

A Report on the Challenges States Encountered, and the Best Practices Implemented in Integrating Human Rights within their National Strategy and Policies in Anti-Corruption- Palestinian Experience

Report Summary:

The Experts in the field of human rights and corruption emphasize on the fact that there are common principles for objectives outcomes and aspirations of both human rights actions and anti-corruption objectives. This relationship prompts to deepen the work and creating a balanced environment between human rights and anti-corruption actions, for example: principle of transparency, equality, and non-discrimination. Both principles of transparency and accountability are considered of the main principles for the development method that focuses on human rights. As well as they are essential factors for the success of anti-corruption strategies.

This report shall focus on the best practices implemented by the state of Palestine in integrating human rights within the anti-corruption policies, legislations, and strategies. It shall shed the light on the challenges Palestine encounters in enhancing human rights and protecting those rights from the violations in accordance with the anti-corruption policies and legislations as the following topics:

The First Topic

The Best Practices

1- The National Legislations and Practices:

a. The Palestinian Basic Law:

Despite the Palestinian experience novelty, the attention to the relation between corruption and human right was taken into consideration since the formulation of the Palestinian Basic Law that is in pursuant with the constitution and any domestic legislation should not contradict. The constitution is the guarantor of the human rights and public freedoms. The second title of the law includes articles (9-30) it is a complete system and a regulatory for human rights protection. One of the most prominent provisions of the law is the right to education, health care, and fair trial. The law has emphasized on the criminal penalty and under the legal principal "no crime or penalty without legal provision" also includes the necessity of taking legal procedures (legal order) in house search or surveillance, emphasizing on the fact that each citizen has the right to work plus permitting regulation of syndicates in accordance with the law, in addition to the right of assuming positions in public service, principle of equal opportunities, and freedom of transportation. The article 31 of the law stipulates to establish the independent commission of human rights, and assign the private commission law the issue of

identifying its functions and jurisdictions. After reviewing part of the regulating articles for human rights within the Basic Palestinian Law, there is an intersection between violating those rights and the act of corruption. This affirms on the relationship between human rights violations and corruption crimes in which it requires from national legislations and strategies for anti-corruption to enhance its provisions and plans in combating human rights violations resulted from corruption crimes.

b. The Human Rights Legislations:

The second title of the Palestinian Basic Law includes provisions that guarantee human rights and public freedoms (articles 9-39) such as the right of equality and non-discrimination, fair trial, right to education, to work, and health care.

Dozens of laws and provisions are detailing and guaranteeing those laws, for example the criminal code in Palestinian territories that criminalizes the murder of human or when individual's life may be violated or restriction of liberty. Plus the code of criminal procedures identifies many procedures and controls that should be followed in fair trials. The labor code regulates the right to work, the relationship between the employer and the employee. Many other ancient and modern laws came to guarantee the rights and freedoms. They are considered as complementing the legal system in protecting the human rights to live in a legal, sound, free environment of violations.

Those laws have not clarified the links between human rights and corruption unequivocally and frankly even it criminalized or overturned acts affect human rights. Also it clearly criminalized acts considered in accordance with the law as corruption in which they affect human rights directly such as penalty code that criminalized abuse of power, abuse of influence, and the public officials' persecution for citizens.

c. Anti-Corruption Legislations:

The Palestinian legal system contains various legislations and provisions mentioned in number of laws in the topic of anti-corruption in public sector.

The anti-corruption law no.1 for the year 2005

The state of Palestine endorsed in 2005 the illicit profit law and amended it in 2010, as Palestine amended its name to be tailored with UNCAC and it becomes Anti-Corruption Law. The following is included within the law:

- To define the term corruption.
- To identify the included categories in its provisions, in which the corruption may be caused by.
- To establish anti-corruption commission, setting its jurisdictions and all the related details on appointing its commissioner and his jurisdictions.
- To complete all the financial disclosure statements of subjected individuals to the law.
- To stipulate that the corruption cases should not be applicable to statutory limitation.
- The commission was tasked of the jurisdiction to request any files, data, papers, documents, information, have access to, or obtain copies of the mentioned form the bodies in which it has and all of this is considered confidential.

Despite the mentioned law was endorsed for the purpose of combating corruption and enhancing integrity and transparency, the legislator didn't demonstrate the relationship between human rights and corruption fully, in the procedures of search and investigation considering that there are other laws implemented and at the same time formulate the basis of legislative respect for human rights in Palestine. Human rights safeguarding has been manifested through setting preventive measures for anti-corruption that are stipulated by the mentioned law in a manner enhance justice, equality, and equal opportunities.

2- The National Plans and Strategies :

- a. Combating corruption in the strategy of the independent commission of human rights (the strategic plan 2014-2018).

PACC indicated in its strategic plan for the years 2014-2018 in more than one place to the corruption and efforts in this frame, they include the following:

- The plan has indicated to the reviewed laws and the related provisions to corruption crimes court upon the request of PACC within mentioning the focal areas of PACC competency.
- The plan indicated after analyzing the external environment within the strategic plan to " restore the fundamental freedoms, respect human rights, and restore democracy through conducting elections" they are fundamental requests to have stable future in the Palestinian territories in abject of an environment where the

request to change, reform, combat corruption, respect human rights and good governance are increasing.

- The plan indicated to the internal risks that may threaten PACC, is the corruption within the commission itself, accordingly to limit the risks the plan suggested to maintain and develop the internal auditor function, maintain transparent internal auditing system, the tender system that should be clear transparent and documented, and internal auditing for PACC's financial system in addition to a clear and transparent expenditure policies to guarantee the separation between the responsibilities and tasks.

b. Human Rights at the National Strategy for Anti-Corruption 2015-2018:

After reviewing the national strategy for anti-corruption 2015-2018, it was demonstrated that it mentioned one right of human rights to fair trial. Also on the aspect of the strategy's general framework, it guarantees through the joint vision, mission, and main purpose combating corruption. The summary of the mentioned plan includes one of the fundamental principles in which this strategy derived from, is the topic of human rights among other topics. It indicated in the second, third, and fifth, principle to enhance and respect human rights for each citizen, to enhance independency of judiciary, and the citizen's right to fair trial. Plus it indicated to the Palestinian citizen right to be providing with integrity, equality, justice, equal opportunities, and access to public services effectively and equally. The plan as well pointed to "in abject of corruption the state ability diminishes to achieve its developmental goals related to the welfare of citizen, ensure equality, achieve justice, and to build rule of law.

c. The Joint Executive Plan between PACC and the Independent Commission for Human Rights (ICHR):

The executive plan for the national strategy for anti-corruption includes a great set of activities that targets putting the mentioned goals within the plan into force as an objective to enhance and develop the necessary preventive measures from crimes of corruption. In addition to develop and enhance the related activities on some of the rights such as working on issuing the right to have access to information, within the framework of the right to fair trial, the plan has indicated to study and review the penal procedures law encompassing simplifying the procedures of investigation, trial, assets sequestration and confiscation, along with resulted proceeds of corruption at the right time.

d. Human Rights within the Cross-Sectorial National Strategy for Anti-Corruption 2020-2022

The strategy has analyzed the national priorities for anti-corruption, the status of integrity and anti-corruption, and impact of the social, economic, cultural circumstance on the anti-corruption efforts in Palestine. The analysis demonstrates the experience and

expertise in connecting between the impacts of corruption on human rights is still poor, affirming on the necessity of enhancing the knowledge generation and building expertise in this regard. Moreover, emphasizing on including the rights principles as part and parcel of the sectorial and cross-sectorial plans within the body, structure, and mindset of the control institutions. An indication has been made to the weaknesses in diagnosing corruption and its repercussions on women plus mechanisms to limit corruption through integrating sexual harassment in work places as one the forms of corruption. On a different level enhancing the culture of reporting for women in case of acts related to corruption through integrity and ant-corruption system.

Furthermore, the strategy has devoted many policies to enhance human rights values and principles which derive from our faith in the relationship of corruption in violating human rights. It is clearly demonstrated in countless locations:

- The increase in Palestine participation in regional and international workshops and conferences related to topics of national priorities in combating corruption, especially those are significant introduction to build capacities of the working teams in anti-corruption such as law enforcement institutions, control bodies, and the national human rights institutions.
- Benefit from Palestine's membership as a member observer state in United Nations in the aim of joining international conventions.
- Independence commission for human rights and the council of human rights organization have an effective role in preparing the document, in addition to the Palestinian public institutions, the civil society, and colleges.

The Second Topic The Challenges Palestine Encounters

1. Political level:

- The Israeli occupation that precludes from law enforcement especially prosecuting and enforcing law to the defendants out in the areas out of the jurisdiction of the Palestinian territories (48 territories and occupied Jerusalem) in which it violates the human rights of the plaintiff to obtain his rights.
- The absence of the legislative council for more than 12 years that concludes to weaken monitoring the provided services for citizens, its quality and integrity. It also weakens a series of legislation endorsements procedures in particular those are enhancing anti-corruption since it is considered a violation for human rights.
- Continue in disruption elections process on both the presidential and legislative level.

2. Legal and legislation level:

- Geopolitical division between West Bank and Gaza Strip that precludes from implementing the provisions of anti-corruption law and enhances a corruption centrifuging environment.
- Issue resolutions on law in abject of political reality that faces public criticism despite it's significant to enhance the anti-corruption system and is not applicable in Gaza Strip.
- The delay in endorsing the right to access to information.

3. The local and international level:

- Slow pace of legal proceedings in issuing sentences regarding the defendant of corruption crimes at the levels of appeal and cassation.
- The weak interconnection between human rights institutions and PACC. Human rights organizations did not contribute actually in preparing the required studies, researches, and sensitization workshops. Human rights organization do not refer corruption suspicious that violates human rights to PACC as the only authorized body in receiving the complaints and reports related to corruption.
- Declining the international financial donations to Palestine, and the rise in budgets deficit in which it may harm anti-corruption efforts on the level of providing the required capabilities or to implement the preventive and raising awareness programs that might be expensive in some cases.