

1. The prescription period for the penal action and the civil action is ten (10) years in offences, three (3) years in misdemeanours and one (1) year in contraventions, unless otherwise provided by law.
2. In all cases, the prescription period for penal actions shall be calculated as from the date of the last procedure taken therein.
3. Without prejudice to the provisions of the two preceding paragraphs, the prescription period for penal actions in crimes of public functionaries shall only be counted from the date of the discovery of the crime, the termination of service or the end of capacity.

**Article 13: Interruption of Prescription**

The prescription period is interrupted when any of the procedures of gathering evidence, investigation, accusation or trial are taken, if they are taken as towards the accused or if he was officially notified thereof. The period shall commence to run anew as of the day it was interrupted. When the procedures interrupting the prescription period are multiple, it shall commence to run anew from the date of the last such procedure.

**Article 15:** The prescription period for a penal action shall not be interrupted for any reason whatsoever.

**(b) Observations on the implementation of the article**

149- According to article 33 of the Anti-Corruption Law, corruption cases and all related procedures are not subject to the statute of limitations.

**Article 30 - Prosecution, Adjudication, and Sanctions**

**Paragraph 1**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

**(a) Summary of information relating to the review of implementation of paragraph 1 of Article 30**

150- Palestine indicated that it is compliant with the paragraph under review. The penal laws applicable in both the West Bank and the Gaza Strip provide for penalties for corruption offences commensurate with the gravity. Also, Article 25 of Anti-Corruption Law No. 1 of 2005, as amended, provides for the punishment of all persons convicted of a crime of corruption that is not punishable under applicable penal or other laws, with three (3) to fifteen (15) years and a fine of up to the value of the funds subject of the crime or either penalty, as well as the return of the funds obtained from the crime. It should be noted that the elements of these crimes, with the exception of the crime of illegal gain, are specified in the Anti-Corruption Law.

151- Article 31 of the said law deprives the perpetrator of the crime of corruption, against whom a final verdict was issued, from holding public office. Article 37 of Anti-Money Laundering Law No. 9 of 2007, as amended, punishes any person convicted of a crime of money laundering with imprisonment of one (1) to fifteen (15) years, depending on whether the predicate crime is an offence or a misdemeanour.

152- Palestine referred to the penal provisions mentioned in the answers on Articles 15 to 25 of the Convention, and to the table shown as part of the answer on the implementation of paragraph 2 of Article 27.

**(b) Observations on the implementation of the article**

153- Palestine adopted penalties for corruption offences that range from three months to up to fifteen years of imprisonment, taking into account the gravity of the offence. In addition, fines, deprivation from holding public office and confiscation are applicable for certain offences.

**Article 30 - Prosecution, Adjudication, and Sanctions**

**Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

**(a) Summary of information relating to the review of implementation of paragraph 2 of Article 30**

154- Palestine indicated that it is compliant with the paragraph under review. Relevant Palestinian legislation makes a balance between the granting of immunities and judicial privileges to some persons subject to the law and the possibility to submit them to investigation and prosecution if they commit any corruption crimes. Though the Basic Law of 2003, as amended, grants immunity to the members of the Legislative Council, and requires specific measures to conduct investigations on ministers and some persons subject to the Anti-Corruption Law, it set a procedure for lifting their immunity and interrogating them. The legislator also adopted a provision establishing a balance when instituting a penal action against a public employee a civil servant, or an officer invested with judicial powers for an offence or misdemeanour he committed in the exercise or his duties in Article 54 of Criminal Procedure Code No. 3 of 2001.

155- Palestine referred to the following provisions:

**Anti-Corruption Law No. 1 of 2005**

**Article 2:** The following persons shall be subject to the provisions of this Law:

1. The President of the National Authority, his advisors and heads of Presidency institutions;
2. The Prime Minister, cabinet members and persons with a similar status;
3. The Speaker and members of the Palestinian Legislative Council;
4. The Members of the Judicial Authority and the Public Prosecution;
5. The Heads of agencies and departments under the supervision of the National Authority;
6. The Governors and the heads, members, and staff of local councils;
7. Employees;
8. The chairmen, directors, and staff of public shareholding companies in which the National Authority or any of its institutions has a holding;
9. Collection officers and their representatives who are trustees on deposits and expenses;
10. Arbitrators, experts, receivers, and agents of creditors and liquidators;
11. The chairmen and directors of entities, public institutions, charities and national entities having an independent legal personality and financial and administrative independence, parties and unions and similar bodies, and their staff, even if they do not receive any financial support from the public budget;
12. Persons entrusted with public service pertaining to the tasks they are entrusted with;
13. Any other non-Palestinian person assuming a position in any institution belonging to the National Authority (legislative, executive, or judicial), and any person assuming public position for the benefit of a public institution or national organization subordinate to a foreign country, or an international public organization; and
14. Any other person or entity which the Council of Ministers decides to subject to the provisions of this Law.

**Article 12:** Trial of the President of the Palestinian National Authority

1. If the president of the Commission or the Attorney General determines the existence of suspicions of corruption concerning the President of the Palestinian National Authority, he shall submit a preliminary request to the Legislative Council and the Constitutional Court asking for an investigation on the legal capacity of the President of the Authority, in accordance with the principles set forth in the Basic Law.
2. The President of the National Authority shall be suspended from exercising his duties as soon he is indicted. The Speaker of the Legislative Council shall temporarily take over the duties of the

President of the National Authority pending a final decision on the case. The Attorney General shall undertake investigation procedures. The trial of the President of the National Authority shall take place before a special court whose composition and proceedings are set by law. If convicted the President shall be removed from his post, without prejudice to other penalties according to law.

**Article 17: Suspicion of Corruption**

1. If it appears to the Commission in respect of the categories outlined in paragraphs (1, 2, 3 and 4) of Article 5 of this Law with the exception of the President of the National Authority that there exist strong suspicions of the commission of any crime contained in this Law, the Head of the Commission shall refer the matter to the President of the National Authority in respect of the Prime Minister and his advisers, and to the Prime Minister in respect of ministers and those at their level, and to the High Judicial Council in respect of members of the Judicial Authority and the Public Prosecution for initiating the necessary legal action according to the Basic Law and the pertinent legislations.
2. If it appears that the Head of the Commission has committed any of the crimes outlined in this Law, the President of the National Authority shall refer the matter to the Legislative Council to initiate the investigation. If the Council decides by absolute majority that those suspicions necessitate referring the matter to court, it shall decide to lift the immunity from the Head of the Commission, suspend him from service and refer the matter to the competent court to review the matter.

**Basic Law of 2003, as amended**

**Article 75:** The right of the President and the Prime Minister of the Authority to refer for investigation

- 1- The President of the National Authority shall have the right to refer the Prime Minister for investigation as a result of crimes attributed to the Prime Minister during, or due to, the performance of official duties, in accordance with the provisions of law.
- 2- The Prime Minister shall have the right to refer any Minister for investigation based on any of the reasons mentioned in the above paragraph 1, in accordance with the provisions of law.

**Article 76: Suspension and trial of Ministers**

- 1- Any accused Minister shall be suspended from the performance of official duties immediately upon the issuance of an indictment. The termination of service shall not prevent continuing the investigation or follow-up procedures.
- 2- The Attorney General, or a representative from the Public Prosecution, shall undertake the investigation and indictment procedures. If a trial ensues, it shall be conducted before an appropriate tribunal and shall follow the provisions and procedures prescribed in the Penal Code and in the Criminal Procedure Code.
- 3- The above provisions shall apply to Deputy Ministers, Assistant Ministers and others of similar rank.

**Law on the Judicial Authority No.1 of 2002**

**Article 59:** Bringing criminal proceedings against judges

Criminal proceedings can only be brought against a judge with the permission of the High Judicial Council. The Council designates the court that examines the case, regardless of the rules of spatial jurisdiction prescribed by law.

**Article 72:** The provisions of Chapter 4 of Part IV shall apply to members of the public prosecution. Disciplinary proceedings are brought against them by the Attorney General on his own initiative or at the request of the Minister of Justice.

## **Rules of Procedure of the Legislative Council**

### **Article 95:**

1. The members of the Council shall not be held accountable in criminal or civil matters because of the facts they mention, or the opinions they express, or voting in public sittings, or in sittings in camera, or in committee proceedings, or in any work they perform outside the Council to be able to perform their parliamentary duties.
2. No member of the Council may be hindered in any form. No search may be conducted on his luggage, home, or place of residence, vehicle, or office, and generally any real estate or movable, as long as he enjoys immunity.
3. No member shall be required to testify on a matter relating to his actions, words, or information he obtained by virtue of his membership in the Council, throughout and after his mandate as a member of the Council, except with his prior consent and with the consent of the Council.
4. Members shall enjoy immunity during their mandate at the Council. It is not permitted, except in a case of flagrante delicto of offence, to take any criminal action against any member, provided that the Council is immediately informed of actions taken against a member of the Council so that this latter may take appropriate actions. The Bureau of the Council shall assume such task if the Council is not in session.
5. No member may waive immunity without the prior approval of the Council. The decision shall be taken by an absolute majority of the Council. Immunity shall not be removed after the end of the mandate within the limits that were covered by the term of membership.

### **Article 96:**

1. The request to lift immunity shall be submitted in writing by the Attorney General to the President attached to a note mentioning the type of offence, the place and time, and the evidence that require legal action.
2. The President shall forward the request to lift immunity to the Legal Committee and inform the Council of it.
3. The Commission shall examine the request and submit a report to the Council. The Council shall take a decision to lift immunity by a two-thirds majority.
4. The member whose immunity is lifted and who is not arrested has the right to attend sessions and committee meetings and participate in the debates and votes.

## **Criminal Procedure Code No. 3 of 2001**

### **Article 54: Prosecution of Public Officials**

None but the Attorney General or one of his assistants may institute a penal action against a public employee, a civil servant or an officer invested with judicial powers for a felony or misdemeanour he committed during or by reason of the performance of his job.

156- Palestine also indicated that the law stipulated in Article 12 of the Anti-Corruption Law has not been issued. This law is enacted when the president is indicted and not before. It is a law specific to the trial and has nothing to do with the investigation and indictment which are conducted in accordance with the Anti-Corruption Law in force. If the Head of State is indicted, this law is issued for court proceedings to take place. The non-issuance of this law shall not preclude the possibility of trying the Head of State as it issue becomes imperative if a criminal charge is brought according to the law.

157- Palestine indicated, for example, that in 2012, two ministers in the Palestinian government were investigated and referred to the courts and suspended from their office, pursuant to the Basic Law and the Anti-Corruption Law, as amended. Their cases are still being examined by the corruption crimes tribunal.

**(b) Observations on the implementation of the article**

158- Immunities do not seem to constitute an impediment to the effective prosecution of corruption offences. The Anti-Corruption Law provides for the investigation, prosecution and trial procedures of the President of the National Authority, his advisors and heads of Presidency institutions; the Prime Minister, cabinet members and persons with a similar status; the Speaker and members of the Palestinian Legislative Council; and the Members of the Judicial Authority and the Public Prosecution (Articles 12 and 17).

**Article 30 - Prosecution, Adjudication, and Sanctions**

**Paragraph 3**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

**(a) Summary of information relating to the review of implementation of paragraph 3 of Article 30**

159- Palestine indicated that it is compliant with the paragraph under review. Palestinian legislation, in particular Criminal Procedure Code No. 3 of 2001, in Articles 1, 149, 151 and 152 thereof, provides that the public prosecutor shall undertake the investigation as soon as it is informed of the occurrence of the crime. Articles 149, 151, and 152, provide for the cases in which the charges are dismissed with regard to misdemeanours and offences. Accordingly, law enforcement authorities have no discretionary power to prosecute perpetrators of crimes of corruption.

**Criminal Procedure Code No. 3 of 2001**

**Article 1:** The right to file and conduct a penal action is vested exclusively in the Public Prosecution, and it shall not be filed by others except in those cases where the law provides otherwise. The action may not be suspended, waived or abandoned, nor may it be delayed or settled out of court except in those cases where the law provides otherwise.

**Article 149:**

1. If, after the investigation is over, the deputy prosecutor is of the opinion that the act is not punishable with law, that the action has lapsed by prescription, death, general amnesty or because the accused was previously tried for the same crime or is not penally liable by reason of his youth or mental illness, or that the circumstances of the case entail that it be dismissed for lack of importance, he sends a memorandum with his opinion to the Public Prosecution for further action.

2. If the Attorney General or one of his assistants finds that the opinion of the deputy prosecutor is valid, he issues a reasoned decision to dismiss the case and orders the release of the accused if he is detained.
3. If the decision to dismiss the case is predicated on the lack of criminal liability on the part of the accused by reason of his mental illness, the Public Prosecution may contact the competent authorities to treat him.

**Article 151:** If the deputy prosecutor finds that the act constitutes a misdemeanour, he charges the accused and sends the file of the case to the court competent to try him.

**Article 152:**

1. If the deputy prosecutor finds that the act constitutes a felony, he charges the accused and sends the file of the case to the Attorney General or one of his assistants.
2. If the Attorney General or one of his assistants sees the need for further investigations, he returns the file of the case to the deputy prosecutor to conduct such investigations.
3. If the Attorney General or one of his assistants finds the charging instrument to be well founded, he orders the accused transferred to the competent court.
4. If the Attorney General or one of his assistants finds that the act does not constitute a felony, he orders the qualification of the charge to be amended and returns the file of the case to the deputy prosecutor for presentation to the competent court.
5. If the Attorney General or one of his assistants finds that the act is not punishable with law, that the case has lapsed by prescription, general amnesty or because the accused was previously tried for the same crime or is not penally liable by reason of his youth or mental illness, because of lack of evidence, because the perpetrator is not known or because circumstances entail that the case be dismissed for lack of importance, he issues an order to that effect.
6. If the Public Prosecution issues an order to dismiss the case, it shall notify such order to the victim and the civil claimant. If one of them is deceased, the order is notified to his heirs at their domicile.

**(b) Observations on the implementation of the article**

160- Prosecution in Palestine follows the principle of legality (mandatory prosecution) pursuant to articles 1, 149, 151, and 152 of the CPC.

**Article 30 - Prosecution, Adjudication, and Sanctions**

**Paragraph 4**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

**(a) Summary of information relating to the review of implementation of paragraph 4 of Article 30**

161- Palestine indicated that it is compliant with the paragraph under review. The prosecutor, within the 48 hours of detention, is competent to grant release on bail, but after that the court is competent to grant such release.

162- Palestine referred to the following provisions – it should be mentioned that all Palestinian laws enacted since the advent of the Palestinian National Authority in 1994, including the Criminal Procedure Code, apply to all Palestinian territories:

**Criminal Procedure Code No. 3 of 2001**

**Article 130:** An accused may not be released on bail until after he designates an elected domicile within the court's jurisdictional limits, unless his residence is located within such limits.

**Article 139:**

- 1- Every person whose request for a release on bail is granted must sign a bail bond in the amount deemed adequate by the court. The bond is also signed by his sureties if the court so requires.
- 2- The court may allow the deposit of cash insurance in the value of the bail bond in place of sureties. The insurance is deemed a guarantee for the performance of the conditions of the bail bond.

**Article 140:** The court may, if it deems that the financial standing of the accused will not allow him to post bail, replace bail with an obligation on the accused to present himself to the police station at the times it prescribes in the release order, with due regard to his circumstances. The court may also ask him to choose a place of abode other than the place in which he committed the crime.

**Article 146:** Bail is deemed a guarantee that the accused will appear when summoned and that he will not evade execution of the sentence that may be passed against him.

**Article 147:**

1. In the event of a breach of the conditions set forth in the bail or surety bond, the competent court is entitled to:
  - a) Issue a writ of attachment against the person released or order his reimprisonment.
  - b) Exact payment discharge of the value of the bail or surety bond if it has not been deposited.
  - c) Confiscate, amend or grant an exemption from the cash insurance.
2. The injured party is entitled to appeal the decision issued pursuant to the provisions of paragraph 1 above.

**(b) Observations on the implementation of the article**

163- Preventive detention can be applied for corruption offences (arts. 115-122 of the CPC). Release pending trial is possible with bail. The Anti-Corruption Commission can also prevent the accused from travelling (paragraph 2 of Article 9 of the Anti-Corruption Law).

**Article 30 - Prosecution, Adjudication, and Sanctions**

**Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

**(a) Summary of information relating to the review of implementation of paragraph 5 of Article 30**

164- Palestine indicated that it is compliant with the paragraph under review. Article 45 of the Palestinian Law on the Reform of Rehabilitation Centres No. 6 of 1998, provides that an inmate may be released after he spends two-thirds of his sentence if he has a good record and his release does not constitute a danger for public security. Since the law makes the release contingent on the serving of two-thirds of the punishment, which is commensurate with the gravity of the act, the possibility of release is dependent on the gravity of the act. Besides, Article 46 of the said law deals with conditional release and links it to the serving of two-thirds of the sentence prescribed in Article 45.

**Law No. 6 on Reform and Rehabilitation Centres of 1998**

**Article 45:**

1. An inmate may be released if he spends two thirds of his sentence and has a good record and his release does not constitute a danger for public security.
2. If the punishment is life sentence, he may be released if he spends twenty (20) years at the Centre and his conduct during that period is good.

**Article 46:**

1. Release shall be granted according to the preceding article by a decision of the Minister upon a proposal by the Director General. The decision shall specify the reasons for release.
2. If the release is conditional, the released inmate may be returned to the Centre to complete the remaining period of the sentence - if there is evidence of misconduct from his part or if he violates the conditions of release - by a decision of the Attorney General stating therein the reasons justifying the return.

**(b) Observations on the implementation of the article**

165- Early release is possible if two thirds of the prison sentence has been completed.

**Article 30 - Prosecution, Adjudication, and Sanctions**

**Paragraph 6**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

**(a) Summary of information relating to the review of implementation of paragraph 6 of Article 30**

166- Palestine indicated that it is compliant with the paragraph under review. Article 9-2 of the Anti-Corruption Act No. 1 of 2005, as amended, states that the Commission can request the suspension of a civil servant accused of corruption from his duties by the authorities concerned, and also the suspension of his salary and allowances and other financial entitlements if necessary. Civil Service Law No. 4 of 1998, as amended, in its

Article 93, allows the minister to suspend from work a civil servant under investigation. Articles 143, 144, 145, and 146 of the implementing regulations of the Civil Service Law set the procedures in this regard.

**Anti-Corruption Law No.1 of 2005, as amended**

**Article 9-2:** Notwithstanding the provisions in the Criminal Procedure Code and in other pertinent laws, the Commission shall have the following powers in implementing its tasks:

Prosecute anyone who violates the provisions of this Law, seize his movable and immovable property, prevent him from travelling, ask for his suspension from office, stop his salary and allowances and all his financial entitlements whenever necessary and the amendment and cancellation of any of those decisions according to the applicable legislations.

**Civil Service law No. 4 of 1998:**

**Article 93:** Subject to the other provisions of this law: When a civil servant is under investigation, the head of the government department to which he belongs may suspend the civil servant from work or transfer him to another position in the same department on a temporary basis pending the end of the investigation.

**Implementing Regulations of the Civil Service Law**

**Article 143: Arrest or detention:**

- 1- If a civil servant is arrested or detained by the police or the public prosecution or any other competent authority in accordance with the law, these authorities shall immediately inform the government department that employs the civil servant and the General Personnel Council and state the date of arrest or detention and the date of release as soon as it occurs.
- 2- The General Personnel Council suspends the salary of the civil servant until the cause of his arrest or detention is investigated.
- 3- The government department and the General Personnel Council shall separately communicate with the competent authorities to find out the reasons for arrest or detention of the civil servant and the stage reached by the investigation.
- 4- When the civil servant is released by the competent authorities, he shall immediately contact the government department to which he belongs.
- 5- The government department may, after a release on bail of the civil servant arrested for an offence or misdemeanour committed in the exercise of his duties, suspend him from duty or reinstate him or assign him to another position of equal degree pending a decision on the lawsuit, while continuing to pay his salary in full.
- 6- The government department shall immediately reinstate the civil servant to his post if he is not indicted for any reason and is released, or if he was not suspended because of his post and he is released on bail.
- 7- The government department shall immediately notify the General Personnel Council of its decision on the issue so that it may take appropriate action in conformity with regulations.
- 8- If the civil servant is convicted on the charges against him, whether for an offence or a misdemeanour, and a final court ruling is issued on the case by a Palestinian court, and those charges involve moral turpitude, or are related to the duties of the civil servant, this latter shall be dismissed from office from the date the Court decision becomes final.
- 9- The General Personnel Council, in coordination with the Attorney General's Office and relevant government departments, shall regularize the situation of civil servants accused in criminal cases in accordance with the conditions of the provisions of this regulation as soon as possible.

**Article 144:** Decision to suspend a civil servant

The head of the government department shall issue a decision to suspend from work a civil servant under disciplinary investigation. In this case, all the powers granted to such civil servant shall be suspended for the duration of the suspension from work, and the General Personnel Council shall be notified of this decision.

**Article 145:** Payment of Full Salary

A civil servant suspended from work and placed under investigation by an investigation committee shall be paid his full salary except the transport allowance during the period of his suspension from work.

**Article 146:** Temporary transfer of a civil servant

The head of the government department may transfer the civil servant to another post in the government department on a temporary basis after the issuance of a decision to place the civil servant under investigation if the interest of the investigation so requires, pending the completion of the investigation, provided that the grade to which he is transferred shall not be below his original grade. The General Personnel Council shall be notified of such transfer.

**(b) Observations on the implementation of the article**

167- The Anti-Corruption Commission can request from the relevant authority the suspension from office of the accused (paragraph 2 of Article 9 of the Anti-Corruption Law). The Civil Service Law No. (4) of 1998 and its implementing regulations also provide for the suspension or reassignment of a public official when placed under investigation.

**Article 30 - Prosecution, Adjudication, and Sanctions**

**Sub-paragraph 7 (a)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office; and*

**(a) Summary of information relating to the review of implementation of paragraph 7 (a) of Article 30**

168- Palestine indicated that it is compliant with the paragraph under review. Its legislation established conditions for holding a public office, and among these conditions, a candidate for appointment shall not have been convicted for an offence or misdemeanour involving moral turpitude unless he is rehabilitated. Besides, Article 31 of Anti-Corruption Law No. 1 of 2005, as amended, stipulates that any person convicted on corruption charges shall not hold a government position. The Criminal Procedure Code include provisions setting the time periods for rehabilitation by judicial ruling or by law, provided that a period of five (5) years shall elapse after the execution of the sentence in criminal cases and one (1) year in misdemeanour cases with regard to judicial rehabilitation, and ten (10) years for some crimes, and three (3) years if rehabilitation is granted by law.

169- Palestine referred to the following provisions:

**Basic Law of 2003, as amended**

**Article 86:** The appointment of all public officials and governmental staff, and the conditions of their employment, shall be in accordance with the law.

**Civil Service Law No. 4 of 1998, as amended**

**Article 24-4:** Whoever is appointed to any position shall:

4 - Enjoy his civil rights, not have been convicted, by a competent Palestinian court, of an offence or misdemeanour involving moral turpitude or dishonesty unless he has been rehabilitated.

**Article 96-7:** A civil servant shall be dismissed from office for the following reasons: 7. If he is convicted, by a final judgment issued by a Palestinian court, of an offence involving moral turpitude or misdemeanour service ends.

**Anti-Corruption Law No. 1 of 2005**

**Article 31:** Whoever is convicted of a corruption crime by final judgment shall not hold any public office.

**Criminal Procedure Code**

**Article 438:** Rehabilitation Conditions

Conditions for rehabilitation:

- 1- The sentence shall have been served fully or pardoned or expired by prescription.
- 2- A period of five (5) years shall have elapsed since the execution of the sentence, or the issue of a pardon, in the case of a criminal punishment; and one (1) year in the case of a misdemeanour. These periods shall be doubled in the cases of repeat and expiry of the punishment by prescription.

**Article 449:** Rehabilitation by law:

A convict is rehabilitated by law if, within the following time frames, he has not incurred a punishment for an offence or misdemeanour, which appears in the convict's criminal record:

- 1- Persons convicted for an offence or misdemeanour for theft, possession of stolen things, swindling, fraud, breach of trust, falsification, or attempt to commit these crimes, if a period of ten (10) years has elapsed since the execution of the sentence, the granting of a pardon thereon, or the expiry of the punishment by prescription.
- 2- Persons convicted for a misdemeanour for other than the above misdemeanours if a period of five (5) years has elapsed since the execution of the sentence, the granting of a pardon thereon, or the expiry of the punishment by prescription.

**(b) Observations on the implementation of the article**

170- The ACL contains the sanction of disqualification from holding public office.

**Article 30 - Prosecution, Adjudication, and Sanctions**

**Sub-paragraph 7 (b)**

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

**(a) Summary of information relating to the review of implementation of paragraph 7 (b) of Article 30**

171- Palestine indicated that it is compliant with the paragraph under review. Article 31 of the Anti-Corruption Law, as amended, forbids the holding of public office for one (1) year, including all such positions regardless of their nature or significance. This law also subjected to its provisions, public shareholding companies in which the Authority has a holding, or any of its institutions in Article 2 thereof. It stipulates in paragraph 7 of Article 9 thereof that any person linked to a corruption crime shall not establish any body, or be a member of the board of directors, or a director of such body for at least one (1) year and at the most five (5) years.

**Anti-Corruption Law No.1 of 2005, as amended**

**Article 2:** The following persons shall be subject to the provisions of this Law:

8. Chairmen, directors and staff of public shareholding companies in which the National Authority or any of its institutions is a shareholder.

**Article 9:**

7. Any company, or association, or national body, or union, or any corporation from among those under the provisions of this Law; except the public institutions whose directors or board members or representatives or staff commit on its behalf or by its means a crime specified in this Law, the Commission is entitled to ask the court to cease their activities, or to dissolve them, or to liquidate their funds, and to prevent anybody related to the crime committed from establishing any similar body, or to sit in its board, or to be a director of same for a period not falling below one (1) year and not exceeding five (5) years.

**(b) Observations on the implementation of the article**

172- Palestinian legislation does not provide for the the disqualification of persons convicted of corruption offences from holding office in an enterprise owned in whole or in part by the State.

173- To implement the provision under review, Palestine should 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.

**Article 30 - Prosecution, Adjudication, and Sanctions**

**Paragraph 8**

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

**(a) Summary of information relating to the review of implementation of paragraph 8 of Article 30**

174- Palestine indicated that it is compliant with the paragraph under review and referred to the following provisions:

**Implementing Regulations of the Civil Service Law**

**Article 95:** The imposition of the punishment stipulated in the Civil Service Law does not preclude from holding a civil servant criminally accountable or vice versa. A civil servant may incur disciplinary sanction even if he is criminally acquitted.

**(b) Observations on the implementation of the article**

175- The imposition of the punishment stipulated in the Civil Service Law does not preclude from holding a civil servant criminally accountable or vice versa. A civil servant may incur disciplinary sanction even if he is criminally acquitted (art. 95 of the Implementing Regulations of the Civil Service Law).

**Article 30 - Prosecution, Adjudication, and Sanctions**

**Paragraph 10**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

**(a) Summary of information relating to the review of implementation of paragraph 10 of Article 30**

176- Palestine indicated that it is compliant with the paragraph under review. Its legislation, in particular the Criminal Procedure Code, deals with judicial rehabilitation or rehabilitation law, provided that a period of five (5) years elapses after the execution of the sentence in criminal cases and one (1) year in misdemeanour cases for judicial rehabilitation, ten (10) years for some crimes, and three (3) years in other cases for rehabilitation by law. The consequence of rehabilitation is that the conviction is erased from the criminal record for the future, and all its consequences are eliminated, especially ineligibility and the suspension of rights and benefits.

177- Palestine referred to the following provisions:

**Law on Reform and Rehabilitation Centres (prisons) No. 6 of 1998**

**Article 41:** The Centre shall seek to train the inmates professionally and develop their skills as well as make them acquire beneficial trades or professions during the period of execution of the punishment which would help them earn their living after their release. The theoretical and practical vocational training shall be carried out in the training and employment workshops inside or outside the Centre according to the regulations and instructions issued by the Directorate General in this respect.

**Criminal Procedure Code No. 3 of 2001**

**Article 436:** Consequence of Rehabilitation

The effects of a criminal sentence remain in place until the convict is rehabilitated by law or by court ruling. The consequence of legal or judicial rehabilitation is that the conviction is erased with regard to the future and all the consequences of the criminal conviction are eliminated, but it had no effect on the rights of other persons.

**Article 438: Rehabilitation Conditions**

Conditions for rehabilitation:

- 1- The sentence shall have been served fully or pardoned or expired by prescription.
- 2- A period of five (5) years shall have elapsed since the execution of the sentence, or the granting of pardon, in the case of a criminal punishment; and one (1) year in the case of a misdemeanour. These periods shall be doubled in the cases of repeat and expiry of the punishment by prescription.

**Article 444:** Without prejudice to the provisions of Article 463 of this law, the court grants rehabilitation if it considers that the record of the applicant for rehabilitation since he was convicted suggests that this person can be trusted to straighten up his conduct.

**Article 449:** Rehabilitation by law:

A convict is rehabilitated by law if, within the following time frames, he has not incurred a punishment for an offence or misdemeanour, which appears in the convict's criminal record:

1. Persons convicted for an offence or misdemeanour for theft, possession of stolen things, swindling, fraud, breach of trust, falsification, or attempt to commit these crimes, if a period of ten (10) years has elapsed since the execution of the sentence, the granting of a pardon thereon, or the expiry of the punishment by prescription.
2. Persons convicted for a misdemeanour for other than the above misdemeanours if a period of five (5) years has elapsed since the execution of the sentence, the granting of a pardon thereon, or the expiry of the punishment by prescription.

**Article 451:** The consequence of rehabilitation is that the conviction is erased from the criminal record, and all its consequences are eliminated, especially ineligibility and the suspension of rights and benefits.

**(b) Observations on the implementation of the article**

178- Palestine does not have a dedicated reintegration programme for convicted persons after their release from prison. However, these persons are trained to acquire beneficial skills or professions during the period of their imprisonment. Under the CPC, the convicted person may be rehabilitated after a period following serving the sentence.

179- The reviewers encourage Palestine to adopt additional measures to promote the reintegration into society of persons convicted of corruption offences.

**(c) Technical assistance needs**

180- Palestine indicated that the following form of technical assistance, if any, will help improve the implementation of the provision under review:

- Technical assistance in the development of programs to promote the reintegration into society of convicted persons.

## **Article 31 - Freezing, Seizure, and Confiscation**

### **Sub-paragraph 1 (a)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

### **(a) Summary of information relating to the review of implementation of paragraph 1 (a) of Article 31**

181- Palestine indicated that it is compliant with the paragraph under review. Article 30 of the Penal Code No. 16 of 1960 in force in the West Bank allows the confiscation any property obtained as a result of an offence or misdemeanour, or used in the commission of any crime or destined for the commission of such acts. Article 40-1 (s), provides for the confiscation of means. Besides, the legislation grants to the Anti-Corruption Commission the power to enable the confiscation of proceeds of crime under Article 9-5 of the Anti-Corruption Law and gives it the right, in coordination with all concerned authorities, to track, seize, confiscate, and recover funds and proceeds of corruption crimes. Article 40 of Anti-Money Laundering Decree-Law No. 9 of 2007 sets forth the measures to be taken when judging the perpetrator of the crime of money laundering, such as the confiscation of the proceeds of crime, including the funds mingled with or deriving from these proceeds, the funds object the crime, and the funds that constitute an income or other benefits obtained from these funds, or the proceeds of crime.

182- Palestine indicated that the confiscation of property whose value equals the value of criminal proceeds is not covered, except for the case of money laundering.

183- Palestine referred to the following provisions:

#### **Penal Code No. 16 of 1960**

**Article 30:** Subject to the rights of bona fide third parties, all items derived from a deliberate offence or misdemeanour, or used in, or intended for the commission of such acts may be confiscated. In the case of an unintentional misdemeanour or infraction, such items may only be confiscated under the law.

#### **Anti-Corruption Law No.1 of 2005, as amended**

**Article 9-5:** Coordinate with the relevant parties to track, seize, and reclaim funds and proceeds generated from crimes of corruption. The confiscation decision shall be taken by the court competent to deal with the case.

#### **Anti-Money Laundering Law No. 9 of 2007**

##### **Article 40:**

1. In addition to the sentences stipulated in Articles 37 and 39 of this law, the physical confiscation of the following shall also be ruled:

- a. Property constituting the proceeds of the crime, including property mixed with, derived from, or exchanged for, such proceeds, or funds whose value equals such proceeds.
  - b. Property constituting the object of the crime.
  - c. Property constituting income or other benefits obtained from such property or proceeds of the crime.
  - d. Means.
  - e. Property mentioned in clauses a-d of this article that is transferred to a party deemed by the court to be the owner thereof, even if the owner obtained the property by paying a fair price or in exchange for providing services equal in value to the property, or on any legal basis, without being aware of the illegal source of the property.
2. In the case of property mentioned in clause 1 of this article, which is owned directly or indirectly by a person convicted of the crime of money laundering or a predicate offence, which property was acquired during the 10 years before the person was charged with the crime, the court may decide to confiscate such property if reasonable grounds exist to indicate that such property constitutes the proceeds of the crime for which the person was convicted, and the person is unable to prove that the property was obtained legally.
3. If a person convicted of money laundering is a fugitive or deceased, the court may decide to confiscate the property if it receives adequate evidence indicating that the property constitutes the proceeds of a crime as provided under this law.
4. The court must specify, in its judgements, the necessary details and location of the property to be confiscated.

**(b) Observations on the implementation of the article**

184- Article (40) of the AML Law provides for the possibility of confiscation of proceeds of crime derived from a money laundering or a predicate offence, which *are* owned directly or indirectly by a person convicted of the crime of money laundering or a predicate offence, or property of corresponding value of such proceeds. Hence this article also applies to bribery and embezzlement. As for the rest of the offences established in accordance with the Convention, Article 30 of the Penal Code No. 16 of 1960 applicable in the West Bank provides for the possibility of confiscation of all items derived from a deliberate felony or misdemeanour. It does not explicitly provide for value-based confiscation. There is no similar text in the legislation applicable in the Gaza Strip. Confiscation should be based on conviction.

185- To implement the provision under review, Palestine should allow, over its entire territory, for the possibility of confiscation of proceeds of crime derived from offences established in accordance with the Convention or property of corresponding value (beyond money laundering, bribery and embezzlement).

**Article 31 - Freezing, Seizure, and Confiscation**

**Sub-paragraph 1 (b)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

**(a) Summary of information relating to the review of implementation of paragraph 1 (b) of Article 31**

186- Palestine indicated that it is compliant with the paragraph under review. Article 30 of Penal Law No. 16 of 1960, in force in the West Bank, allows the confiscation of all the things used in or destined to the commission of any crime. Also, the Criminal Procedure Code mentions the powers of the judicial officer and stipulates that he shall, within his duties, take all necessary action to preserve criminal evidence. Besides, Article 40 of Anti-Money Laundering Law No. 9 of 2007, as amended, stipulates that the court shall order the physical confiscation of all property, and Article 1 of this law, includes in the definition of confiscation property, proceeds of crime, and the means used in the crime, and provides for the physical confiscation of equipment and means as other criminal proceeds.

187- Palestine referred to the following provisions:

**Penal Code No. 16 of 1960**

**Article 30:** (already quoted above)

**Criminal Procedure Code No. 3 of 2001**

**Article 22-3** provides for the duties of judicial officers as follows: Take all necessary measures to preserve evidence of the crime.

**Anti-Money Laundering Decree-Law No. 9 of 2007**

**Article 40:** (already quoted above)

**Article 1:** Definitions

**Confiscation:** The permanent divestment and deprivation of property or proceeds resulting from a crime or of the instrumentalities used in a crime, based on a judicial judgment issued by the competent court.

**(b) Observations on the implementation of the article**

188- Article (40) of the AML Law provides for the possibility of confiscation of the means in money laundering or a predicate offence cases. Hence this article also applies to bribery and embezzlement. As for the rest of the offences established in accordance with the Convention, Article 30 of the Penal Code No. 16 of 1960 applicable in the West Bank provides for the possibility of confiscation of all items used in, or intended for the commission of a deliberate offence or misdemeanour. There is no similar text in the legislation applicable in the Gaza Strip.

189- To implement the provision under review, Palestine should allow, over its entire territory, for the possibility of confiscation of instrumentalities used in or destined for use in offences established in accordance with this Convention (beyond money laundering, bribery and embezzlement).

## Article 31 - Freezing, Seizure, and Confiscation

### Paragraph 2

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

### (a) Summary of information relating to the review of implementation of paragraph 2 of Article 31

190- Palestine indicated that it is compliant with the paragraph under review. The Anti-Corruption Law, as amended, provides that the Commission coordinates its action with the competent authorities to track, seize, confiscate, and return the property and the proceeds of corruption crimes, provided that the confiscation shall be ordered by a competent court. The Criminal Procedure Code provides that provisional measures with regard to the property of a fugitive defendant who perpetrates an offence relating to public funds, and this measure include his spouse and minor children. Anti-Money Laundering Law No. 9 of 2007, as amended, organizes the procedures of attachment for conservation of property and any means related to the crime of money laundering, which includes in its legal description the criminalization of acts of corruption. The said law provides for the mechanism and methods of disposing of cash, real estate, bonds, and equities held in banks, which are subject of financial transactions. This law authorizes the Financial Intelligence Unit (FIU) to suspend the execution of financial transactions by providing reasonable grounds for suspicion of money laundering crimes. It also grants the Attorney General the authority to extend the period of suspension. This law also gives the competent court similar powers. Anti-Corruption Law No. 1 of 2005, considers the crime of money laundering as a corruption crime.

191- Palestine referred to the following provisions:

#### **Anti-Corruption Law No.1 of 2005, as amended**

**Article 9, paragraphs 4 and 5:** Notwithstanding the provisions in the Criminal Procedure Code and in other pertinent laws, the Commission shall have the following powers in implementing its tasks:

4. Request any files, or data, or documents, or information; or review them; or request copies of them from the relevant body keeping them; including those which consider all that confidential according to the applicable legal procedures.

5. Coordinate with the relevant parties to track, seize, and reclaim funds and proceeds generated from crimes of corruption. The confiscation decision shall be taken by the court competent to deal with the case.

**Article 24:** The Commission may request the competent court to order the provisional seizure of the suspicious funds, or any funds suspected of belonging to him, in whomever hands they are. It may also access the defendant's books and documents, request necessary information from official and non-official departments, and in doing so seek task the assistance of any experts it deems appropriate.

#### **Criminal Procedure Code**

##### **Article 289:**

1- In cases where the investigation yields sufficient evidence that the accusation is serious in any crimes involving public funds, the Attorney General may, when he deems that the matter requires

precautionary measures against the assets of the fugitive indictee, submit the matter to the Criminal Court, which may decide to put his assets under custody and prevent him from disposing of them.

- 2- The Court may, upon the request of the Attorney General, include in its decision the assets of the spouse and minor children of the fugitive indictee if it has sufficient evidence that these assets derive from the crime under investigation.
- 3-
  - a) The Court shall appoint a person to manage the assets after making an inventory in the presence of stakeholders, a representative of the public prosecutor, and an expert appointed by the court.
  - b) The person appointed to preserve the assets shall maintain the assets placed under custody and manage them properly and return them with their yields at the end of the period of custody.
- 4- Any interested party may appeal against the decision of the court referred to in paragraphs 1, 2, and 3 above, within three (3) months before the court that rendered it.
- 5- During the period of preventive seizure of the assets of the fugitive indictee, the spouse, children, parents, and legal dependents shall be given a monthly expense from the revenue of his property to be determined by the competent court. The civil plaintiff may request from this court a decision to grant a temporary amount of adjudged compensation with or without guarantee.

**Article 290:**

- 1- The Attorney General shall immediately communicate the court decision to the director of the land registration department for affixing the notice of seizure of the real estate of the fugitive indictee.
- 2- If the seized property is subject to rapid deterioration, or the court deems that its sale would be beneficial to its owner, an order to sell it may be issued, as appropriate, and its value shall be placed in the court treasury.

**Anti-Money Laundering Law No. 9 of 2007**

**Article 29:** Based on the Unit's request, the competent authority or entities required to report under Article 14 of this law must furnish or apprise the Unit of any additional information relating to the Unit's duties under this law within five days of the Unit's submission of the request.

**Article 31:** If the Unit has reasonable grounds to suspect that a transaction involves the crime of money laundering, it must:

Suspend the execution of the financial transaction for a period not to exceed three working days.

**Article 32:** The public prosecutor shall be authorized to extend the suspension of the execution of a transaction for up to seven working days.

**Article 33:** The public prosecutor shall, based on a decision issued by the competent court, be authorized to:

1. Monitor bank accounts and similar other accounts.
2. Have access to computer systems and networks and computer mainframes.
3. Monitor or track communications.
4. Make audio and visual recordings of, or photograph, actions, behaviour, or conversations.
5. Intercept and seize correspondence.
6. Impose precautionary seizure on property and means linked to the crime of money laundering for up to 15 days.

**(b) Observations on the implementation of the article**

192- The CPC, the AML Law and the ACL provide for a wide range of investigative measures available for the tracing and freezing of criminal proceeds and instrumentalities for the purpose of confiscation.

**Article 31 - Freezing, Seizure, and Confiscation**

**Paragraph 3**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

**(a) Summary of information relating to the review of implementation of paragraph 3 of Article 31**

193- Palestine indicated that it is compliant with the paragraph under review. It has adopted a series of legislative measures to regulate and manage seized or confiscated property. The Criminal Procedure Code No. 3 of 2001 provides for a mechanism and method of disposing of seized property, in general, in all crimes under Chapter III thereof. Articles 72, 73, 74, 75, and 76 of Criminal Procedure Code No. 3 of 2001 provides for the manner in which seized objects, such as equipment and instruments used in the commission of the crime of corruption, are disposed of.

194- Palestine referred to Article 289 of the Criminal Procedure Code previously mentioned, in addition to the following provisions:

**Criminal Procedure Code No. 3 of 2001**

**Article 72:**

1. The objects seized are placed in sealed containers on which the particulars of the contents are inscribed. The containers are placed in the warehouse of the Prosecution or in any place it designates.
2. If the object seized is perishable and the expenses of preserving it exceed its value, the Public Prosecution or the court may order it sold at public auction if the requirements of the investigation so permit. The proceeds of the sale are placed in the court registry and the person entitled to the proceeds may claim the sale price within one year from the date the action is terminated, otherwise it shall devolve to the State without necessity for a judgment ordering same.

**Article 73:**

1. Seized objects may be restituted, even before rendition of judgment, at the request of the person in whose possession they were found at the time they were seized, unless their retention is necessary for the judicial examination or they are subject to mandatory confiscation.
2. If the seized objects are those against which the crime was committed, or if they were obtained as a result of its commission, they shall be restituted to the person who was deprived of their possession by the crime, unless the person in whose possession they were found at the time they were seized is entitled by law to retain them.

**Article 74:** The restitution order is issued by the Public Prosecution. The court may order restitution pendente lite.

**Article 75:** The order to retain papers or the judgment rendered on the case must provide for the manner of disposition of the seized objects.

**Article 76:** The parties may, when a dispute arises in connection with the seized objects, resort to the competent civil court.

**Anti-Money Laundering Law No. 9 of 2007, as amended**

**Article 42:** Unless stipulated otherwise in this law, the National Authority shall have title to confiscated property, and laws in effect shall apply thereto.

**(b) Observations on the implementation of the article**

195- Palestine has some procedures and legislative provisions relating to the administration of seized items. Seized items may be sold if perishable or if their maintenance requires expenses that exceed their value, pursuant to article 72 of the CPC. As for the administration of confiscated property, the National Authority shall have title to those, and laws in effect shall apply thereto.

196- To fully implement the provision under review, Palestine should adopt additional measures to improve the regulation of administration of frozen, seized and confiscated property.

**(c) Technical assistance needs**

197- Palestine indicated that the following form of technical assistance, if any, will help improve the implementation of the provision under review:

- Legislative drafting;
- Establishing programs for building capacities of authorities responsible for the administration of frozen, seized and confiscated property;
- Summary of good practices/lessons learnt.

**Article 31 - Freezing, Seizure, and Confiscation**

**Paragraph 4**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

**(a) Summary of information relating to the review of implementation of paragraph 4 of Article 31**

198- Palestine indicated that it is compliant with the paragraph under review. Civil obligations in penal judgements include the proceeds of crime themselves, or any other property belonging to the defendant according to the value of such proceeds.

199- Palestine referred to the following provisions:

**Penal Law No. 16 of 1960, in force in the West Bank**

**Article 42:** Obligations that may be ordered by the court are: 1) restitution; 2) damages; 3) confiscation; 4) expenses.

**Article: 49-3** Death has no effect on material confiscation and the closure of the business premises.

**Article: 50-3**

1. A general pardon is issued by the legislative authority.
2. The general pardon totally erases the offence. It is issued with regard to a public action before or after a judgment is issued thereon. It cancels principal and secondary penalties, but shall not deny the civil complainant from all relevant civil obligations or prevent the execution of the judgment rendered with regard thereto.
3. Collected fines, fees, and confiscated items shall not be not reimbursed.

200- Palestine also referred to Article 40 of Anti-Money Laundering Law No. 9 of 2007, as amended, which covers not only the funds associated with the crime of money laundering, but also those associated with the predicate offence. It should be noted that predicate offences, under Article 3 of the same law include bribery, embezzlement, and illegal gain.

**Anti-Money Laundering Law No. 9 of 2007**

**Article 40:**

1. In addition to the sentences stipulated in Articles 37 and 39 of this law, the physical confiscation of the following shall also be ruled:

- a. Property constituting the proceeds of the crime, including property mixed with, derived from, or exchanged for, such proceeds, or funds whose value equals such proceeds.
- b. Property constituting the object of the crime.
- c. Property constituting income or other benefits obtained from such property or proceeds of the crime.
- d. Means
- e. Property mentioned in clauses a-d of this article that is transferred to a party deemed by the court to be the owner thereof, even if the owner obtained the property by paying a fair price or in exchange for providing services equal in value to the property, or on any legal basis, without being aware of the illegal source of the property.

2. In the case of property mentioned in clause 1 of this article, which is owned directly or indirectly by a person convicted of the crime of money laundering or a predicate offence, which property was acquired during the 10 years before the person was charged with the crime, the court may decide to confiscate such property if reasonable grounds exist to indicate that such property constitutes the proceeds of the crime for which the person was convicted, and the person is unable to prove that the property was obtained legally.

3. If a person convicted of money laundering is a fugitive or deceased, the court may decide to confiscate the property if it receives adequate evidence indicating that the property constitutes the proceeds of a crime as provided under this law.

4. The court must specify, in its judgements, the necessary details and location of the property to be confiscated.

**(b) Observations on the implementation of the article**

201- Article (40) of the AML Law provides for the possibility of confiscation of transformed or converted property in money laundering or a predicate offence cases. Hence this article also applies to bribery and embezzlement. As for the rest of the offences established in accordance with the Convention, the Palestinian legislation does not provide for such possibility.

202- To implement the provision under review, Palestine should allow for the possibility of confiscation of transformed or converted property (beyond money laundering, bribery and embezzlement).

**Article 31 - Freezing, Seizure, and Confiscation**

**Paragraph 5**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

**(a) Summary of information relating to the review of implementation of paragraph 5 of Article 31**

203- Palestine indicated that it is compliant with the paragraph under review and referred to its previous answer.

**(b) Observations on the implementation of the article**

204- Article (40) of the AML Law provides for the possibility of confiscation of intermingled property in money laundering or a predicate offence cases. Hence this article also applies to bribery and embezzlement. As for the rest of the offences established in accordance with the Convention, the Palestinian legislation does not provide for such possibility.

205- To implement the provision under review, Palestine should allow for the possibility of confiscation of intermingled property (beyond money laundering, bribery and embezzlement).

**Article 31 - Freezing, Seizure, and Confiscation**

## Paragraph 6

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

### (a) Summary of information relating to the review of implementation of paragraph 6 of Article 31

206- Palestine indicated that it is compliant with the paragraph under review and referred to its previous answer.

### (b) Observations on the implementation of the article

207- Article (40) of the AML Law provides for the possibility of confiscation of income or other benefits derived from proceeds of crime in money laundering or a predicate offence cases. Hence this article also applies to bribery and embezzlement. As for the rest of the offences established in accordance with the Convention, the Palestinian legislation does not provide for such possibility.

208- To implement the provision under review, Palestine should allow for the possibility of confiscation of income or other benefits derived from proceeds of crime (beyond money laundering, bribery and embezzlement).

## Article 31 - Freezing, Seizure, and Confiscation

### Paragraph 7

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

### (a) Summary of information relating to the review of implementation of paragraph 7 of Article 31

209- Palestine indicated that it is compliant with the paragraph under review and referred to its answer on paragraph 2 of Article 31 of the Convention.

210- Palestine also referred to the following provisions:

#### **Anti-Corruption Law No. 1 of 2005**

**Article 9-4:** Notwithstanding the provisions in the Criminal Procedure Code and in other pertinent laws, the Commission shall have the following powers in implementing its tasks: Request any files, or data, or documents, or information; or review them; or request copies of them from the relevant body keeping them; including those which consider all that confidential according to the applicable legal procedures.

#### **Anti-Money Laundering Law No. 9 of 2007**

**Article 46:** In implementation of this law, banking secrecy provisions shall not prevent the implementation of the provisions of this law. Banking secrecy provisions may not be used as a pretext to refrain from disclosing or presenting any information on the combating of money laundering, excluding what is stated in Article 14, paragraph 3 of this law.

#### **Decree-Law No. 9 of 2010 on Banks**

##### **Article 32:**

1. The Monetary Authority shall develop directives that organize bank account secrecy, the exchange of information and data on client debts among banks and specialized lending institutions, to ensure confidentiality and the availability of data needed to securize credit operations and risk management.

2. All current or past members of the Board of Directors of a bank, key officials, employees, auditors, consultants, external contractors of banks and specialized lending institutions shall preserve the confidentiality of information and documents relating to customers and the information and documents they have access to on account of their duties. They shall not disclose any such information or allow third parties outside the bank or specialized lending institution to access the same. This prohibition applies to any person who has access to those information and documents on account of his duties, directly or indirectly, except under: a. A written consent of the customer; b. A ruling issued by a Palestinian court.

...

#### **(b) Observations on the implementation of the article**

211- The public prosecutor or the FIU may request that bank records be made available or seized, after obtaining a court ruling. Moreover, article (9/4) of the ACL provides that the Anti-Corruption Commission can, in implementing its tasks, request any files, or data, or documents, or information; or review them; or request copies of them from the relevant body keeping them; including those which consider all that confidential according to the applicable legal procedures.

#### **Article 31 - Freezing, Seizure, and Confiscation**

##### **Paragraph 8**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

#### **(a) Summary of information relating to the review of implementation of paragraph 8 of Article 31**

212- Palestine indicated that it is compliant with the paragraph under review and referred to the following provisions:

##### **Anti-Money Laundering Law No. 9 of 2007, as amended**

**Article 20:** In the case of property mentioned in clause 1 of this article, which is owned directly or indirectly by a person convicted of the crime of money laundering or a predicate offence, which property was acquired at least ten (10) years before the person was charged with the crime, the court

may decide to confiscate such property if reasonable grounds exist to indicate that such property constitutes the proceeds of the crime for which the person was convicted, and the person is unable to prove that the property was obtained legally.

**(b) Observations on the implementation of the article**

213- The court may require that an offender demonstrate the lawful origin of alleged proceeds of crime in money laundering, bribery and embezzlement cases (art. 20 of the AML Law).

**Article 31 - Freezing, Seizure, and Confiscation**

**Paragraph 9**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

**(a) Summary of information relating to the review of implementation of paragraph 9 of Article 31**

214- Palestine indicated that it is compliant with the paragraph under review and referred to the following provisions:

**Anti-Money Laundering Law No. 9 of 2007, as amended**

**Article 41:** The court may cancel the effect of any legal title that precludes the confiscation of property under Article 40 of this law. The sum actually paid [for the property] shall be repaid to the party that acquired the property in good faith.

**Penal Code No. 16 of 1960, applicable in the West Bank and its amendments**

**Article 30:** Subject to the rights of bona fide third parties, all things derived from a deliberate offence or misdemeanour, or used in, or intended for the commission of such acts may be confiscated. In the case of an unintentional misdemeanour or infraction, such things may only be confiscated under the law.

**Criminal Procedure Code**

**Article 289:**

- 1- In cases where the investigation yields sufficient evidence that the accusation is serious in any crimes involving public funds, the Attorney General may, when he deems that the matter requires precautionary measures against the assets of the fugitive indictee, submit the matter to the Criminal Court, which may decide to put his assets under custody and prevent him from disposing of them.
- 2- The Court may, upon the request of the Attorney General, include in its decision the assets of the spouse and minor children of the fugitive indictee if it has sufficient evidence that these assets derive from the crime under investigation.

- 3- a) The Court shall appoint a person to manage the assets after making an inventory in the presence of stakeholders, a representative of the public prosecutor, and an expert appointed by the court.  
b) The person appointed to preserve the assets shall maintain the assets placed under custody and manage them properly and return them with their yields at the end of the period of custody.
- 4- Any interested party may appeal against the decision of the court referred to in paragraphs 1, 2, and 3 above, within three (3) months before the court that rendered it.

**(b) Observations on the implementation of the article**

215- The CPC (art. 289), the AML Law (art. 41) and the Penal Code No. 16 of 1960, applicable in the West Bank (art. 30) provide for the protection of the rights of *bona fide* third parties.

**Article 32 - Protection of Witnesses, Experts, and Victims**

**Paragraph 1**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

**(a) Summary of information relating to the review of implementation of paragraph 1 of Article 32**

216- Palestine indicated that it is partly compliant with the paragraph under review. Article 18-2 of Anti-Corruption Law No. 19 of 2005, as amended, provides for legal, job, and personal protection for witnesses, experts, and bona fide whistleblowers. The Council of Ministers is expected to issue a special regulation on this matter. But the Commission is yet to prepare such a draft regulation for the protection of witnesses, whistleblowers, and experts. So far, the Council of Ministers hasn't issued such a text, because of conflict between some protection mechanisms and the applicable Criminal Procedure Code. This issue requires an amendment of the anti-corruption law, including forms of protection. Also, the text of Article 18-2 referred to above does not provide for the protection of the relatives of witnesses, whistleblowers, and experts, and other persons closely related to them. The anti-money laundering law, which is closely linked with the crimes of corruption, does not include provisions or measures that ensure protection for the listed category.

217- Palestine referred to the following provisions:

**Anti-Corruption Law No. 1 of 2005, as amended**

**Article 18-2:** The Commission guarantees to witnesses, experts, and informers of crimes of corruption, acting in good faith, legal, job, and personal security. The protection procedures and measures in this respect shall be determined by a regulation prepared by the Commission and issued by the Council of Ministers.

**Draft amendment to the Anti-Corruption Law**

**Article 18** of the original law is repealed and replaced with the following text:

- 1- Whoever acquires reliable information or documents pertaining to a crime of corruption committed by a person subject to the provisions of this law shall submit them to the Commission, or file a complaint thereon against the perpetrators.
- 2- The Commission provides the necessary legal, job, and personal protection to the witnesses, experts, informers and their relatives and persons closely related to them, in cases of corruption, from any potential assault, retaliation, intimidation. Such protection is ensured through:
  - a. protecting them in their places of residence;
  - b. non-disclosure of information concerning their identity and whereabouts;
  - c. allowing them to speak and give testimony through the use of modern communication technologies and to ensure their security;
  - d. protecting them in their places of work and from any discrimination, ill-treatment, any arbitrary action, or administrative decision that may change their legal or administrative status or impair their rights because of their testimony or communication of information or the acts they did to uncover crimes of corruption;
  - e. providing them with accommodation when necessary; and
  - f. Taking any step or making any necessary action to ensure their security.
- 3- Protection is granted by the Commission depending on the circumstances surrounding the person who requests protection, and such protection is lifted when the circumstances that necessitated protection no longer exist.
- 4- All matters relating to the provision of the requested protection for informants, witnesses, and experts and their relatives and persons closely related to them are organized under a regulation for this purpose by the Council of Ministers upon the recommendation of the Head of the Commission ...
- 5- Notwithstanding any other legislation, the Commission may grant a financial reward to informants and witnesses under a regulation to be issued for this purpose.
- 6- Protection granted by a decision of the Council shall be forfeited in case of violation of the terms under which it was granted.
- 7- All members of the judicial police shall implement the decisions of the Commission issued with regard to requests for protection.

**(b) Observations on the implementation of the article**

218- Palestine did not adopt sufficient measures to provide effective protection for witnesses or experts who give testimony concerning offences established in accordance with the Convention.

219- Article 18-2 of the ACL provides for legal, job, and personal protection for witnesses, experts, and whistleblowers. The Council of Ministers is expected to issue a special regulation on this matter. During the joint meeting, the authorities have indicated that the lack of issuance of this regulation does not prevent from providing the protection, and practically, physical and legal protection is being provided. Article (18/2) does not provide for the protection of the relatives of witnesses and experts, and other persons close to them.

220- To implement the provision under review, Palestine should adopt additional measures to provide effective protection for witnesses and experts who give testimony

concerning offences established in accordance with the Convention, and to include their relatives and other persons close to them in such protection.

## **Article 32 - Protection of Witnesses, Experts, and Victims**

### **Sub-paragraph 2 (a)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

### **(a) Summary of information relating to the review of implementation of paragraph 2 (a) of Article 32**

221- Palestine indicated that it is partly compliant with the paragraph under review and referred to its answer on paragraph 1 of Article 32.

### **(b) Observations on the implementation of the article**

222- Palestine did not adopt sufficient measures to provide effective protection for witnesses or experts who give testimony concerning offences established in accordance with the Convention.

223- Article 18-2 of the ACL provides for legal, job, and personal protection for witnesses, experts, and whistleblowers. The Council of Ministers is expected to issue a special regulation on this matter. During the joint meeting, the authorities have indicated that the lack of issuance of this regulation does not prevent from providing the protection, and practically, physical and legal protection is being provided. Article (18/2) does not provide for the protection of the relatives of witnesses and experts, and other persons close to them.

224- To implement the provision under review, Palestine should adopt additional measures to provide effective protection for witnesses and experts who give testimony concerning offences established in accordance with the Convention, and to include their relatives and other persons close to them in such protection.

## **Article 32 - Protection of Witnesses, Experts, and Victims**

### **Sub-paragraph 2 (b)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

**(a) Summary of information relating to the review of implementation of paragraph 2 (b) of Article 32**

225- Palestine indicated that it is partly compliant with the paragraph under review and referred to its answer on paragraph 1 of Article 32.

**(b) Observations on the implementation of the article**

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

**Article 32 - Protection of Witnesses, Experts, and Victims**

**Paragraph 3**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

**(a) Summary of information relating to the review of implementation of paragraph 3 of Article 32**

227- Palestine indicated that it is partly compliant with the paragraph under review as, under the Palestinian legal system, nothing prevents the entering into such agreements.

**(b) Observations on the implementation of the article**

228- Palestine did not enter into any agreements with respect to the relocation of persons.

229- To implement the provision under review, Palestine should consider entering into agreements for the relocation of persons.

**Article 32 - Protection of Witnesses, Experts, and Victims**

**Paragraph 4**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

**(a) Summary of information relating to the review of implementation of paragraph 4 of Article 32**

230- Palestine indicated that it is partially compliant with the paragraph under review. The text of Article 18-2 of the anti-corruption law includes a general provision for the protection of witnesses and informants, without specifying the capacity of these witnesses or informants, which means that this provision applies to all witnesses and informants, even if they are victims. However, Palestine's implementation of this provision is partial because Article 18-2 of the said law does not explicitly include this provision.

Besides, the Council of Ministers has not issued any regulation that guarantees the protection of witnesses, informants, and experts, including the victims.

**(b) Observations on the implementation of the article**

231- Palestine did not adopt sufficient measures to provide effective protection for witnesses or experts who give testimony concerning offences established in accordance with the Convention.

232- Article 18-2 of the ACL provides for legal, job, and personal protection of witnesses, experts, and reporting persons. The Council of Ministers is expected to issue a special regulation on this matter. Article 18-2 includes a general provision which applies to all witnesses, even if they are victims. During the joint meeting, the authorities have indicated that the lack of issuance of this regulation does not prevent from providing the protection, and practically, physical and legal protection is being provided. Article (18/2) does not provide for the protection of the relatives of witnesses and experts, and other persons close to them.

233- To implement the provision under review, Palestine should adopt additional measures to provide effective protection for witnesses, including victims insofar as they are witnesses, and experts who give testimony concerning offences established in accordance with the Convention, and to include their relatives and other persons close to them in such protection.

**Article 32 - Protection of Witnesses, Experts, and Victims**

**Paragraph 5**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

**(a) Summary of information relating to the review of implementation of paragraph 5 of Article 32**

234- Palestine indicated that it is compliant with the paragraph under review. The victim may submit a civil right claim to the public prosecutor or to the court, and the complainant may give his testimony and request compensation for the damage he sustained, according to the text of Articles 228, 194-195 of the Criminal Procedure Code.

235- Palestine explained that a judge cannot ask the removal of the defendant from the court room when listening to the victim, as Article 243 of the Criminal Procedure Code requires the presence of the defendant. The defendant can only be removed if he disturbs the court.

**Criminal Procedure Code No. 3 of 2001**

**Article 228:** The civil claimant is heard as a witness after taking the oath.

**Article 243:** Presence of the accused at the trial

The accused appears at the trial free from restraint or chains; he shall, however, be kept under sufficient guard. The accused may not be excluded from the session while the case is in progress unless he creates a disturbance entailing his exclusion. In such case, proceedings will continue until they can be conducted in his presence. The court shall inform him of all the procedures taken in his absence.

**Article 194:**

- 1- Every person harmed by a crime is entitled to submit an application to the deputy prosecutor or to the court seized of the case in which he expressly assumes the capacity of a civil claimant for the reparation of the injury he suffered as a result of the crime.
- 2- The application must be sufficiently reasoned and supported by facts and evidence.

**Article 195:**

- 1- The action for the recovery of a civil right may be instituted as an ancillary to the penal action before the competent court. It may also be instituted separately before the civil court, in which case proceedings in the action conducted before the civil court are suspended until final judgment is rendered on the penal action, unless judgment on the penal action has been suspended due to the insanity of the accused.
- 2- If the civil claimant institutes an action before the civil judiciary he may not thereafter institute it before the penal judiciary unless he has abandoned his action before the civil court.

**(b) Observations on the implementation of the article**

236- Palestine's legislation does not enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders.

237- To implement the provision under review, Palestine should enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders.

**(c) Technical Assistance Needs**

238- Palestine indicated that the form of the following technical assistance, if available, can help improve the implementation of the provision under review in a better way:

- Model legislation to protect witnesses and reporting persons;
- Technical assistance in the preparation of witness protection regulations that determine the types and forms of legal, job, and physical protection that can be offered, as well as the mechanisms to grant such protection and the unit that will decide the granting of the protection under certain conditions;
- Information on comparative experiences in this area to identify best practices.

**Article 33 - Protection of Reporting Persons**

*Each 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.*

**(a) Summary of information relating to the review of implementation of Article 33**

239- Palestine indicated that it is compliant with the paragraph under review. It included an explicit provision in Article 18-2 of the Anti-Corruption Law No. 1 of 2005, as amended, for the legal, job, and physical protection of bona fide informants on corruption crimes. The Commission is expected to issue a regulation defining the procedures and measures for such protection. A proposal has been submitted to amend the anti-corruption law; it states the mechanisms for providing protection for informants within the provisions of the anti-corruption law. The details of the procedures concerning the protection for informants and witnesses, and experts are determined by a regulation issued by the Council of Ministers upon the recommendation of the President of the Commission.

240- Palestine referred to the texts cited in its answer on sub-paragraph 1 of Article 32.

241- For examples on implementation, Palestine indicated that, despite the failure to adopt the witness protection regulation, in 2011, one of the ministries provided job protection to three informants who had been suspended from work because they informed on a case of corruption in their ministry. The Commission intervened under Article 18, paragraph 2, and requested their reinstatement in their positions and the protection of their rights. These requests were met and the relevant minister issued a decision at the request of the Commission to reinstate them in their jobs.

**(b) Observations on the implementation of the article**

242- Article 18-2 of the ACL provides for legal protection of reporting persons.

**(c) Technical Assistance Needs**

243- Palestine indicated that the form of the following technical assistance, if available, can help improve the implementation of the provision under review in a better way:

- A model legislation to protect witnesses and reporting persons.

244- Palestine did not receive any form of such technical assistance in the past.

**Article 34 - Consequences of Acts of Corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

**(a) Summary of information relating to the review of implementation of Article 34**

245- Palestine indicated that it is partly compliant with the paragraph under review because civil law (Code of Judicial Judgements) does not include any provision that allows a judge to invalidate contracts that violate laws. However, Anti-Money Laundering Law No. 9 of 2007, as amended, provides in Article 41 thereof a precautionary measure and empowers the court to cancel the effect of any legal title that precludes the confiscation of property that is the subject of a money laundering offence while preserving the rights of a bona fide party. Whereas the anti-money laundering law considers the crime of illegal gain as a money laundering offence, it is possible to apply the said Article 41 to the crimes stipulated in the anti-corruption law.

246- Palestine also referred to the following provisions:

**Anti-Money Laundering Law No. 9 of 2007, as amended**

**Article 41:** The court may cancel the effect of any legal title that precludes the confiscation of property under Article 40 of this law. The sum actually paid [for the property] shall be repaid to the party that acquired the property in good faith.

**(b) Observations on the implementation of the article**

247- Palestine has not taken measures to address consequences of corruption.

248- To implement the provision under review, Palestine should take measures to address 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.

**Article 35 - Compensation for Damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

**(a) Summary of information relating to the review of implementation of Article 35**

249- Palestine indicated that it is partly compliant with the paragraph under review. The relevant anti-corruption laws or the other legislation do not include any express provision or measure that guarantees the right of entities or persons that suffer damage as a result of an act of corruption to come forward and file a lawsuit against those responsible for that damage in order to obtain a compensation for the damage they sustained. However, general rules, especially the Code of Judicial Judgements, which is considered as civil law in force in Palestine, in Article 19 thereof, forbid the infliction of harm; Article 20 thereof stipulates "*Inflicted harm shall be removed*", which means that if damage is inflicted, it shall be removed and the injured shall be compensated for the damage he suffered as a result of the incident; Article 25 thereof stipulates that damage shall not be removed by a similar damage.

250- Palestine also referred to the following provisions:

**Criminal Procedure Code No. 3 of 2001**

**Article 196:**

1. Claims for the recovery of a civil right may be raised before the court of first instance at any stage of the penal action and until the close of pleadings.
2. Claims for the recovery of a civil right may not be raised if the case is returned to the court of first instance for any reason whatsoever.
3. A civil claim may not delay pronouncement of judgment in the penal action, otherwise the court orders it inadmissible.

**Code of Judicial Judgements**

**Article 19:** The infliction of harm is forbidden.

**Article 20:** Inflicted harm shall be removed.

**Article 25:** Inflicted harm shall not be removed by a similar harm.

**(b) Observations on the implementation of the article**

251- Palestine has implemented the provision under review. Pursuant to Article 196 of the CPC, claims for the recovery of a civil right may be raised before the court of first instance at any stage of the penal action and until the close of pleadings.

**Article 36 - Specialized Authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

**(a) Summary of information relating to the review of implementation of Article 36**

252- Palestine indicated that it is compliant with the paragraph under review. Anti-Corruption Law No. 1 of 2005, as amended, provides for the establishment an anti-corruption commission and entrusts it, in addition to the tasks of prevention of corruption, with competences relating to law enforcement. It gives it the necessary independence in its work and a wide range of powers that enable it to carry out its tasks in the areas of law enforcement and prevention. The said law also provides for the setting up of a court specialized in corruption crimes and assigned members of the public prosecution to take over the tasks of a specialized anti-corruption prosecution. Article 19 of Anti-Money Laundering Law No. 9 of 2007 also provides for the establishment a national anti-money laundering commission. Article 23 of the said law, provides for the setting up of an independent unit in charge of anti-money laundering called the 'Financial Follow-up Unit.'

253- As for the measures taken to ensure the independence of specialized bodies, Palestine indicated that the Palestinian Anti-Corruption Commission enjoys, under the Anti-Corruption Law, as amended, legal personality and financial and administrative independence. In this capacity, it may take all necessary legal actions to achieve its goals; it may enter into contracts; it may institute legal proceedings; and is represented before the courts by the public prosecutor mandated at the Commission. Aspects of autonomy enjoyed by the Anti-Corruption Commission include:

- The Commission receives its own budget from the budget of the Authority.
- Its staff is subject to special regulations that determine their grades, privileges, salaries, and the method of their appointment. They are not subject to the Civil Service Law.
- The President and the staff of the Commission enjoy immunity with respect to all their actions undertaken in the exercise of their duties.
- The President of the Commission is appointed by the Head of State upon the recommendation of the Prime Minister. His term of office at the head of the Commission lasts for seven (7) years. He can only be dismissed from office in the cases set forth in Article 6 of the said Law.

254- With regard to the selection and training of the staff, the law and the regulations of the Anti-Corruption Commission stipulate that only Palestinian nationals can be appointed to the Commission. The candidates shall have the requisite skills and competence; they shall be known for their integrity and good reputation; they shall have minimum qualifications and experience for holding the specific posts; they shall not have been convicted by a competent court of any financial offence or an offence involving moral turpitude and dishonesty. The persons who meet the above requirements shall pass a competitive examination organized by three committees: the first one made up of members of the Commission; the second one made up of specialists; and the third one made up of academics from outside the Commission.

255- Since the establishment of the Commission more than four years ago, it has been provided with all the budget allocations approved by the Council of Ministers based upon the recommendation of the President of the Commission. The Commission adopted training programmes for all its staff to enhance their abilities, through internal training courses in cooperation with Birzeit University, and external courses in cooperation with many regional and international bodies, such as the European Police, the Regional Project on Anti-Corruption and Integrity in the Arab countries, and the United Nations Development Program, and the Arab Anti-Corruption and Integrity Network, and others.

256- Palestine also referred to the following provisions:

**Anti-Corruption Law No. 1 of 2005, as amended**

**Article 3:** 1. In accordance with the provisions of this Law, there shall be established a commission to be called the Commission for the Elimination of Corruption. It shall enjoy a legal personality and administrative and financial independence, and shall be allotted a special budget within the general budget of the Palestinian Authority. In this capacity, it shall perform all legal tasks to achieve its goals, shall have the right to conclude contracts and to have locus standi, and shall be represented before the courts by the public prosecution delegated to the Commission.

**Article 8:** The Commission shall have the following powers:

- 1- Keep all statements of assets and request any data or clarifications related to them;
- 2- Examine the statements of assets submitted by the persons subject to this law;
- 3- Investigate complaints filed on corruption;
- 4- Investigate suspected corruption committed by persons subject to the provisions of this Law.
- 5- Raise community awareness at all official and un-official levels on the dangers of corruption and its consequences on economic, social and political development; the methods of combating and controlling it through:
  - a. Collect information on all forms of corruption and work towards the creation of a database and information systems and exchange same with internal and external agencies and bodies concerned with corruption according to the applicable legislations.
  - b. Coordination with the National Authority institutions to strengthen and develop the measures needed to prevent crimes of corruption and to update the mechanisms and the means of eliminating them.
  - c. Coordination with the media to assume an active role to promote the culture of integrity and eliminate corruption within the community.
  - d. Work to strengthen the participation of civil society organizations and the educational institutions in anti-corruption activities, create public awareness on its dangers and consequences, strengthen the culture of non-tolerance with corruption and with the corrupt.
- 6 - Preparation of the general policy of anti-corruption with stakeholders and preparation of the necessary plans and programs for their implementation.
- 7 - Preparation of periodicals on the dangers of corruption, nepotism and favouritism to the National Authority institutions and its agencies.
- 8 - Review, evaluate and study anti-corruption legislation and propose amendments according to the applicable procedures.
- 9 - Coordinate and cooperate with Arab, regional and international bodies on anticorruption; and participate in the programs aimed at preventing such crimes.
- 10 - Prepare the Commission's annual report.

**Article 9-1 bis:** By virtue of the decision of the High Judicial Council at the request of the Head of the Commission, there shall be established a special court panel to deal with crimes of corruption wherever committed. The panel shall be chaired by a judge holding the rank of President of a Court of First Instance. The other two members shall be judges holding the rank of judges of Court of First Instance.

**Article 9-2 bis:**

1. At the request of the Head of the Commission, a sufficient number of public prosecutors including an Assistant Attorney-General may be delegated to work for the Commission for two years renewable.
2. Taking into consideration the provisions of paragraph (1) above, the delegation procedures shall comply with the procedures outlined in the Judicial Authority Law.
3. The public prosecutors delegated to work for the Commission shall be considered specialists in investigating any of the crimes outlined in this Law, shall initiate the trial and shall take the necessary legal action in the country's entire districts.
4. The delegated Public Prosecution shall, with the assistance of the Commission staff in their capacity as judicial officers, promptly initiate the investigation procedures without unjustified delay.

**Article 19:** 1. 1. Under this law, there shall be established a committee called the “National Anti-Money Laundering Committee ”by a decree of the President of the National Authority. The Committee’s members shall include:

- a. The governor of the Monetary Authority or his deputy in the governor’s absence, chairman.
- b. A representative of the Ministry of Finance, member.
- c. A representative of the Ministry of Justice, member.
- d. A representative of the Ministry of Interior, member.
- e. A representative of the Ministry of National Economy, member.
- f. Director, Bank Supervision Department, member.
- g. A representative of the Capital Market Authority, member.
- h. A legal expert, member.
- i. An economic and financial expert, member.

**Article 23:** There shall be established under this law an independent unit to combat the crime of money laundering. It shall be called “Financial Follow-Up Unit ”to act as the national information centre and shall be responsible for the following functions:

1. Receive and request of information on transactions suspected of involving money laundering operations from entities subject to this law.
2. Analyse the information mentioned in paragraph 1 of this article.
3. Dissemination of information and the results of information analyses on the proceeds of crimes suspected of involving money-laundering operations under this law.

**(b) Observations on the implementation of the article**

257- Palestine established an Anti-Corruption Commission entrusted with law enforcement and prevention tasks. It has also established in 2010 a Court specialized in corruption offences and assigned members of the public prosecution to take over the tasks of a specialized anti-corruption prosecution. The authorities indicated during the joint meeting that each security service has specialized sections in financial crime and corruption, including: the "security of the institutions" office in the Preventive Security Service and in the General Intelligence Service, in addition to the Office of the fight against corruption, money laundering and economic crimes of the police. Palestine has also established a Financial Follow-up Unit (FIU) and a National Committee to combat money laundering.

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

**(c) Successes and good practices**

259- The establishment of an Anti-Corruption Commission and an Anti-Corruption Court as measures conducive to the fight against corruption.

**(d) Technical Assistance Needs**

260- Palestine indicated that the form of the following technical assistance, if available, can help improve the implementation of the provision under review in a better way:

- Specialized training courses to enhance the capacities of the staff of the Anti-Corruption Commission, the Anti-Corruption Prosecution, and all public institutions to enhance integrity and combat corruption, especially in the field of financial investigations.

## **Article 37 - Cooperation with Law Enforcement Authorities**

### **Paragraph 1**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

### **(a) Summary of information relating to the review of implementation of paragraph 1 of Article 37**

261- Palestine indicated that it is compliant with the paragraph under review. Article 25-2 of Anti-Corruption Law No. 1 of 2005, as amended, provides for such a measure by exempting from punishment any offender who takes the initiative to inform the Commission of a crime of corruption before it becomes aware of it or informs any competent authorities; but if the reporting takes place after it becomes aware of the same, the culprits and the funds subject of the crime must be seized for the informant to benefit from the exemption. Article 27 of the same law exempts the perpetrator of the crime and his accomplice from the punishments of imprisonment and fine if they inform the competent authorities of the crime, before its detection, and of the money they obtained from such offence.

262- Article 38 of Anti-Money Laundering Law No. 9 of 2007, exempts the offenders who report a crime from punishment. In addition, Article 172/2 of Penal Code No. 16 of 1960, in force in the West Bank, exempts the briber and the intermediary from punishment if they report the crime to the competent authorities or confess it before the case is referred to the court.

263- Palestine referred to the following provisions:

#### **Anti-Corruption Law No. 1 of 2005, as amended**

**Article 25-2:** Whoever takes the initiative from among the perpetrators to notify the Commission of a crime of corruption before it or any of the authorities become aware of it shall be exempted from punishment. If the notification takes place after becoming aware of the crime, it shall be conditional that the outcome of the notification is the apprehension of the other perpetrators and the seizure of the funds which are the subject matter of the crime.

Article 27-1: If the perpetrator or an accomplice in a crime of corruption takes the initiative to inform the authorities about the crime before detection and the money obtained from such crime he shall be exempted from the prison sentence and the fine incurred for this crime.

**Anti-Money Laundering Law No. 9 of 2007, as amended**

**Article 38:** Any criminal who undertakes to report, to the Unit, the crime of money laundering before the Unit or any competent authority has knowledge of the crime, shall be exempt from the penalty established in this law. If the report occurs after the Unit or another competent authority has knowledge of the crime, in order for the criminal to be exempt, the report must lead to the arrest of the other criminals or seizure of the property that is the object of the crime.

**Penal Code No. 16 of 1960 applicable in the West Bank**

**Article 172-2:** 2. The briber and the intermediary shall be exempted from punishment if they report the matter to the competent authorities or confess before the case is referred to the court.

**(b) Observations on the implementation of the article**

264- Palestinian legislation allows to exempt from punishment persons who participate or who have participated in the commission of acts of corruption in case of reporting or in case their cooperation has led to the apprehension of the other perpetrators and the seizure of the the proceeds of crime (Arts. 25/2 and 27/1 of the ACL, art. 38 of the AML Law and art. (172/2) of the Penal Code No. 16 of 1960 applicable in the West Bank).

**Article 37 - Cooperation with Law Enforcement Authorities**

**Paragraph 2**

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relating to the review of implementation of paragraph 2 of Article 37**

265- Palestine indicated that it is compliant with the paragraph under review. Article 27-2 of Anti-Corruption Law No. 1 of 2005, as amended, reduces the punishment for the perpetrator of the crime of corruption or the accomplice cooperate during the investigation to uncover the crime and the offender.

**Anti-Corruption Law No. 1 of 2005, as amended**

**Article 27-2** If the perpetrator of a crime of corruption or the accomplice cooperate during the investigation to uncover the crime and the offender the punishment shall be reduced to a prison sentence and he shall be exempted from the fine.

**(b) Observations on the implementation of the article**

266- Article (27-2) of the ACL provides for the mitigation of the punishment of the perpetrator of a crime of corruption or the accomplice who cooperate during the investigation to uncover the crime and the offender.

## **Article 37 - Cooperation with Law Enforcement Authorities**

### **Paragraph 3**

*3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

#### **(a) Summary of information relating to the review of implementation of paragraph 3 of Article 37**

267- Palestine indicated that there is no provision in Palestinian legislation that grants immunity from prosecution to those who help in the investigation of an offence criminalized under this Convention. However, a defendant is exempted from punishment in some cases. Such exemption is granted by judicial ruling and according to the cases stipulated by law and which have been mentioned in the answer on paragraph 1 of this Article.

#### **(b) Observations on the implementation of the article**

268- There is no provision in the Palestinian legislation that grants immunity from prosecution to a person who provides cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

269- To implement the provision under review, Palestine should 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.

## **Article 37 - Cooperation with Law Enforcement Authorities**

### **Paragraph 4**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

#### **(a) Summary of information relating to the review of implementation of paragraph 4 of Article 37**

270- Palestine indicated that it is compliant with the paragraph under review and referred to its answer on Article 32. It also explained that the protection provided for in Article 18-2 of the Anti-Corruption Law does not except offenders if they are witnesses or informants.

#### **Anti-Corruption Law No. 1 of 2005, as amended**

**Article 18-2:** The Commission guarantees to the witnesses, experts and informers of crimes of corruption acting in good faith legal, job and personal security. The protection procedures and measures

in this respect shall be determined by a regulation prepared by the Commission and issued by the Council of Ministers.

**(b) Observations on the implementation of the article**

271- Palestine has not adopted sufficient measures to provide effective protection to crime perpetrators who collaborate with justice, especially if the cooperation took place after the discovery of the crime.

272- To implement the provision under review, Palestine should adopt additional measures to provide effective protection to perpetrators who cooperate with justice, and to include their relatives and other persons close to them in such protection.

**Article 37 - Cooperation with Law Enforcement Authorities**

**Paragraph 5**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

**(a) Summary of information relating to the review of implementation of paragraph 5 of Article 37**

273- Palestine indicated that there is no provision in Palestinian legislation that prevents the conclusion of such agreements in accordance with legal and constitutional rules in force in that regard, but currently there are no such agreements because they are not needed.

**(b) Observations on the implementation of the article**

274- Palestine can enter into *ad hoc* agreements to provide for the possibility to exempt from punishment persons collaborating with justice located abroad, within the applicable legal conditions.

**Article 38 - Cooperation between National Authorities**

**Sub-paragraph (a)**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

**(a) Summary of information relating to the review of implementation of sub-paragraph (a) of Article 38**

275- Palestine indicated that it is compliant with this provision and it has implemented the measures set forth in this article through the text of Article 9-4 and Article 19-1 of Anti-Corruption Law No. 1 of 2005, as amended, and many provisions contained in the Anti-Money Laundering Law, as amended, in addition to the Law on the State Administrative and Financial Control Bureau No. 15 of 2004, particularly Article No. 12 thereof, and which obliges parties subject to the control of the Bureau with the full cooperation.

**Criminal Procedure Code No. 3 of 2001**

**Article 25:** Every constituted authority and every public official who, in the performance of his duties or by reason of the performance thereof, acquires knowledge of a crime, is held to report same to the competent authorities unless the law makes the institution of the penal action flowing from such crime conditional on a complaint, a requisition or a warrant.

**Law on the State Financial and Administrative Control Bureau No. 15 of 2004**

**Article 12:** Interference in any of the Bureau activities is forbidden. All the parties that are subject to control by the Bureau shall fully cooperate with it and meet any request it makes.

**Anti-Corruption Law No. 1 of 2005, as amended**

**Article 9-4:** Notwithstanding the provisions in the Criminal Procedure Code and in other pertinent laws, the Commission shall have the following in implementing its tasks and powers: Request any files, or data, or documents, or information; or review them; or request copies of them from the relevant body keeping them; including those which consider all that confidential according to the applicable legal procedures.

**Article 19-1:** Any public official who becomes aware of a crime of corruption shall report the fact to the Commission.

**Anti-Money Laundering Law No. 9 of 2007 and its amendments**

**Article 5:** The competent authorities must:

1. Maintain, protect, and update adequate, precise information regarding the title and control structure of legal persons established in the National Authority's territories.
2. Inform the Unit and the agencies in charge of enforcing the law of the information stated in paragraph 1 of this article promptly in cases of suspicion and investigation.

**Article 13:** Duties of the Supervisory Authorities

1. The supervisory authority and the competent authority shall be responsible for supervising compliance by financial institutions and non-financial businesses and professions with Articles 4, 5, 6, 7, 8, 9, 10, 11, and 12 and Chapter 6 of this law and the regulations and instructions issued in this regard.
2. The supervisory authority shall, insofar as doing so does not conflict with the provisions of this law:

- a. Develop the necessary procedures for acquiring, managing, or directly or indirectly participating in the management, organization, or operation of a financial institution or non-financial businesses and professions.
- b. Regulate and supervise financial institutions to ensure the compliance thereof with the duties stipulated in Articles 4, 5, 6, 7, 8, 9, 10, 11, and 12 and Chapter 6 of this law, including the conduct of field inspections.
- c. Issue instructions to help financial institutions and non-financial businesses and professions comply with the requirements stipulated in Articles 4, 5, 6, 7, 8, 9, 10, 11, and 12 and Chapter 6 of this law.
- d. Cooperate and exchange information with other competent authorities, assist in investigations, bring judicial actions, and initiate procedures regarding the crime of money laundering and predicate offences.
- e. Enhance internal cooperation according to criteria or objectives established by the Committee regarding the reporting of suspicious transactions based on existing and future national and international criteria.
- f. Ensure that financial institutions, including the foreign branches and subsidiaries thereof, implement the procedures stipulated in this law to the extent permitted by the legislation of the countries in which they operate.
- g. Report to the Unit promptly any information on transactions or occurrences suspected of involving the crime of money laundering.
- h. Maintain statistical data on measures taken and penalties imposed in the course of implementing the provisions of this article.

**(b) Observations on the implementation of the article**

276- Article 25 of the CPC establishes the obligation on any public official who, in the performance of his duties or by reason of the performance thereof, becomes aware of a crime, to report it to the competent authorities. Article (19/1) of the ACL establishes the obligation on any public official who becomes aware of a crime of corruption to report it to the Commission.

**Article 38 - Cooperation between National Authorities**

**Sub-paragraph (b)**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

- (b) Providing, upon request, to the latter authorities all necessary information.*

**(a) Summary of information relating to the review of implementation of sub-paragraph (b) of Article 38**

277- Palestine indicated that it had complied with this provision and referred to its previous answer.

**(b) Observations on the implementation of the article**

278- Article (9/4) of the ACL gives the Anti-Corruption Commission the right to request any documents or information from the relevant body keeping them; including those which consider all that confidential according to the applicable legal procedures.

279- The reviewers encourage Palestine to ensure that the legislation explicitly requires the public authorities to respond to requests from the Anti-Corruption Commission.

**(c) Successes and good practices**

280- Good cooperation among the domestic institutions engaged in anti-corruption.

**Article 39 - Cooperation between National Authorities and the Private Sector**

**Paragraph 1**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

**(a) Summary of information relating to the review of implementation of paragraph 1 of Article 39**

281- Palestine indicated it had complied with this provision and implemented the measures set forth in this article through the text of Article 9-4 of Anti-Corruption Law No. 1 of 2005, as amended, and several provisions of the Anti-Money Laundering Law.

**Anti-Corruption Law No.1 of 2005, as amended**

**Article 9-4:** Notwithstanding the provisions in the Criminal Procedure Code and in other pertinent laws, the Commission shall have the following in implementing its tasks and powers: 4. Request any files, or data, or documents, or information; or review them; or request copies of them from the relevant body keeping them; including those which consider all that confidential according to the applicable legal procedures.

**Anti-Money Laundering Law No. 9 of 2007, as amended**

**Article 14: Reporting**

- a. Financial institutions and non-financial businesses and professions that suspect, or have reasonable grounds to suspect, that property represents the proceeds of an offence, or they have knowledge of an occurrence or activity that may indicate the commission of the crime of money laundering, must submit reports in this regard promptly to the Unit according to the instructions issued in this regard by the Unit to the extent that doing so does not conflict with paragraphs (c), (d), and (e) of this article.
- b. Paragraph (a) of this article shall apply to attempts to conclude transactions.
- c. An attorney shall be exempt from the duty to report information which he receives from, or obtains about, his clients in the course of the attorney's determination of his client's legal

status or the attorney's defence or representation of his client in or regarding litigation procedures, including consultations on the initiation or avoidance of litigation, regardless of whether such information was received or obtained before, during, or after such procedures.

- d. Dealers of precious metal and precious stones and dealers who conduct high-value transactions must report, to the Unit, any suspicious transactions under paragraph (a) of this article when they enter into any cash transaction whose value equals or exceeds the value set by the Committee in the instructions issued by the Committee in this regard.
- e. Real estate agents and brokers must report, to the Unit, suspicious transactions consistent with paragraph (a) of this article when executing real-estate sale or purchase transactions for their clients.

**Article 15:** Financial institutions and non-financial businesses and professions must refrain from executing transactions which they suspect involve the crime of money laundering until they report their suspicions regarding such transactions to the Unit.

**Article 29:** Based on the Unit's request, the competent authority or entities required to report under Article 14 of this law must furnish or apprise the Unit of any additional information relating to the Unit's duties under this law within five days of the Unit's submission of the request.

**(b) Observations on the implementation of the article**

282- The AML Law establishes the obligation of a number of private sector entities, including banks, money-dealers and insurance companies to report to the FIU any suspicious transactions and to provide it with any information that the FIU may request.

283- To implement the provision under review, Palestine should adopt measures to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector, beyond the anti-money laundering obligations.

**Article 39 - Cooperation between National Authorities and the Private Sector**

**Paragraph 2**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

**(a) Summary of information relating to the review of implementation of paragraph 2 of Article 39**

284- Palestine indicated that it is compliant with this provision. The Anti-Corruption Commission launched several media campaigns to encourage citizens to report corruption through audio, visual, and written media. It also sent messages on mobile devices to encourage reporting. During these campaigns, it stressed whistleblower protection, allowed for whistleblowers to submit complaints or reports via the Internet, fax, or personally. It also allowed anonymous reporting. In 2013, out of 392 complaints and reports received, 93 were anonymous, which is almost 24 percent.

285- Palestine also referred to the following provisions:

**Anti-Corruption Law No. 1 of 2005, as amended**

**Article 18: Provision of Information, Documents, and Complaints**

1. 1. Whoever acquires reliable information or documents pertaining to a crime of corruption provided for in this Law committed by an employee shall submit it to the Commission, or shall file a complaint thereof against the perpetrators.
2. 2. The Commission guarantees to witnesses, experts, and informers of crimes of corruption, acting in good faith, legal, job, and personal security. Protection procedures and measures in this respect shall be set by a regulation prepared by the Commission and issued by the Council of Ministers.

**Article 19: Reporting Corruption Crimes**

1. Any public official who becomes aware of a crime of corruption shall inform the Commission of it.
2. The report made by a public official in accordance with paragraph 1 above shall not be a reason for any disciplinary action against him or any action that harms his professional standing.

**Criminal Procedure Code No. 3 of 2001**

**Article 24:** Any person who learns of the occurrence of a crime may report same to the Public Prosecution or to a judicial officer, unless the law makes the institution of the penal action flowing therefrom conditional on a complaint, a requisition or a warrant.

**(b) Observations on the implementation of the article**

286- Article (18) of the ACL provides that the Commission guarantees to persons who report on corruption, legal, job, and personal security. Article 24 of the CPC creates an ethical duty of those who become aware of a crime to report it, although there are no corresponding sanctions for failure to report.

**Article 40 - Bank Secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

**(a) Summary of information relating to the review of implementation of Article 40**

287- Palestine indicated that it is compliant with this provision and it has implemented the necessary measures. Article 9-4 of Anti-Corruption Law No. 1 of 2005, as amended, allows the Anti-Corruption Commission to request access to or copies of any files, data, papers, documents, or information from the party in whose possession they are, including the parties that consider such data as confidential under applicable law. Besides, Article 46 of Anti-Money Laundering Law No. 9 of 2007, as amended, provides that banking secrecy provisions do not prevent the implementation of the provisions of this law and banking secrecy provisions may not be used as a pretext to refrain from disclosing or presenting any information relating to the fight against money laundering. In addition, the Bank Secrecy Law provides for a number of exceptions and cases for lifting bank secrecy, for example when a Palestinian court orders the lifting of bank secrecy. To date,

approximately 149 court rulings ordered the lifting of bank secrecy at the request of the Anti-Corruption prosecution.

288- Also, in spite of the powers granted to the Anti-Corruption Commission to request access to copies of all documents and information, even if they are confidential, the law provides that it shall follow legal procedures and the provisions of the Banking Law to lift bank secrecy. The request to lift bank secrecy is made on the basis of a judicial ruling.

**Anti-Corruption Law No.1 of 2005, as amended**

**Article 9-4:** Notwithstanding the provisions in the Criminal Procedure Code and in other pertinent laws, the Commission shall have the following powers in implementing its tasks: 4. Request any files, or data, or documents, or information; or review them; or request copies of them from the relevant body keeping them; including those which consider all that confidential according to the applicable legal procedures.

**Anti-Money Laundering Law No. 9 of 2007, as amended**

**Article 46:** In implementation of this law, banking secrecy provisions shall not prevent the implementation of the provisions of this law. Banking secrecy provisions may not be used as a pretext to refrain from disclosing or presenting any information on the combating of money laundering, excluding what is stated in Article 14, paragraph 3 of this law.

**Decree-Law No. 9 of 2010 on Banks**

**Article 32:**

1. The Monetary Authority shall develop directives that organize bank account secrecy, the exchange of information and data on client debts among banks and specialized lending institutions, to ensure confidentiality and the availability of data needed to securize credit operations and risk management.
2. All current or past members of the Board of Directors of a bank, key officials, employees, auditors, consultants, external contractors of banks and specialized lending institutions shall preserve the confidentiality of information and documents relating to customers and the information and documents they have access to on account of their duties. They shall not disclose any such information or allow third parties outside the bank or specialized lending institution to access the same. This prohibition applies to any person who has access to those information and documents on account of his duties, directly or indirectly, except under:
  - a. A written consent of the customer;
  - b. Disclosure of information and documents required by the Monetary Authority or its staff in charge of carrying out their tasks.
  - c. Issuance of a certificate or statement indicating the reasons for refusal to cash any check at the request of the right holder;
  - d. Disclosure of specific information under the provisions of the Anti-Money Laundering Law and directives issued under this law;
  - e. Disclosure and exchange of information relating to customers and borrowers and their sponsors for use by the Credit Information Office of the Monetary Authority with banks and any other companies or entities approved by the Monetary Authority to facilitate the exchange of such information.
3. The following cases are excepted from the provisions on confidentiality requirements contained in paragraph 2 of this article, provided such parties comply with the requirements of confidentiality:
  - a. Disclosure allowing an external auditor to conduct specific legal duties under this law;
  - b. Disclosure of information and documents required by the Monetary Authority or its staff in charge of carrying out their tasks.
  - c. Issuance of a certificate or statement indicating the reasons for refusal to cash any check at the request of the right holder;
  - d. Disclosure of specific information under the provisions of the Anti-Money Laundering Law and directives issued under this law;
  - e. Disclosure and exchange of information relating to customers and borrowers and their sponsors for use by the Credit Information Office of the Monetary Authority with banks and any other companies or entities approved by the Monetary Authority to facilitate the exchange of such information.

f. Disclosure of customer information to the relevant Deposit Insurance Corporation and institutions related to its tasks according to the instructions issued by the Monetary Authority.

g. Disclosure by the bank of some or all information related to customer transactions to provide forensic evidence in prosecution between them on these transactions.

h. The Chairs of the boards of directors of banks wishing to merge or purchase under the provisions of this Law or the persons they delegate with a special authorization for this purpose can share with each other the necessary information on the business of their banks to complete a merger or acquisition survey, subject to the prior written approval of the Monetary Authority. These officials are personally responsible for preserving the confidentiality of the information to which they have access and subject to legal liability.

289- Palestine indicated that the exception provided for in paragraph 3- b of Article 32 of Decree Law No. 9 of 2010 does not include the Financial Intelligence Unit (FIU) based in the Monetary Authority because the Unit cannot request information from banks without a court ruling.

**(b) Observations on the implementation of the article**

290- The public prosecutor, the Anti-Corruption Commission or the FIU may request that bank records be made available or seized, after obtaining a court ruling. During the joint meeting, the authorities also indicated that the prosecutor can circulate the court's decision directly to the banks or through the Monetary Authority. Banking secrecy can be lifted on a specific account or on all accounts of a particular person.

**Article 41 - Criminal Record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

**(a) Summary of information relating to the review of implementation of Article 41**

291- Palestine indicated that it did not adopt this provision, because Penal Code No. 16 of 190 in force in the West Bank requires that an irrevocable judgment has been issued by a court of justice to apply the rules of repetition, in accordance with the provisions of Article 104 thereof.

**Penal Code No. 16 of 1960, applicable in the West Bank**

**Article 104:** A previous sentence shall not be considered as a basis for applying the rules of repetition, unless it is issued by a law court.

**(b) Observations on the implementation of the article**

292- Palestinian legislation does not provide for the possibility of taking into account previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings.

## **Article 42 - Jurisdiction**

### **Sub-paragraph 1 (a)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

### **(a) Summary of information relating to the review of implementation of paragraph 1 (a) of Article 42**

293- Palestine indicated that it is compliant with the provision under review. Article 7 of Penal Law No. 16 of 1960, in force in the West Bank includes provisions relating to the territorial jurisdiction of this law, and Penal Code No. 74 of 1936, as amended, in force in the Gaza Strip, particularly Articles 6 and 7 thereof, provides for the territorial jurisdiction of Palestinian courts.

#### **Penal Code No. 16 of 1960, applicable in the West Bank**

##### **Article 7:**

1. The provisions of this Law shall apply to anyone committing within the Kingdom any of the offences prescribed therein.
2. An offence is deemed to have been committed in the Kingdom if one of the elements constituting the offence, or an act inseparable from the offence, or a principal or secondary act of complicity, took place on its soil.
3. The territory of the Kingdom includes the air above it, the territorial sea to a distance of five (5) kilometres from the shore, the airspace above the territorial sea, and Jordanian ships and aircraft.
4. Foreign territory occupied by the Jordanian army if the offence committed damages the integrity or interests of the army.

#### **Penal Code No. 74 of 1936, applicable in the Gaza Strip**

**Article 6:** The jurisdiction of the Courts of Palestine for the purposes of this Code extends to every place within Palestine or within three (3) nautical miles of the coast thereof, measured from low water mark.

**Article 7:** When an act is committed partly within and partly outside the jurisdiction of the courts of Palestine, and that act if totally committed within the jurisdiction of the courts of Palestine would be in violation of this Code, every person who commits any part of such act within the jurisdiction of Palestinian courts may be tried and punished under this Code as if he committed such act totally within the jurisdiction of those courts.

### **(b) Observations on the implementation of the article**

294- Palestine has established its jurisdiction over offences committed in its territory (art. 7 of the Penal Code No. 16 of 1960, applicable in the West Bank, art. 6 of the Penal Code No. 74 of 1936, applicable in the Gaza Strip).

## **Article 42 - Jurisdiction**

### **Sub-paragraph 1 (b)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

### **(a) Summary of information relating to the review of implementation of paragraph 1 (b) of Article 42**

295- Palestine indicated that it is compliant with the provision under review. Article 7 of Penal Law No. 16 of 1960, in force in the West Bank, above mentioned, includes provisions dealing with the territorial jurisdiction of the law, which considers that a vessel or aircraft that bears the flag of the State is part of its territory, and if a crime is committed on board such vessel or aircraft it is considered as being committed on its territory and the domestic law applies in this case.

### **(b) Observations on the implementation of the article**

296- Palestine has established its jurisdiction over offences committed on board a vessel that is flying its flag or an aircraft that is registered under its laws. The jurisdiction in that case will be for the courts of the West Bank (art. 7 of the Penal Code No. 16 of 1960, applicable in the West Bank).

## **Article 42 - Jurisdiction**

### **Sub-paragraph 2 (a)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

### **(a) Summary of information relating to the review of implementation of paragraph 2 (a) of Article 42**

297- Palestine indicated that this case is not subject to its jurisdiction, as the Palestinian legislation does not provide for passive personality jurisdiction.

### **(b) Observations on the implementation of the article**

298- Palestine does not adopt the passive personal jurisdiction.

299- The reviewers encourage Palestine to consider establishing its jurisdiction over corruption offences committed against its citizens.

## **Article 42 - Jurisdiction**

### **Sub-paragraph 2 (b)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

### **(a) Summary of information relating to the review of implementation of paragraph 2 (b) of Article 42**

300- Palestine indicated that this case is subject to its jurisdiction. Article 10 of Penal Law No. 16 of 1960, in force in the West Bank, as amended, provides for positive personality jurisdiction.

#### **Penal Code No. 16 of 1960, applicable in the West Bank and its amendments**

**Article 10:** The provisions of this law shall apply to:

1. Any Jordanian who, outside the Kingdom, perpetrates, instigates or is an accessory to an offence or a misdemeanour punishable with Jordanian law. The same provisions shall apply to those persons even if they lose or acquire Jordanian nationality after committing an offence or a misdemeanour.
2. Offences committed outside the Kingdom by any Jordanian official in the performance or in connection with the performance of his duties.
3. Offences committed outside the Kingdom by foreign service officers and Jordanian consuls who enjoy immunity under international public law; and
4. Any alien residing in the Hashemite Kingdom of Jordan who, outside the Kingdom, perpetrates, instigates or is an accessory to an offence or a misdemeanour punishable with Jordanian law, if his extradition has not been requested or accepted.

### **(b) Observations on the implementation of the article**

301- Article 10, para. 1 of the Penal Code No. 16 of 1960, applicable in the West Bank, provides for the active personal jurisdiction. This provision does not cover stateless persons who have their habitual residence in Palestine, however Palestinian authorities indicated that such persons are treated as foreigners and can be prosecuted based on article 10, paragraph 4 of the Penal Code No. 16 of 1960, applicable in the West Bank.

302- The reviewers encourage Palestine to consider expanding the scope of application of the principle of active personal jurisdiction so as to include all the Palestinian territories (including Gaza).

## **Article 42 - Jurisdiction**

### **Sub-paragraph 2 (c)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

### **(a) Summary of information relating to the review of implementation of paragraph 2 (c) of Article 42**

303- Palestine indicated that it is compliant with the provision under review through Article 7-2 of Penal Law No. 16 of 1960, in force in the West Bank and Article 7 of Penal Law No. 74 of 1936, in force in the Gaza Strip. It should be noted that these provisions are general and apply to all types of crimes, including money laundering crimes.

### **(b) Observations on the implementation of the article**

304- Palestine establishes its jurisdiction regarding the case mentioned in the provision under review (art. 7 of the Penal Code No. 16 of 1960, applicable in the West Bank, art. 7 of the Penal Code No. 74 of 1936, applicable in the Gaza Strip)..

## **Article 42 - Jurisdiction**

### **Sub-paragraph 2 (d)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(d) The offence is committed against the State Party.*

### **(a) Summary of information relating to the review of implementation of paragraph 2 (d) of Article 42**

305- Palestine indicated that this case is only subject to its jurisdiction in exceptional cases that fall outside the context of implementation of the Convention.

### **(b) Observations on the implementation of the article**

306- Palestine has not established its jurisdiction over offences committed against Palestine.

307- The reviewers encourage Palestine to consider establishing its jurisdiction over corruption offences committed against Palestine.

## **Article 42 - Jurisdiction**

### **Paragraph 3**

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

### **(a) Summary of information relating to the review of implementation of paragraph 3 of Article 42**

308- Palestine indicated this case is subject to its jurisdiction. Article 10-1 of Penal Law No. 16 of 1960, as amended, in force in the West Bank provides for positive personality jurisdiction.

#### **Basic Law of 2003**

##### **Article 28:**

No Palestinian may be deported from the homeland, prevented or prohibited from returning to or leaving it, deprived of his citizenship, or handed over to any foreign entity.

### **(b) Observations on the implementation of the article**

309- Palestine establishes its jurisdiction regarding the case mentioned in the provision under review based on the active personal jurisdiction. The jurisdiction in that case will be for the courts of the West Bank (art. 10, para. 1 of the Penal Code No. 16 of 1960, applicable in the West Bank).

## **Article 42 - Jurisdiction**

### **Paragraph 4**

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

### **(a) Summary of information relating to the review of implementation of paragraph 4 of Article 42**

310- Palestine indicated this case is subject to its jurisdiction. Article 10-4 of Penal Law No. 16 of 1960, as amended, in force in the West Bank expressly provides for this jurisdiction.

### **(b) Observations on the implementation of the article**

311- Palestine establishes its jurisdiction regarding the case mentioned in the provision under review. The jurisdiction in that case will be for the courts of the West Bank (art. 10, para. 4 of the Penal Code No. 16 of 1960, applicable in the West Bank).

## **Article 42 - Jurisdiction**

### **Paragraph 5**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

#### **(a) Summary of information relating to the review of implementation of paragraph 5 of Article 42**

312- Palestine indicated that there is no provision in Palestinian law that prevents the competent authorities of Palestine from consulting with foreign authorities to coordinate actions in the case provided for in the paragraph under review.

#### **(b) Observations on the implementation of the article**

313- It seems that nothing prevent Palestinian authorities from, as appropriate, consulting with foreign authorities with a view to coordinating their actions.

## **Article 42 - Jurisdiction**

### **Paragraph 6**

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

#### **(a) Summary of information relating to the review of implementation of paragraph 6 of Article 42**

314- Palestine indicated that it is compliant with this paragraph as there is no provision that prevents it from extending criminal jurisdiction over acts beyond what is provided for in the Convention.

#### **(b) Observations on the implementation of the article**

315- This Convention does not exclude the exercise of any criminal jurisdiction established by Palestine in accordance with its domestic law.

## **Chapter IV: International Cooperation**

316- The State of Palestine (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 (MLA).

317- Palestine has a written constitution, the Basic Law. However, there are no provisions in the Basic Law on the the relationship between international and municipal law, and in particular on the conclusion and status of international treaties. The only provision that mentions international treaties is Art. 10(2) which stipulates that “[t]he Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights”

318- During the joint meeting, it was stated that even though the situation is not entirely clear yet, the relationship between international and municipal law can be described as monist. Therefore, an international treaty that has been ratified by the President and duly promulgated in the Official Gazette would become part of the legal system and could be applied directly to the extent that its provisions are self-executing. Moreover, in the event of a conflict between municipal law and obligations stemming from an international convention, it is not clear which will take precedence.

319- The proposition that international conventions can be applied directly was supported by practical examples, namely the extradition of persons to Egypt on the basis of the Riyadh Agreement on Judicial Cooperation. An MLA request to Jordan was sent on the basis of the Riyadh Agreement and UNCAC.

320- Despite limited control over its borders, Palestine has received and executed extradition requests (e.g. extraditions to Egypt and Russia), and has successfully requested extradition of nationals (from Jordan). In total, there were about 8 extradition cases to date. Likewise, Palestine has both received and sent requests for mutual legal assistance.

321- Palestine is working on a draft International Cooperation Law. It has requested technical assistance for the elaboration of this law.

322- Palestine is a full member of the League of Arab States and has acceded to a number of regional treaties, including the Arab Anti-Corruption Convention, the Arab Convention on Combating Money Laundering and Terrorist Financing, and the Riyadh Arab Agreement on Judicial Cooperation. For Palestine, UNCAC was the first international convention with a global scope that regulates aspects of international cooperation.

### **Article 44 - Extradition**

323- Palestine has not concluded any bilateral extradition treaties yet. Extradition is based on:

- the League of Arab States, Riyadh Arab Agreement on Judicial Cooperation of 6 April 1983 (Riyadh Agreement)<sup>2</sup>;
- the Law on the Extradition of Fugitives of 1927, in force in the West Bank;
- the Law on the Extradition of Fugitives of 1926, in force in the Gaza Strip; and
- the principle of reciprocity.

324- The principle of reciprocity is applied based on customary law.

325- The Ministry of Justice takes the decision to extradite and then refers the case to the public prosecution. Such decision must be signed by the president, who has the final word whether or not to extradite.

### **Paragraph 1**

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

### **(a) Summary of information relating to the review of implementation of paragraph 1 of Article 44**

326- Palestine indicated that it had implemented the provision under review partly and for some offences established in accordance with this Convention, provided that the offence for which extradition is sought is included in the offences specified in Table 1 of the Law on Extradition Law of 1927 in force in the West Bank, which specified them exhaustively. The crimes related to the Convention and specified in the Table are the following: 12. False testimony or perjury or prompting another person to give false testimony or perjury in any way; 16. Theft, embezzlement, abuse of trust, fraud, or buying or receiving any property while knowing that it was obtained in one of the ways listed above; 20. Bribery; 26. Any other crime that may be added from time to time to the table attached to this law, as stipulated in the Law on Extradition; 27. Participation in any of the crimes listed in this table.

327- Article 4-1 stipulates: "His Royal Highness may add to the offences listed in the table attached to this law any offence that is not included in it, or remove any offence from it or added to it by issuing a decree (from time to time) to be published in the Official Gazette." This power of the Royal Highness is nowadays exercised by the President.

328- Paragraph (b) of Article 2 of this law defines the offence that requires extradition as: Any offence punishable under the laws of Transjordan if it is committed in Transjordan and is included in the crimes listed in the table attached to this law, regardless of the name given to such an offence under the applicable law in Transjordan. Consequently, this article stipulates that to be extraditable an offence must be punishable under the domestic law of both the requesting State and of the State of Palestine within the limits of the offences listed in the table.

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<sup>2</sup> Available at <<http://www.refworld.org/docid/3ae6b38d8.html>>.

329- In the Gaza Strip, it must be one of the crimes punishable under the laws of Palestine, or identified in Annex 1 of the Law on Extradition of 1926, which requires amending legislations on extradition. The crimes related to the Convention and specified in the Annex are the following: Embezzlement, breach of trust by a trustee that is considered a criminal offence under any law enacted by Parliament or any applicable law, false testimony or incitement to give false testimony, bribery, any other offence added to this annex from time to time as described in the article, complicity in any offence listed in this annex.

330- Article 4-1 stipulates: "The High Commissioner may add, by order or decree, to the offences listed in Annex 1 attached to this law any offence that is not included in it, or remove any offence from it or added to it."

331- Article 2 of this law defines the extraditable offence as: Any offence punishable under the laws of Palestine if it is committed in Palestine or is considered as one of the offences listed in the Annex 1 of this law, regardless of the name given to such an offence under Palestinian legislation." Consequently, this article stipulates that to be extraditable an offence must be punishable under the domestic law of both the requesting State and the State of Palestine or is one of the offences listed in Annex 1 of this law, whatever its name in Palestine.

**(b) Observations on the implementation of the article**

332- In extradition matters, Palestine requires dual criminality. However, in line with Art. 43(2) of the Convention, the principle of dual criminality is applied flexibly (*in abstracto*). Therefore, it is sufficient if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States parties.

333- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 44 - Extradition**

**Paragraph 2**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

**(a) Summary of information relating to the review of implementation of paragraph 2 of Article 44**

334- Palestine noted that while the provision under review is not consistent with the explicit provisions of the Law on Extradition of 1927, in force in the West Bank, and the Law on Extradition of 1926, in force in the Gaza Strip, Article 40(b) of the Riyadh Agreement makes an exception to dual criminality when the person sought is charged with acts not punishable by the laws of the requested party but is a citizen of the requesting party or another State where the act is punishable. Accordingly, if the requesting party is a party to this Convention, extradition can be carried out on the basis of this text.

**(b) Observations on the implementation of the article**

335- During the joint meeting, it was confirmed that on the basis of Article 40(b) of the Riyadh Agreement, dual criminality would not be required if the person sought is charged with acts not punishable by the laws of the requested party but is a citizen of the requesting party or another State where the act is punishable.

336- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 44 - Extradition**

**Paragraph 3**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

**(a) Summary of information relating to the review of implementation of paragraph 3 of Article 44**

337- Palestine indicated that there are no provisions in the Law on Extradition of 1927, in force in the West Bank, or in the Law on Extradition of 1926, in force in the Gaza Strip, that prevent extradition in such cases. Besides, the period of imprisonment is only stipulated in the Riyadh Convention as a criterion to accept extradition. Consequently, it is only applicable in the States Parties to this Convention.

**(b) Observations on the implementation of the article**

338- It follows from the above that accessory extradition, i.e. extradition for connected offences, is possible.

339- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 44 - Extradition**

**Paragraph 4**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

**(a) Summary of information relating to the review of implementation of paragraph 4 of Article 44**

340- Palestine has not concluded any bilateral extradition treaties yet.

341- Palestine indicated that it is compliant with this paragraph. After its ratification of the United Nations Convention against Corruption and the publication of this convention in the Official Gazette, Palestine has become committed to the provision set forth in this paragraph to include extraditable offences, to which Article 44 of the Convention applies, in any extradition treaty it concludes. Palestinian legislation does not consider any corruption crime as a political crime.

342- Palestine also noted that nothing in the agreements signed in the field of extradition or those that include provisions on extradition prevents extradition in this case. Moreover, many of these agreements stipulate that principle.

343- Palestine also referred, for example, to Article 40 of the Riyadh Arab Convention on Judicial Cooperation of 1983 and Article 23-2 of the Arab Convention against Corruption.

**Riyadh Arab Agreement for Judicial Cooperation**

**Article 40:** Obligation to extradite

Extradition shall be obligatory with respect to the following persons:

- (a) Individuals charged with committing acts punishable with the laws of each of the two contracting parties - that requesting extradition and that requested to extradite - with a custodian sentence of one year or a more severe penalty in the laws of either party - whatever the maximum or minimum limits in the gradation of the stipulated penalty.
- (b) Individuals charged with acts not punishable with the laws of the requested party requested or where the stipulated penalty for such acts in the laws of the requesting party has no equivalent in the laws of the requested party. The same penalty shall apply if the individuals prosecuted are nationals of the requesting party of another contracting party.
- (c) Individuals convicted in presence or in absentia by the courts of the requesting party in case of a custodial sentence of one year or a more severe penalty in respect of acts punishable with the laws of the requested party.
- (d) Individuals convicted in presence or in absentia by the courts of the requesting party who are not punishable with the laws of the requested party or who are subject to a penalty for which there is no equivalent in its laws, if such individuals are nationals of the requesting party or of another contracting party applying the same penalty.

**Arab Anti-Corruption Convention**

**Article 23**

1. All the crimes covered by the present Convention are considered crimes in which the criminals can be delivered, according to any treaty for the extradition of criminals between State Parties. These shall avow to include these crimes among the crimes that are covered in each treaty of extradition of offenders concluded among them. A State Party whose law allows this shall not consider any of the crimes covered by the present Convention as a political crime if the present Convention is taken as a basis for the extradition.

2. This Article shall apply to the crimes covered by the present Convention when the person object of extradition is located in the territory of the requested State Party with the condition that the act for which extradition is requested is a criminal act according to the domestic legislations of both the requesting and the requested State Parties.

**(b) Observations on the implementation of the article**

344- Palestine laws do not consider any corruption crime as a political crime in accordance with UNCAC.

345- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 44 - Extradition**

**Paragraph 5**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

**(a) Summary of information relating to the review of implementation of paragraph 5 of Article 44**

346- Palestine stated that Palestinian legislation does not require the existence of a treaty as a basis for extradition. Besides, this legislation does not prevent Palestine from considering this Convention as the legal basis for extradition in respect of corruption offences, even though Palestine is yet to inform the Secretary-General of the United Nations that it considers the Convention as the legal basis for cooperation on extradition in respect of any offence to which this article applies, because Palestine's accession to the Convention is recent and it is still considering this matter.

**(b) Observations on the implementation of the article**

347- Palestine does not make extradition conditional on the existence of a treaty.

**Article 44 - Extradition**

**Paragraph 6**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 6 of Article 44**

348- Palestine referred to its previous answer.

**(b) Observations on the implementation of the article**

349- Palestine does not make extradition conditional on the existence of a treaty.

350- Moreover, Palestine can use UNCAC as the legal basis of extradition for corruption offenses. However, it is yet to inform the Secretary-General of the United Nations that it considers the Convention as the legal basis for cooperation on extradition.

**Article 44 - Extradition**

**Paragraph 7**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

**(a) Summary of information relating to the review of implementation of paragraph 7 of Article 44**

351- Palestine indicated that it is compliant with this paragraph. Since Palestine's ratification of the United Nations Convention against Corruption and its publication in the Official Gazette, the provisions of the Convention have acquired the force of law in Palestine. In addition, Palestinian law imposes extradition with respect to some offences to which this article, in particular the crimes set forth in Annex I of the Law on Extradition of 1927, in force in the West Bank, and in Annex 1 of the Law on Extradition of 1926, in force in the Gaza Strip (referred to them in the answer on Article 44-1).

**(b) Observations on the implementation of the article**

352- In the West Bank, extraditable offences are provided in Table 1 of the 1927 Law on the Extradition of Fugitives, and include offenses such as false testimony or perjury (including aiding and abetting), theft, embezzlement, abuse of trust, fraud, or purchase/receipt of property obtained as a result of the former listed crimes, and bribery.

353- In the Gaza Strip, extraditable offences must be one of the crimes identified in Annex 1 of the 1926 Law on the Extradition of Fugitives, which currently includes embezzlement, breach of trust by a trustee (if it is considered as a criminal offence), false testimony or incitement to give false testimony, bribery, or any other offence added to the Annex.

354- The above mentioned exhaustive lists do not cover all convention offences. While the list can be amended by the President, and the ratification of the Convention by the President could be seen as such an amendment, it was recommended for the sake of legal clarity and certainty to expressly include in the legislation all Convention offences as extraditable offences.

## **Article 44 - Extradition**

### **Paragraph 8**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

### **(a) Summary of information relevant to reviewing the implementation of paragraph 8 of Article 44**

355- Palestine indicated that it is compliant with this paragraph. Requests of extradition submitted to Palestine are subject to the conditions imposed by the Palestinian legal system and those set forth in applicable extradition treaties, including the conditions relating to the minimum penalty requirement for extradition and the reasons for refusing extradition.

356- Palestine referred to the following provisions:

#### **Basic Law of 2003**

##### **Article 28:**

No Palestinian may be deported from the homeland, prevented or prohibited from returning to or leaving it, deprived of his citizenship, or handed over to any foreign entity.

#### **Law on the Extradition of Fugitives of 1927, applicable in the West Bank**

##### **Article 6:**

The following limitations shall be considered for the extradition of fugitives:

- a. The fugitive shall not be extradited if the crime for which extradition is requested is of a political nature or if it is determined by the conciliation judge (before whom the criminal was brought), the court of appeal, His Royal Highness the Prince that the purpose of the extradition request is to try this criminal or punish him for a political crime.
- b. The fugitive shall not be extradited to the foreign country except if the law thereof, or the held agreement therewith stipulates not to arrest or prosecute the criminal for another crime committed in the countries of this State before extradition other than the crime that the request is signed for and that the agreement of extradition is based on except if he was returned to East Jordan or was able to go back.
- c. The fugitive shall not be extradited if he is accused of committing a crime in East Jordan other than the crime of the requested extradition or if he is a prisoner for an issued judgment against him by the courts of East Jordan except after his release upon expiration of the mentioned judgment, after proving his innocence or by any other means.

- d. The fugitive shall not be extradited except after the lapse of 15 days from date of his arrest awaiting his extradition.

### **Law on the Extradition of Fugitives of 1926, applicable in the Gaza Strip**

#### **Article 7:**

The following limitations shall be taken into consideration with regard to the extradition of fugitives:

- a. A fugitive criminal shall not be extradited if the crime for which his extradition is requested is of a political nature or if he proves to the court before which he is brought with a memorandum of opposition to imprisonment or he proves to the High Commissioner that the purpose of the extradition request is to try and punish him for a crime of a political nature.
- b. A fugitive criminal shall only be extradited to a foreign State if the law of this State, or an agreement concluded with it, stipulates that he shall not be arrested or prosecuted for a crime committed in this State for a crime committed before his extradition other than the one requiring extradition and proven with facts on which extradition is based, except if the criminal is returned to Palestine or has an opportunity to return to it.
- c. A fugitive criminal accused of committing a crime in Palestine other than the one for which extradition is requested or imprisoned pursuant to a judgment issued against him in Palestine shall only be extradited after his release either by proving his innocence from the charge against him, or after the expiry of the sentence, or by any other means.
- d. A fugitive criminal shall only be extradited after the expiration of fifteen (15) days from the date of arrest pending extradition.

### **Riyadh Arab Agreement for Judicial Cooperation**

#### **Article 40: Obligation to extradite**

Extradition shall be obligatory with respect to the following persons:

- a. Individuals charged with committing acts punishable with the laws of each of the two contracting parties - that requesting extradition and that requested to extradite - with a custodial sentence of one year or a more severe penalty in the laws of either party - whatever the maximum or minimum limits in the gradation of the stipulated penalty.
- c. Individuals convicted in presence or in absentia by the courts of the requesting party in case of a custodial sentence of one year or a more severe penalty in respect of acts punishable with the laws of the requested party.

#### **(b) Observations on the implementation of the article**

357- It was noted that domestic law only stipulates few conditions for extradition and is silent on minimum penalty requirements, which are only contained in Art. 40 of the Riyadh Agreement.

358- It was concluded that Palestine is in compliance with this provision of the Convention.

### **Article 44 - Extradition**

#### **Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 9 of Article 44**

359- Palestine indicated that it is compliant with this provision, either through its commitment to bilateral agreements with various countries in the field of extradition, or through its commitment to the provision of this paragraph of the United Nations Convention against Corruption, which has in Palestine the force of Palestinian law, or in compliance with customs, applications, and practices in its judicial system in this regard.

360- Palestine also indicated that it is currently considering the adoption of a draft law on international cooperation in criminal matters for the purpose of expediting extradition and simplifying evidentiary requirements relating thereto in respect of any offence to which this and other articles applies.

**(b) Observations on the implementation of the article**

361- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 44 - Extradition**

**Paragraph 10**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

**(a) Summary of information relevant to reviewing the implementation paragraph 10 of Article 44**

362- Palestine indicated that it is compliant with this paragraph. Palestinian laws allow the arrest and detention of a person whose extradition is requested and who is found in its territory. Besides, nothing prevents it from taking all other precautionary measures to ensure he attends extradition proceedings.

363- Palestine referred to the following provisions:

**Law on the Extradition of Fugitives of 1927, applicable in the West Bank**

**Article 7:**

Any fugitive criminal who is a subject of a foreign State and who is found in, or suspected of being in, Transjordan shall be liable to arrest and extradition in the manner stipulated in this Act in the cases where this Act applies to extradition requests submitted by the State concerned, whether he committed

the extraditable offence before or after this Act took effect and whether or not the courts in Transjordan are competent to examine that offence. "conditional that he shall not be extradited for a crime that he committed before the 26th of July of the year 1924.

**Article 11:**

1. The conciliation judge shall order the arrest of the fugitive accused of committing a crime that necessitates extradition if the order issued by the foreign country to arrest him was authenticated in conformity with regulations and these information were presented (in accordance with the provisions of this law) to make possible taking the accused to court in accordance with the provisions of the observed laws in East Jordan except if the accused has committed such a crime therein or else the conciliation judge shall order his release.
2. If information were presented related to the criminal judged for a crime that necessitates his extradition and was (in accordance with the provisions of this law) proved guilty with such crime in accordance with the laws of East Jordan, the conciliation judge shall order his arrest or else order his release and in all cases the order of arrest or release shall be subject to appeal within 15 days of the date of issuance and subject to discernment during same period considering explanation or reporting the appeal award in accordance with set up rules in the law of basic prosecutions.
3. The conciliation judge shall, upon ordering to arrest this criminal, send him to prison or any other place of arrest in East Jordan to stay until issuing the order by The Great Royal Prince for his extradition and shall submit at once to The Great Royal Prince an arrest certificate to arrest this criminal together with a report about the case accordingly.

**Law on the Extradition of Fugitives of 1926, applicable in the Gaza Strip**

**Article 8:**

In cases where this law applies to extradition requests submitted by any foreign country, any criminal fleeing from that State who is found in any part of Palestine, or suspected of being in any part thereof, exposes himself to arrest and extradition as provided for in this Law, whether he committed the crime for which his extradition is requested before or after this law came into force and whether or not any court in Palestine has joint jurisdiction to examine such a crime.

**Article 12:**

1. A judge may order the arrest of a fugitive criminal accused of an extraditable crime if the order issued by a foreign State to arrest him is duly authenticated and he is shown evidence that warrants referral of the prisoner to trial under the laws of Palestine, taking into account the provisions of this law as if it had committed the crime attributed to him in Palestine, otherwise he orders his release.
2. A judge may order the arrest of an offender who is alleged to have been convicted of an extraditable offence if he is shown evidence, taking into account the provisions of this Law, that the prisoner had been convicted of that offence according to the laws of Palestine, otherwise, he orders his release.
3. If the judge decides to arrest the offender, he sends him to prison or to another place of detention in Palestine where he remains detained until the High Commissioner issues a memorandum for extradition. He immediately sends to the High Commissioner a certificate of arrest of the offender annexed to a report on the case.

**(b) Observations on the implementation of the article**

364- Palestine can take a person whose extradition is sought and who is present in its territory into provisional custody.

365- It was concluded that Palestine is in compliance with this provision of the Convention.

## **Article 44 - Extradition**

### **Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

### **(a) Summary of information relevant to reviewing the implementation of paragraph 11 of Article 44**

366- Palestine indicated that it is compliant with this paragraph. According to the principle that the law applies to all nationals wherever they are, the legislation in force in the State of Palestine allows the tracking of criminal activity committed abroad by a Palestinian to prevent evasion from punishment. Besides, Palestine is more entitled than the foreign country where the crime was committed because of the links it has with such country. Prosecution does not require a request from the State Party that seeking extradition.

#### **Basic Law of 2003**

#### **Article 28:**

No Palestinian may be deported from the homeland, prevented or prohibited from returning to or leaving it, deprived of his citizenship, or handed over to any foreign entity.

367- Under the principle of positive personality jurisdiction, the domestic penal law applies to crimes committed outside the national territory. If an offender is a Palestinian, Palestinian penal law applies to the crimes he commits abroad. Penal Law No. 16 of 1960, applicable in the West Bank, in Article 10 thereof, applies this principle.

368- The legislator also adopted this principle in the Palestinian draft penal law. Article 5 thereof states that, "*Any Palestinian who commits outside the country an act that is considered as an offence or a misdemeanor under Palestinian laws shall be punishable under its provisions if he returns to Palestine as long as the act is punishable under the law of the country in which it was committed.*"

369- The principle of personality has great importance. It is a way to prevent the offender from escaping punishment if he commits a crime outside the territory of the State of which he is a national, because this State cannot punish him according to the territoriality principle. Besides, this principle supports the State's position and improves its image and reputation among nations, as the interest of the State and its good reputation require that its nationals do not commit serious crimes abroad.

370- It is clear from Article 5 of the draft penal law that the validity of the penal text according to the personality principle requires the availability of a number of conditions, listed as follows:

- 1- **The offender is of Palestinian nationality**, whether original or acquired by naturalization, and whether he has only the Palestinian nationality or other nationalities as well. He must have had the Palestinian nationality at the time of the commission of the crime. If he had a foreign nationality when he committed the crime, Palestinian law does not apply to him according to the personality principle, even if he acquired Palestinian citizenship at a later date;
- 2- **The crime must be a felony or a misdemeanor**, as the Palestinian draft Penal Law took account, when applying the penal provision to the personality principle, of the gravity of the criminal behaviour, and removed misdemeanors from the scope of this principle;
- 3- **Dual criminality**, which means that it is not sufficient that the act is criminalized by Palestinian penal law. The act must be criminalized by the law of the foreign State as well. To apply Palestinian penal law according to the personality principle, it is not necessary that the criminal act bears the same descriptive designation. It is enough that the act is subject to the criminal provision regardless of its descriptive designation. In practice, if a Palestinian commits a crime abroad described as theft by the foreign penal law, Palestinian penal law can be applied even if the act committed by that person is considered as fraud under Palestinian law. The requirement of dual criminality for the application of the Palestinian Penal Code according to the personality principle relies on the fact that the infliction of a penalty on a Palestinian under the Palestinian Penal Code if he commits an offence abroad can only be justified if the act committed abroad is considered as a crime in the place where it was committed.
- 4- **Return of the offender to the Palestinian territory**. Another condition to apply Palestinian penal law on a Palestinian who commits a crime abroad is his return to the homeland. If he stays abroad, it means that the law of that foreign country applies to him, and the Palestinian courts may not try him in absentia, because his staying abroad excludes his intention to escape punishment, while his return to the homeland allows the application of the Palestinian criminal law to avoid impunity. In order for the Palestinian penal law to apply in this case, it is sufficient to institute legal proceedings against him after his return, even if he goes abroad thereafter. But if he returns to the country and leaves it without an action being brought against him, he cannot be prosecuted.

371- Palestine referred to these provisions:

**Penal Code No. 16 of 1960, applicable in the West Bank and its amendments**

**Article 10:** The provisions of this law shall apply to:

1. Any Jordanian who, outside the Kingdom, perpetrates, instigates or is an accessory to an offence or a misdemeanour punishable with Jordanian law. The same provisions shall apply to those persons even if they lose or acquire Jordanian nationality after committing an offence or a misdemeanor.

2. Offences committed outside the Kingdom by any Jordanian official in the performance or in connection with the performance of his duties.
3. Offences committed outside the Kingdom by foreign service officers and Jordanian consuls who enjoy immunity under international public law; and
4. Any alien residing in the Hashemite Kingdom of Jordan who, outside the Kingdom, perpetrates, instigates or is an accessory to an offence or a misdemeanour punishable with Jordanian law, if his extradition has not been requested or accepted.

**(b) Observations on the implementation of the article**

372- 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 active personality principle (Art. 10 of Penal Law No. 16 of 1960). 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, the Penal Law No. 16 – and thus the principle “*aut dedere, aut iudicare*” – does not apply.

373- It was recommended that Palestine should Extend the principle “*aut dedere, aut iudicare*” to the entire territory of Palestine (including Gaza).

**Article 44 - Extradition**

**Paragraph 12**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 12 of Article 44**

374- Palestine indicated that, with regard to Convention offences, there is no exception to the principle of non-extradition of its citizens provided for in Article 28 of the Basic Law of 2003.

**(b) Observations on the implementation of the article**

375- It was noted that Palestinian nationals cannot be extradited.

376- It was concluded that Palestine is in compliance with this provision of the Convention.

## Article 44 - Extradition

### Paragraph 13

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

### **(a) Summary of information relating to the review of implementation of paragraph 13 of Article 44**

377- Palestine indicated that there are no provisions in Penal Code No. 16 of 1960 applicable in the West Bank, nor in the Penal Code No. 74 of 1936 applicable in the Gaza Strip, nor in the Palestinian draft Penal Code that recognize the enforceable character of a foreign criminal sentence. However, the enforceable character of a foreign criminal sentence can be recognized if an agreement in this regard exists, such as the Arab Agreement on Judicial Cooperation (Riyadh Agreement of 1985).

378- In practice, a foreign penal judgment does not have penal consequences, including its consideration as a previous offence with regard to repetition. Indeed, Penal Code No. 74 of 1936, applicable in the Gaza Strip, does not include any provision that gives such effect to a foreign ruling. Article 104 of Penal Code No. 16 of 1960, applicable in the West Bank, stipulates that a foreign penal judgement does not have such effect, it reads, "*A previous sentence shall not be considered as a basis for applying the rules of repetition, unless it is issued by a law court.*" Article 12 of the same law stipulates: "*With the exception of offences stipulated in Article 9 and the crimes committed in the Kingdom, A Jordanian or a foreigner shall not be prosecuted in this Kingdom if he was the subject of a final judgement abroad, or in the event that the sentence was enforced against him or expired by prescription or pardon*". Article 58-1 of the same law stipulates: "*The same act shall only be prosecuted once ...*" The corresponding provision of Article 21 of Penal Code No. 74 of 1936, applicable in the Gaza Strip, reads: "*A person shall not be punished criminally twice for the same act or omission, whether under the provisions of this Law or another one. In cases where the act or omission results in the death of another person, the perpetrator may be convicted for the offence that caused the death even he had been convicted of another offence resulting from the same act or omission.*"

379- The legislator also adopted this effect with respect to foreign penal judgements in the draft Palestinian Penal Code under Article 6 thereof, which reads, "*A criminal case shall only be brought against any person who commits a crime outside Palestine in violation of the provisions of this law by the public prosecutor, and it shall not be brought against a person who proves that foreign courts acquitted him of the charges against him, or he served the sentence inflicted to him or the criminal case brought against him expired for any reason.*"

380- The consequences of the recognition of the effect of foreign penal provisions in Palestine, are as follows:

1. No criminal lawsuit can be brought against a Palestinian if he underwent a final judgement abroad and acquitted.

2. No criminal lawsuit can be brought against a Palestinian who was convicted abroad and fully served his sentence, whether actually or by judgement.
3. No criminal lawsuit can be brought against a Palestinian who committed a crime abroad if the criminal case against him expires for any reason whatsoever.

381- The situation in which it is permitted to prosecute a Palestinian citizen who committed a criminal offence outside Palestine other than the cases specified above.

**(b) Observations on the implementation of the article**

382- The Penal Codes applicable in Palestine do not contain any provisions that provide for the direct enforceability of a foreign ruling. However, this could be done on the basis of Art. 55 of the Riyadh convention ('Execution of judgements involving detentive penalties in the territory of the contracting party where the convicted person is present'), which is subject to the consent of the convicted person and the requested party.

**Article 44 - Extradition**

**Paragraph 14**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 14 of Article 44**

383- Palestine indicated that it is compliant with this paragraph. The Palestinian Basic Law, in Article 6 thereof, reads, "*The rule of law is the basis of government in Palestine*", and all government authorities, organs, bodies, institutions, and individuals are subject to the law. This law reinforced the principle of the rule of law as Article 9 thereof stipulates, "*Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, colour, religion, political views, or disability.*" Paragraph 1 of Article 10 of this law, states, "*Basic human rights and liberties shall be protected and respected.*" This law also guarantees basic personal freedoms for everyone, "*No person shall be arrested, searched, detained, or deprived of his freedom except by court order.*" (Article 12). The Basic Law prohibits "*coercion or torture*" (Article 13). It "*grants the accused the right to a fair trial,*" (Article 14). It states in Article 15 thereof, "*punishment is personal and shall not be extended to family members.*" It establishes a constitutional rule characterized by the principle of legality, as "*no crime or punishment can be established except by legal provision.*" It protects the human body from "*abuse or experiment except with his consent.*" (Article 16)." It protects homes and forbids their entry, monitoring, or inspection except by judicial order, and "*Any consequences resulting from violations of these provisions shall be*

*considered invalid. Individuals who suffer from such violation shall be entitled to a fair remedy, guaranteed by the State (Article 17).*

384- Owing to the policy adopted by the Palestinian legislator in the Basic Law of 2003, as amended, on the public freedoms and fundamental rights of the human being, and to ascertain the extent of the application of human rights and freedoms and the extent of the commitment of the executive branch to observing these rights, an independent human rights body has been established. The composition and functions of this body have been set out by a special law. This body submits its annual report to the Head of State and the Legislative Council on a regular basis (Article 31). It should be noted that the Basic Law referred to above considers the assault on public and private freedoms of every individual as a criminal offence not subject to prescription and the civil lawsuit resulting therefrom also is not subject to prescription. Furthermore, the law compels the State to compensate a harmed person if these rights are violated by the authorities (Article 32).

385- In addition to the above, the law entitles the person whose extradition is sought to appeal the decision to arrest him before the Court of Appeal and then before the Court of Cassation, in Article 11 of the Law on Extradition of 1927, in force in the West Bank. Paragraph 5 provides that the arrest or release decision is subject to appeal before the Court of Appeal within fifteen (15) days from its issue and then to appeal before the Court of Cassation within the same period from the date of explanation or notification or the appellate decision in accordance with the rules established in the Criminal Procedure Law. The law currently applicable in the Gaza Strip does not expressly provide for this, but mentions memorandums of opposition to arrest in paragraphs 1 and 2 of Article 13 thereof.

**(b) Observations on the implementation of the article**

386- Art. 9 et seq. of the Basic Law enshrine fundamental rights and freedoms which also apply in extradition proceedings.

387- The decision to extradite can be appealed in a court of law, up to the court of cassation.

388- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 44 - Extradition**

**Paragraph 15**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 15 of Article 44**

389- Palestine indicated that it is compliant with this provision and referred to its previous answer, in addition to the following provisions:

**Law on Extradition of 1927**

**Article 6:** ... The fugitive shall not be extradited if the crime for which extradition is requested is of a political nature or if it is determined by the conciliation judge (before whom the criminal is brought), or the Court of Appeals, or His Royal Highness the Prince that the purpose of the extradition request is to try this criminal or punish him for a political crime...

**Law on the Extradition of Fugitives of 1926, applicable in the Gaza Strip**

**Article 7:** ...A fugitive criminal shall not be extradited if the crime for which his extradition is requested is of a political nature or if he proves to the court before which he is brought with a memorandum of opposition to imprisonment or proves to the High Commissioner that the purpose of the extradition request is to try and punish him for a crime of a political nature...

**(b) Observations on the implementation of the article**

390- The extradition laws in force only cover political crimes as grounds for refusal of an extradition request. Likewise, Art. 41 of Riyadh Agreement only mentions crimes of a political nature. Therefore, it was recommended to clarify in the legislation that extradition will be refused if Palestine has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions.

**Article 44 - Extradition**

**Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 16 of Article 44**

391- Palestine indicated that it is compliant with this provision. The cases of non-extradition stipulated in Article 6 of the Law on Extradition of 1927 in force in the West Bank and Article 7 of the Law on Extradition of 1926 in force in Gaza Strip do not include a refusal of extradition based on the fact that the offence involves fiscal matters.

**(b) Observations on the implementation of the article**

392- The fact that the offence involves fiscal matters is not a ground for refusal.

393- It was concluded that Palestine is in compliance with this provision of the Convention.

## **Article 44 - Extradition**

### **Paragraph 17**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

#### **(a) Summary of information relevant to reviewing the implementation of paragraph 17 of Article 44**

394- Palestine indicated that it is compliant with this provision. There is no provision in the Palestinian legal system that prevents consultation as appropriate with the State requesting extradition and giving it the opportunity to present its views and provide supporting information. Moreover, this matter is implemented in practice through written and oral measures by the Minister of Justice.

#### **(b) Observations on the implementation of the article**

395- While there is nothing in the legislation, the obligation to consult flows from the direct application of Convention.

## **Article 44 - Extradition**

### **Paragraph 18**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

#### **(a) Summary of information relevant to reviewing the implementation of paragraph 18 of Article 44**

396- Palestine indicated that it is compliant with this provision as it is currently seeking to enter into bilateral and multilateral agreements and arrangements for the implementation of extradition and to enhance its effectiveness. It should be noted that it acceded to the Riyadh Arab Convention on Judicial Cooperation, the Arab Convention against Corruption, the Arab Anti-Money Laundering Convention, and others.

#### **(b) Observations on the implementation of the article**

397- As stated in the introduction, the special situation of Palestine has prevented the conclusion of bilateral treaties on the matter so far. Due to its limited sovereignty, Palestine is currently not in a position to actively seek to enter into bilateral treaties.

## **Article 45 - Transfer of Sentenced Person**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

**(a) Summary of information relating to the review of implementation of Article 45**

398- Palestine indicated that its special situation has prevented the conclusion of bilateral treaties so far.

399- Palestine also noted that it has acceded to a number of multilateral agreements which deal with this matter, including the Riyadh Arab Agreement for Judicial Cooperation, the Arab Convention against Corruption and the Arab Convention to Combat Money Laundering.

**(b) Observations on the implementation of the article**

400- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraphs 1 and 2**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

**(a) Summary of information relating to the review of implementation of paragraphs 1 and 2 of Article 46**

401- With respect to paragraph 1, Palestine indicated that it provides legal assistance in investigations, prosecutions, and judicial proceedings relating to the offences covered by this Convention, especially that Palestine upholds the principle of international cooperation in the fight against crime. Palestine acceded to several relevant conventions, including the Arab Convention against Corruption in 2010.

402- Palestine also indicated that it is compliant with paragraph 2 of Article 46. The legal system on legal assistance does not differentiate between the crimes for which a legal person may be called to account and others with respect to providing assistance to the fullest extent possible. Besides, Palestinian law has defined the principle of criminal liability of the legal person as explained in the answer on Article 26 of the Convention.

**(b) Observations on the implementation of the article**

403- There is no domestic legislation that governs mutual legal assistance (MLA) in Palestine. Therefore, apart from UNCAC and the Arab Convention against Corruption, the Riyadh Agreement is the only written legal basis for mutual legal cooperation. However, Palestine does not require a treaty to render MLA, and the principle of reciprocity is also applied as customary law. An MLA request to Jordan was sent on the basis of the Riyadh Agreement and UNCAC. This was noted as a good practice by the reviewers.

404- Palestine handles few incoming MLA requests per year (1-3). MLA requests have been received from Jordan, the US and Russia and were sent to Egypt and Jordan. So far, Palestine has sent out a total of (5-6) MLA requests.

405- Palestine requested technical assistance on MLA request drafting generally and in particular with regard to asset recovery.

## **Article 46 - Mutual Legal Assistance**

### **Sub-paragraphs 3 (a) to 3 (i)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

### **(a) Summary of information relating to the review of implementation of paragraphs 3 (a) to 3 (i) of Article 46**

406- Palestine referred to its previous answer relating to the review of the implementation of paragraph 1. It noted that nothing in the legal system in Palestine prevents the provision of all forms of mutual legal assistance. Palestine is also seeking to reaffirm its commitment to this principle through the text of Article 45 of the draft law on international judicial cooperation in criminal matters.

#### **Draft Law on International Judicial Cooperation in Criminal Matters**

##### **Article 45:**

- 1- If a foreign jurisdiction submits a request for assistance in taking a legal action in the State concerning a crime punishable in the requesting State and it is within the jurisdiction of its judicial

power, the competent court may provide the requested assistance if it is necessary for judicial proceedings in criminal proceedings pending before the foreign judicial body.

- 2- Judicial cooperation includes, in particular:
- a. Identification of persons and their whereabouts;
  - b. Hearing persons;
  - c. Presenting detained persons to testify before foreign judicial authorities;
  - d. Notification of judicial documents;
  - e. Seizure of property and search of persons and places;
  - f. Provision of information and evidence; and
  - g. Provision of documents and original or certified copies of records.

**(b) Observations on the implementation of the article**

407- During the joint meeting, Palestine confirmed that all measures that could be taken nationally can also be used in fulfilling MLA requests. As far as access to bank records is concerned a court decision is needed.

408- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Sub-paragraphs 3 (j) and 3 (k)**

3. *Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

*(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of paragraphs 3(j) to 3(k) of article 46**

409- Palestine referred to its previous answer, in addition to the following provisions:

**Bill on International Judicial Cooperation in Criminal Matters**

**Article 42:**

The Attorney General or his authorized representative may request the competent authorities to communicate with the authorities of a foreign country in order to recover from a convicted person property obtained from a crime committed by such person, or used to commit such a crime or that are proceeds of crime or that can be used as evidence of a crime.

**(b) Observations on the implementation of the article**

410- During the joint meeting, Palestine confirmed that all measures that could be taken nationally can also be used in fulfilling MLA requests. As far as access to bank records is concerned a court decision is needed.

411- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraph 4**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

**(a) Summary of information relating to the review of implementation of paragraph 4 of Article 46**

412- Palestine noted that the provision contained in the above paragraph is included in applicable law in Palestine, taking into account Palestine's ratification and publication of the United Nations Convention against Corruption, especially that nothing in the legal system in Palestine prevents the automatic transmission of information.

**Article 45 AML Decree Law**

The Unit may exchange information with counterpart units based on agreements signed by the Palestine Liberation Organization in this regard, insofar as such agreements do not conflict with the laws in effect in the territories of the National Authority.

**(b) Observations on the implementation of the article**

413- While spontaneous information sharing is possible in principle, it is not practiced in formal MLA. However, in FIU to FIU and police to police relations, it is applied frequently, e.g. on the basis of Art. 45 of the AML Decree Law.

**Article 46 - Mutual Legal Assistance**

**Paragraph 5**

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

**(a) Summary of information relating to the review of implementation of paragraph 5 of Article 46**

414- Palestine indicated that it is compliant with this provision as it is committed to the provisions of the United Nations Convention against Corruption, which has the force of law in Palestine. The provision under review is implemented if such information comes from the investigation or the results thereof under Article 59 of the Palestinian Criminal Procedure Code, which states that "*The procedures of the investigation and the results thereof are among the secrets that may not be divulged, and their divulgence is deemed a crime punishable with law.*"

**(b) Observations on the implementation of the article**

415- It was noted that with regard to the handling of information, Palestine applies Article 59 of the Criminal Procedure Code which provides for confidential treatment. The confidentiality of the information provided will not prevent Palestine from disclosing it when such information is exculpatory for an accused person.

416- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraph 8**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

**(a) Summary of information relating to the review of implementation of paragraph 8 of Article 46**

417- Palestine noted that bank secrecy is not in itself a reason to refuse to provide mutual legal assistance, especially as Palestinian law does not prohibit the lifting of bank secrecy in cases prescribed by law. Palestine also referred to Article 46 of Palestinian Decree Law No. 9 of 2007 on combating money laundering, which states that "*Pursuant to the provisions of this law, bank secrecy provisions shall not prevent the implementation of the provisions of this law. Bank secrecy provisions may not be used as a pretext to refrain from disclosing or presenting any information on the combating of money laundering...*"

**(b) Observations on the implementation of the article**

418- Bank secrecy is not a ground for refusing to render MLA. It was noted that a court order is needed to lift bank secrecy. However, the courts will grant that order on the basis of the MLA request.

419- It was concluded that Palestine is in compliance with this provision of the Convention.

## Article 46 - Mutual Legal Assistance

### Paragraph 9

(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

### (a) Summary of information relating to the review of implementation of paragraph 9 of Article 46

420- Palestine indicated that it takes into account this article in accordance with the United Nations Convention against Corruption, which has the force of law in Palestine, especially as nothing in the legal system in Palestine prevents from providing assistance in accordance with the provisions of the paragraph under review

### (b) Observations on the implementation of the article

421- During the joint meeting, Palestine clarified that regarding MLA requests, dual criminality is not required. Requests are not refused on the sole ground that they involve matters of a *de minimis* nature.

422- It was concluded that Palestine is in compliance with this provision of the Convention.

## Article 46 - Mutual Legal Assistance

### Paragraphs 10, 11, and 12

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of paragraphs 10,11 and 12 of Article 46**

423- Palestine indicated that it is compliant with these paragraphs as it is committed to the provisions of the United Nations Convention against Corruption, especially that nothing in the legal system in Palestine prevents it from providing assistance in accordance with the paragraphs under review.

**(b) Observations on the implementation of the article**

424- In the absence of internal MLA legislation, the transfer of a person being detained or serving a sentence for the purpose of testimony is possible on the basis of the Convention, which is directly applicable. Safe conduct is granted on the same basis.

425- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraph 13**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This*

*requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 13 of Article 46**

426- Palestine noted that on 6 June 2014, the Ministry of Justice was designated as the central authority for receiving requests. The Secretary-General was informed of this designation by letter No. CN330.2014.TREATIES-XVIII.14. A specialized unit has recently been set up at the Ministry of Justice to receive requests for assistance. Requests need not be transmitted through diplomatic channels. Some requests are actually received through diplomatic channels.

**(b) Observations on the implementation of the article**

427- In the absence of internal legislation on the procedure for treating MLA requests, the competent authorities have developed procedures which are only partly laid down in writing.

428- If an incoming requests is addresseded to the Ministry of Foreign Affairs (MoFA), the MoFA will forward it to the Ministry of Justice (MoJ), which in turn will send it to the Attorney General (AG). However, requests can also be sent directly to the central authority (the MoJ) or the AG.

429- For outgoing MLA request, Palestine follows the procedure specified by the receiving country.

430- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraph 14**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 14 of Article 46**

431- Palestine noted that all requests for legal assistance must be submitted in writing. The State of Palestine uses both the Arabic and English languages in requests for legal assistance, despite the absence of legislation regulating international cooperation. The

Secretary General has been informed that both Arabic and English are acceptable with respect to requests for legal assistance by letter No. CN330.2014. TREATIES-XVIII.14.

432- Palestine added that there is no provision for the possibility of submitting requests orally in urgent cases, provided that they are confirmed in writing later.

**(b) Observations on the implementation of the article**

433- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraphs 15 and 16**

*15. A request for mutual legal assistance shall contain:*

*(a) The identity of the authority making the request;*

*(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*

*(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*

*(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*

*(e) Where possible, the identity, location and nationality of any person concerned; and*

*(f) The purpose for which the evidence, information or action is sought.*

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relating to the review of implementation of paragraphs 15 and 16 of Article 46**

434- Palestine indicated that it is compliant with this provision despite the absence of a law that regulates the provision of mutual legal assistance, pursuant to the United Nations Convention against Corruption and relevant multilateral agreements, particularly the Riyadh Agreement and the Arab Convention against Corruption (Article 20). Applicable measures are taken in accordance with the provisions of these conventions, which do not depart from the information contained in paragraph 15. Whereas this Convention includes the provisions on requests for mutual legal assistance among Arab States that have acceded to it, the State of Palestine provides the requested information in accordance with the provisions of this article concerning requests to Arab States, and its implementation extends to include all mutual legal assistance requests even if they are rare.

435- As for additional information, they are determined according to the papers and documents that are submitted and the assessment of their adequacy. Nothing prevents

Palestine from requesting additional information when they seem necessary to fulfil the request or when they can facilitate such implementation.

**(b) Observations on the implementation of the article**

436- It was confirmed that for outgoing MLA requests, Palestine follows the procedure specified by the receiving country.

437- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

**(a) Summary of information relating to the review of implementation of paragraph 17 of Article 46**

438- Palestine indicated that it is compliant with this provision despite the absence of a law that organizes the provisions of mutual legal assistance, pursuant to the provisions of the United Nations Convention against Corruption and relevant multilateral agreements, particularly the Riyadh Convention and the Arab Anti-Corruption Convention.

**Riyadh Arab Agreement for Judicial Cooperation**

**Article 18:** Method of carrying out rogatory commissions

A rogatory commission shall be carried out in accordance with the legal procedures set by the law of the requested party. Should the requesting contracting party wish, by virtue of an explicit demand to this effect, that the commission be carried out in a specific manner, the contracting party so requested shall respond to such wish so long as it does not contradict its laws or regulations. Should the requesting party state its wish to be informed in a timely fashion of the date and place of carrying out the commission so that the parties concerned or their representatives could be present, this shall be done within the limits permissible by the laws of the requested party.

**Arab Anti-Corruption Convention**

**Article 20-8** The request shall be acted upon in accordance with the domestic legislation of the requested State Party as well as in accordance with the procedures specified in the request, wherever possible, as long as this does not conflict with the domestic legislation of the requested State Party.

**(b) Observations on the implementation of the article**

439- Palestine fulfils requests in accordance with the procedure specified in the request unless such procedure conflicts with national law.

440- It was concluded that Palestine is in compliance with this provision of the Convention.

## **Article 46 - Mutual Legal Assistance**

### **Paragraph 18**

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

### **(a) Summary of information relevant to reviewing the implementation of paragraph 18 of Article 46**

441- Palestine indicated that the legislation in force in Palestine does not currently allow for the hearing of witnesses by videoconference, because this is contrary to the Criminal Procedure Code No. 3 of 2001, which requires the presence of a witness, in Articles 229 and 231 thereof. However, nothing prevents a person present in Palestine to provide testimony before a foreign court via videoconferencing, if the foreign court proceedings so permits.

#### **Criminal Procedure Code No. 3 of 2001**

##### **Article 229:**

1. The court may decide to have the testimony given under oath in the preliminary investigation read out if the witness cannot be brought before it for any reason, or if the accused or his attorney so accept.
2. If the accused cannot be brought before the court because of his disability or illness, the court may move to his location to hear his testimony.
3. If the witness referred to in the preceding paragraph is domiciled within the jurisdictional limits of another court, the competent court issues a rogatory commission to such other court to hear his testimony.
4. If the court determines that the excuse mentioned in the two preceding paragraphs is false, it may refer the witness to the Public Prosecution for the required legal procedures.

**Article 231:** If the witness is properly notified and does not appear at the designated time to testify, the court issues a writ of summons or attachment against him and may sentence him to a fine of fifteen (15) Jordanian dinars or their equivalent in legal tender.

### **(b) Observations on the implementation of the article**

442- The use of videoconference for witness testimony is generally not allowed in Palestine since it is considered to be contrary to Art. 229 of the Criminal Procedure Code.

443- However, only the use as evidence in court is prohibited. Therefore, the use of videoconferencing is possible if the MLA request asks for it and the person concerned consents to it. During the joint meeting, it was confirmed that this would also be possible in practice because some prosecution offices are equipped with the necessary facilities.

444- It was concluded that Palestine is in compliance with this provision of the Convention.

## **Article 46 - Mutual Legal Assistance**

### **Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

#### **(a) Summary of information relevant to reviewing the implementation of paragraph 19 of Article 46**

445- Palestine indicated that it is compliant with this provision, pursuant to the provisions of the United Nations Convention against Corruption and relevant multilateral agreements, especially the Arab Convention against Corruption (Article 20-9).

#### **(b) Observations on the implementation of the article**

446- During the joint meeting it was confirmed that the rule of specialty is observed in practice.

447- It was concluded that Palestine is in compliance with this provision of the Convention.

## **Article 46 - Mutual Legal Assistance**

### **Paragraph 20**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

#### **(a) Summary of information relating to the review of implementation of paragraph 20 of Article 46**

448- Palestine indicated that it is compliant with this provision, pursuant to the provisions of the United Nations Convention against Corruption and relevant multilateral agreements, especially the Arab Anti-Corruption Convention (Article 20-10). Besides, nothing in the legal system in Palestine prevents from complying with this rule.

449- Palestine also noted that the draft law on international judicial cooperation in criminal matters stipulates in Article 50 thereof that it is permissible to maintain the confidentiality of requests from foreign judicial authorities or the information contained therein.

### **Bill on International Judicial Cooperation in Criminal Matters**

**Article 50:** It is possible, at the request of a foreign judicial authority, to maintain the confidentiality of a request or the information it contains.

#### **(b) Observations on the implementation of the article**

450- Requests can be treated confidentially.

451- It was concluded that Palestine is in compliance with this provision of the Convention.

### **Article 46 - Mutual Legal Assistance**

#### **Paragraph 21**

*21. Mutual legal assistance may be refused:*

*(a) If the request is not made in conformity with the provisions of this article;*

*(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

*(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

*(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

#### **(a) Summary of information relevant to reviewing the implementation of paragraph 21 of Article 46**

452- Palestine pointed out that refusal of the request is generally decided according to the terms of applicable treaties, or if the fulfilment of the request is inconsistent with public order or sovereignty, or because there is not commitment to implementation. It also referred to the following text:

#### **Riyadh Arab Agreement for Judicial Cooperation**

**Article 17:** (Rejection of impracticability of carrying out requests for a rogatory commission) The party requested to conduct such a rogatory commission is obliged to do so in accordance with the provisions of the present agreement, and shall not refuse to carry out such requests except in the following cases: (a) If such implementation is not within the competence of the judicial authority requested to do so. (b) If such implementation would prejudice the sovereignty of the contracting party requested, or public order in its territory. (c) If the request concerns a crime considered by the contracting party requested to be a crime of a political nature. In the case of refusal to carry out the request or the impracticability thereof, the requested party shall promptly notify the requesting party to this effect, return the relevant papers, and set forth the reasons behind the refusal or impracticability of carrying out the request.

#### **(b) Observations on the implementation of the article**

453- In the absence of national MLA legislation, Palestine would only refuse MLA requests on the basis of Art. 20(11) of the Arab Anti-Corruption Convention or Art. 46(21) UNCAC. Palestine indicated that no MLA request has been refused so far.

454- It was concluded that Palestine is in compliance with this provision of the Convention.

## **Article 46 - Mutual Legal Assistance**

### **Paragraph 22**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

#### **(a) Summary of information relevant to reviewing the implementation of paragraph 22 of Article 46**

455- Palestine indicated that it is compliant with this provision, pursuant to the provisions of the United Nations Convention against Corruption and relevant multilateral agreements, especially that no provision in Palestinian law prevents the fulfilment of requests for mutual legal assistance simply because they relate to an offence on financial matters.

456- Concerning money laundering, article 46 of the AML Decree Law No. 9 of 2007 it provides that “[p]ursuant to the provisions of this law, bank secrecy provisions shall not prevent the implementation of the provisions of this law. Bank secrecy provisions may not be used as a pretext to refrain from disclosing or presenting any information on the combating of money laundering.”

#### **(b) Observations on the implementation of the article**

457- Palestine does not refuse mutual legal cooperation on grounds of bank secrecy.

458- It was concluded that Palestine is in compliance with this provision of the Convention.

## **Article 46 - Mutual Legal Assistance**

### **Paragraph 23**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

#### **(a) Summary of information relevant to reviewing the implementation of paragraph 23 of Article 46**

459- Palestine indicated that it is compliant with this provision. The reasons for refusal of assistance are explained despite the absence of legal provisions governing mutual

legal assistance, in accordance with the provisions of the United Nations Convention against Corruption and relevant multilateral agreements. It also referred to the following provisions:

**Riyadh Arab Agreement for Judicial Cooperation**

**Article 17** - Rejection of impracticability of carrying out requests for a rogatory commission

The party requested to conduct such a rogatory commission is obliged to do so in accordance with the provisions of the present agreement, and shall not refuse to carry out such requests except in the following cases:

[...]

In the case of refusal to carry out the request or the impracticability thereof, the requested party shall promptly notify the requesting party to this effect, return the relevant papers, and set forth the reasons behind the refusal or impracticability of carrying out the request.

**(b) Observations on the implementation of the article**

460- No MLA request has been refused so far. However, in direct application of the Convention, Palestine would provide reasons for doing so, if it ever were to refuse a request.

461- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 24 of Article 46**

462- Palestine indicated that it is compliant with this provision. These measures are implemented in keeping with the provisions of multilateral agreements and conventions, including the United Nations Convention against Corruption. It also referred to the following provisions:

**Riyadh Arab Agreement for Judicial Cooperation**

**Article 18:** Method of carrying out rogatory commissions: A rogatory commission shall be carried out in accordance with the legal procedures set by the law of the requested party. Should the requesting contracting party wish, by virtue of an explicit demand to this effect, that the commission be carried out in a specific manner, the contracting party so requested shall respond to such wish so long as it does not contradict its laws or regulations. Should the requesting party state its wish to be informed in a timely fashion of the date and place of carrying out the commission so that the parties concerned or their

representatives could be present, this shall be done within the limits permissible by the laws of the requested party.

463- Palestine also made it clear that there is no time frame specified by law between the date of receipt of requests for mutual legal assistance and the date of response to such request. The time frame for responding to the request for legal assistance depends on the type of request and the adequacy of required documents.

**(b) Observations on the implementation of the article**

464- During the joint meeting, Palestine indicated that the average length of response to incoming MLA requests was less than one month. Indeed the Palestinian authorities are keen on encouraging other countries to send requests to Palestine.

465- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraph 25**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 25 of Article 46**

466- Palestine indicated that it is compliant with this provision, pursuant to the provisions of the United Nations Convention against Corruption and relevant multilateral conventions, in particular paragraph 15 of Article 20 of the Arab Anti-Corruption Convention.

**(b) Observations on the implementation of the article**

467- Assistance may be postponed by Palestine on the ground that it interferes with an ongoing investigation.

468- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraph 26**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 26 of Article 46**

469- Palestine indicated that it is compliant with this provision, pursuant to the provisions of the United Nations Convention against Corruption and relevant multilateral agreements. Furthermore, in actual practice, the above provision is compliant with, because there is no legislative provision to prevent or preclude its implementation.

**(b) Observations on the implementation of the article**

470- It was noted that so far, no request has been refused yet. However, in direct application of the Convention, if Palestine were to refuse a request, prior consultations would be held.

471- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraph 27**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 27 of Article 46**

472- Palestine indicated that it is compliant with this provision, pursuant to the provisions of the United Nations Convention against Corruption and relevant multilateral agreements. Palestine referred to the following provisions:

**Riyadh Arab Agreement for Judicial Cooperation**

**Article 22: Immunity of witnesses and experts**

Any witnesses or experts - regardless of their nationality - served notice to attend in the territory of any contracting party, and doing so voluntarily for this purpose before the judicial bodies of the requesting party, shall enjoy immunity of penal action against them, or arrest, or imprisonment on the basis of previous actions in their part, or in the execution of convictions made prior to their entry to the territory of the requesting party. The body serving a witness or an expert with a subpoena ad testificandum must inform them in writing of such immunity before their first appearance. The immunity of the witness or expert shall lapse after 30 days of the date on which the judicial bodies of the requesting party dispense

with his presence in the said party's territory - provided that no reasons beyond the person's control arise to prevent his departure - or if he voluntarily returns to such territory after having departed.

**(b) Observations on the implementation of the article**

473- Safe conduct can be granted in practice.

474- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 28 of Article 46**

475- Palestine indicated that it is compliant with this provision, pursuant to the provisions of the United Nations Convention against Corruption and relevant multilateral agreements. It also referred to the following provisions:

**Riyadh Arab Agreement for Judicial Cooperation**

**Article 21:** Fees or costs of carrying out a rogatory commission

No right to charge any fees or costs shall ensue from implementing a rogatory commission except for the fees of experts, if justified, and the costs of witnesses, which shall be borne by the requesting party, and a statement of which shall be dispatched with the dossier. The requested party shall be entitled to receive in accordance with its laws the charges set for papers presented in the course of carrying out the commission.

**(b) Observations on the implementation of the article**

476- During the joint meeting it was confirmed that in practice, Palestine has always borne the costs of complying with MLA requests.

477- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraph 29**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 29 of Article 46**

478- Palestine indicated that it is compliant with this provision, pursuant to the provisions of the United Nations Convention against Corruption and relevant multilateral agreements. Besides, there is no legal provision to prevent or impede the enforcement of this provision.

479- Palestine also referred to the following text:

**Riyadh Arab Agreement for Judicial Cooperation**

**Article 5:** Article 5: Exchange of criminal records.

The Ministry of Justice in each contracting party shall dispatch to the Ministry of Justice in any other contracting party the latest data on final legal judgements pronounced against its citizens or persons born or residing within its territory and entered in the criminal records (legal register) in accordance with the local legislation of the sender contracting party. In the case of a charge being made by a judiciary body or other bodies of inquiry or prosecution in any contracting party, such bodies may obtain directly from the competent authorities the criminal record of the person charged. In the absence of a charge, the judiciary or administrative bodies of any of the contracting parties may obtain from the competent authorities the criminal record in the possession of the other contracting party, subject to the conditions and limits contained in the legislation of the said party.

**(b) Observations on the implementation of the article**

480- 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 to respect confidentiality.

481- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 46 - Mutual Legal Assistance**

**Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 30 of Article 46**

482- Palestine indicated that while its special situation has prevented the conclusion of bilateral treaties so far, it had acceded to a number of multilateral agreements on MLA, including the Arab Anti-Corruption Convention, the Arab Convention on Combating Money Laundering and Terrorist Financing, and the Riyadh Arab Agreement on Judicial Cooperation. It is also seeking to conclude bilateral agreements in this regard.

**(b) Observations on the implementation of the article**

483- During the joint meeting, Palestine added that it has a cooperation with Europol, Eurojust and the EU Anti-Fraud Office (OLAF). The PACC has concluded a cooperation agreement with OLAF.

484- It was concluded that Palestine is in compliance with this provision of the Convention.

**Article 47 - Transfer of Criminal Proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

**(a) Summary of information relevant to reviewing the implementation of Article 47**

485- Palestine indicated that this matter has not been considered yet.

**(b) Observations on the implementation of the article**

486- It was recommended that Palestine consider the possibility of transferring proceedings for the prosecution of a Convention offence in cases where such transfer is considered to be in the interests of the proper administration of justice.

**Article 48 - Law Enforcement Cooperation**

**Paragraph 1**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

(i) *The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

(ii) *The movement of proceeds of crime or property derived from the commission of such offences;*

(iii) *The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

(c) *To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

(d) *To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

(e) *To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

(f) *To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of paragraph 1 of Article 48**

487- Palestine indicated that the International Cooperation Unit at the Ministry of the Interior includes an Interpol Division, which cooperates actively with law enforcement institutions in neighbouring Arab and other countries. Cooperation with Arab countries is based on relevant Arab conventions and the principle of reciprocity. With non-Arab countries, cooperation is based on the principle of reciprocity.

488- The Financial Follow-Up Unit, which is the Palestine FIU, cooperates with its counterpart units in other countries on the basis of Article 45 of the Anti-Money Laundering Law, which states, "*The Unit may exchange information with counterpart units on the basis of agreements signed by the Palestine Liberation Organization in this regard, insofar as such agreements do not conflict with the laws in effect in the territories of the National Authority.*" In this area, the Financial Follow-Up Unit signed memoranda of understanding with the Anti Money Laundering and Counter Terrorist Financing Unit in the Hashemite Kingdom of Jordan, and is in the process of signing a memorandum of understanding with its counterpart in Russia. It cooperates on the basis of the principle of reciprocity with many counterpart units, for example those of the Arab Republic of Egypt, Cyprus, and Panama.

489- Palestine added that no provision in its domestic law prevents the provision of necessary items or quantities of substances for analytical or investigative purposes in cases that require this, and the exchange information, when appropriate, with other States Parties on specific means and methods used in the commission of offences covered by this Convention, taking into account the principle of reciprocity.

**(b) Observations on the implementation of the article**

490- During the joint meeting, Palestine indicated that it considers the Convention as a basis for mutual law enforcement cooperation.

491- The PACC has cooperation only with other Arab ACCs (e.g. Jordan) and is a member of the network of Arab ACCs. Exchange of information is practiced with Jordan on the basis of an oral understanding. No MoUs with other ACCs have been signed so far. However, there are draft MoUs with Malaysia and Morocco.

492- The FIU has concluded MoUs with its Jordanian and Russian counterparts. It is not a member of the Egmont Group of FIUs. As means of communication, it currently uses encrypted e-mails. It also uses GoAML. Palestine has recently joined the Financial Action Task Force for the Middle East and North Africa (MENAFATF).

493- Palestine is an observer to INTERPOL. There is a national INTERPOL focal point, but he has no access yet to the I-24 secure network. A vote on its membership in Interpol will take place on 3 November 2015.

494- Liaison officers have not yet been used.

495- It was recommended that Palestine should endeavour to establish and enhance channels of communication with foreign competent law enforcement authorities, agencies and services.

## **Article 48 - Law Enforcement Cooperation**

### **Paragraph 2**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

### **(a) Summary of information relevant to reviewing the implementation of paragraph 2 of Article 48**

496- Palestine referred to its previous answer. It also indicated that it considers this convention as a basis for mutual cooperation in the field of law enforcement with regard to the offences covered by this Convention. Besides, it considers the Arab Anti-Corruption Convention as the basis for cooperation. In addition, Article 2 of the draft law on international judicial cooperation in criminal matters stipulates that, without prejudice to the provisions of the conventions to which it is a party, and the condition of reciprocity, the State's judicial authorities cooperate with foreign judicial authorities in criminal matters in accordance with the law.

### **(b) Observations on the implementation of the article**

497- It was concluded that Palestine is in compliance with this provision of the Convention.

## **Article 48 - Law Enforcement Cooperation**

### **Paragraph 3**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

#### **(a) Summary of information relevant to reviewing the implementation of paragraph 3 of Article 48**

498- Palestine indicated that it attaches importance to the fight against crime committed with the use of modern technology. A unit dealing with this type of crime has been set up at the Office of the Attorney General; it is called the Telecommunications Unit. Besides, the police has a unit that monitors e-crime.

#### **(b) Observations on the implementation of the article**

499- It was concluded that Palestine is in compliance with this provision of the Convention.

## **Article 49 - Joint Investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

#### **(a) Summary of information relevant to reviewing the implementation of Article 49**

500- Palestine indicated that it is compliant with this provision. Nothing prevents the conclusion of such agreements. It referred, for example, to the cooperation agreement signed by the Anti-Corruption Commission with the EU Anti-Fraud Office (OLAF), whose Article 2 provides for "*the exchange of information, technical assistance, joint or parallel investigations*" among areas of cooperation.

#### **(b) Observations on the implementation of the article**

501- Palestine could establish joint investigations in the framework of UNCAC, the United Nations Conventions on Transnational Organized Crimes (UNTOC), as well as on a case-by-case basis (e.g. with OLAF).

502- It was concluded that Palestine is in compliance with this provision of the Convention.

## **Article 50 - Special Investigative Techniques**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

### **(a) Summary of information relevant to reviewing the implementation of Article 50**

503- Palestine indicated that it is compliant with this provision. Nothing prevents the use of the controlled delivery and special investigative techniques. It also referred to electronic surveillance. Besides, it mentioned that there is an e-police unit at the Attorney General's Office that uses special electronic monitoring investigative techniques. It added that it uses electronic surveillance. Controlled delivery is not governed by law, but nothing prevents its use. It should be mentioned that the draft law on international judicial cooperation in criminal matters addressed in Article 43 thereof controlled delivery, as it reads:

1. Without prejudice to the rules of jurisdiction established in the law, the Attorney General may authorize the transit of items whose possession is considered a crime or those obtained from a crime or were used as a tool in the commission of a crime in accordance with the provisions of the law inside or outside the State without seizing them, or replacing them in whole or in part under the control of competent authorities at the request of a foreign judicial authority, according to agreed terms if this procedure can serve to identify the destination or capture the perpetrator.

2. The order referred to in the preceding paragraph shall not be issued if its implementation would harm State sovereignty, security, or public order, morals, or the environment.

504- The Anti-Money Laundering Law also includes a definition of controlled delivery in Article 1 thereof as follows:

Method enabling verification and substantiation with all means of proof of smuggling crimes. This method need not be based on the seizure of goods within or outside the scope of Customs. It allows for verification of crimes concerning the smuggling of goods when customs declarations were submitted

and the goods were examined and cleared without any remark or reservation by the department indicating a smuggling crime.

505- Palestine also indicated that nothing prevents the conclusion, when necessary, of suitable bilateral or multilateral agreements or arrangements for the use of special investigative techniques in the context of international cooperation. It referred, for example, to the cooperation agreement signed by the Anti-Corruption Commission with the EU Anti-Fraud Office (OLAF). It should be noted that this agreement does not explicitly provide for the possibility of using special investigative techniques, but provides for cooperation in the exchange of information, operational assistance, joint or parallel investigations, and technical assistance, which includes the exchange of necessary technical information with regard to investigative tools and methods of processing and analysis of investigation data, and equipment used for information technology, knowledge and expertise for investigation purposes.

506- Palestine also pointed out that no Palestinian law prevents, in the absence of an agreement, the adoption of decisions regarding the use of such special investigative techniques at the international level, depending on the situation. It added that, so far, no similar decisions were issued and no agreements were concluded in relation such measures.

**(b) Observations on the implementation of the article**

507- During the joint meeting it was added that Art. 51 and 51 of the Criminal Procedure Code are the legal basis for special investigative techniques. Evidence obtained through the use of such techniques is admissible in court because in principle, any means of proof is acceptable. However, the procedural requirements have to be fulfilled (e.g. a court order for electronic surveillance or controlled delivery). Moreover, the evidentiary value of such evidence on its own would be very limited; it is necessary for a police officer to testify on what he witnessed through the use of such techniques.

508- It was concluded that Palestine is in compliance with this provision of the Convention.