



ARAB ANTI-CORRUPTION AUTHORITIES

THE WAY FORWARD

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- NIS Palestine 2013 by the AMAN Coalition for Accountability and Integrity
- NIS Morocco 2014 by Transparency Maroc
- NIS Tunisia 2015 by I Watch Organisation (unpublished)
- NIS Jordan 2015 by the Rasheed Coalition for Integrity and Transparency (unpublished)
- NIS Libya 2014 by Transparency International (unpublished)



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TABLE OF CONTENTS

INTRODUCTION AND METHODOLOGY	2
POLITICAL, ECONOMIC AND SOCIAL CONTEXTS	6
ANTI-CORRUPTION AGENCIES IN FIVE ARAB COUNTRIES: FRAMEWORKS, EXPERIENCES AND CHALLENGES.....	10
MOROCCO	11
TUNISIA	16
JORDAN	20
PALESTINE	24
LIBYA.....	29
REGIONAL TRENDS: STRENGTHS, WEAKNESSES AND BEST PRACTICES	33
CONCLUSIONS AND RECOMMENDATIONS	40

INTRODUCTION AND METHODOLOGY

Since the General Assembly of the United Nations adopted the United Nations Convention against Corruption in October 2003 and opened the door to its ratification, numerous Arab countries have taken many of the measures contained in the convention. To date, 16 Arab countries have ratified the Convention and 11 countries have established anti-corruption authorities and enacted the laws necessary for their work. These countries are Jordan, Algeria, Tunisia, Morocco, Palestine, Libya, Iraq, Yemen, Saudi Arabia, Kuwait and the Comoros. Many of these countries have made legislative amendments to harmonise their national laws with the requirements of the convention, and some of them have drawn up strategic plans to fight corruption. The Arab Anti-Corruption and Integrity Network (ACINET) was established to coordinate the efforts of the integrity and anti-corruption bodies in Arab countries. Recently, no less than four Arab countries have undergone a review of the extent of their adherence to the convention. Despite these achievements, the results on the ground in the field of strengthening integrity and fighting corruption in the Arab region are still modest compared to other regions of the world.

It had been hoped, after the people took to the streets around five years ago, calling for freedom, justice and an end to corruption, that this popular movement would lead not only to the changing of the authoritarian regimes, but also to a substantial change in the running of government, towards more cooperation, transparency and integrity. It is true that some countries in the region have made significant constitutional amendments and that the barrier of fear in the Arab mind has gone. However, the combating of corruption has not seen any noteworthy change. According to the 2015 Corruption Perceptions Index shown in Table (1), only five countries registered a score above 50, these being Qatar, the United Arab Emirates (UAE), Jordan, Saudi Arabia and Bahrain. The scores of 16 countries were far below this, including four countries lying at the bottom of the international list, these being Somalia, Sudan, Libya and Iraq.

Table 1: Ranking of Arab countries in the 2015 Corruption Perceptions Index*

COUNTRY	RANK	SCORE	COMPARED TO LAST YEAR
Qatar	22	71	+
UAE	23	70	0
Jordan	45	53	+
Saudi Arabia	48	52	+
Bahrain	50	51	+
Kuwait	55	49	+
Oman	60	45	0
Tunisia	76	38	-
Algeria	88	36	0
Egypt	88	36	-
Morocco	88	36	-
Djibouti	99	34	-
Mauritania	112	31	-
Lebanon	123	28	+
Comoros	136	26	0
Syria	154	18	-
Yemen	154	18	-
Iraq	161	16	-
Libya	161	16	-
Sudan	165	12	+
Somalia	167	8	0

* Ranked out of 168 countries, according to Transparency International (cpi.transparency.org)

While the scores of six countries improved on last year, these being Qatar, Jordan, Saudi Arabia, Bahrain, Kuwait and Lebanon, the scores of 10 countries fell and five countries remained the same. It is noticeable that the results for all the countries whose people took to the streets calling for a change of the ruling regime have fallen, instead of having improved, these being Tunisia, Egypt, Libya, Yemen and Syria. These results are attributable in part to the fact that the governments and methods of state administration have not changed greatly during the last five years.

According to Transparency International's 2015 report on the Corruption Perceptions Index, the effective combating of corruption requires a high degree of press freedom, the ability to obtain information on the financial affairs of the state and how these are conducted, the way the state functions, high levels of integrity of senior officials, independence of the judiciary, and justice and equality between people. However, it is noticeable that there are real gaps in all these factors in the Middle East and North Africa region.

The spread of conflict in more than one Arab country and the fight against terrorism are often used as excuses for not carrying out real political reforms. Contrary to what had been expected, public freedoms, freedom of expression and freedom of opinion have seen a sharp decline. Similarly, civil society and non-governmental institutions have been subjected to increased pressure from governments, sometimes leading to the closure of some of them or a suspension of the operations of others. It goes without saying that the effective combating of corruption cannot be addressed in isolation from the positive partnership of all the supporters of the national integrity system (NIS), including civil society institutions. Within this context of the widespread disillusionment and unfulfilled expectations of the Arab Spring, this report takes a close look at the anti-corruption environment in the region. It looks at key institutions in the fight against corruption – anti-corruption agencies – for signs of progress and areas in need of reform, and puts forward tangible recommendations for the countries in the region.

METHODOLOGY

Within the context of the “Assessment of National Integrity Systems of Europe’s Southern Neighbourhood Countries” project funded by the European Commission, Transparency International and its partners implemented assessments of NISs in seven countries in the Middle East and North Africa. These studies addressed a number of aspects of the NIS adopted by Transparency International, focusing on the efficacy of these systems, the challenges they face, and practical suggestions to improve them. Transparency International had previously implemented similar studies in 2009 in four countries of the Middle East and North Africa region, namely Egypt, Lebanon, Morocco, and Palestine. The results of these reports were incorporated into the Transparency International report (2010) *The Challenge of Good Governance: Egypt, Lebanon, Morocco, and Palestine*.¹ These studies upheld the conclusions reached in the *Arab Human Development Report* of 2004² in terms of the tragic state of good governance in the region. Worse still, the 2010 report indicated that the NISs of each of the four countries were not just characterised by extreme weakness, but doubts were also raised about the mere existence of a system whose basic components all operate in a coherent and integrated manner. It would not be surprising if the rest of the region’s countries all suffer from these same phenomena.

In view of the great importance of anti-corruption agencies in the formulation of anti-corruption policies and taking the necessary measures to protect against corruption, conduct the necessary investigations and follow up issues, this study, by pursuing an in-depth analysis, aims to examine the conditions of one of the NIS pillars, namely, “anti-corruption agencies”, in five Middle East and North Africa countries: Jordan, Tunisia, Morocco, Libya, and Palestine.³ Specifically, the report examines the capacities of the agencies, their internal governance and the role they play in the National Integrity System. It places special emphasis on the independence of these authorities, their effectiveness in fighting corruption, and the transparency and integrity of their work according to indicators derived from the NIS methodology. The results of the NIS assessments conducted between 2013 and 2015 on anti-corruption authorities in Morocco, Palestine, Jordan, Tunisia and Libya provide the basis for this discussion.

The legislative and practical contexts in which these authorities work will be considered. The UN Convention against Corruption will guide the study in terms of the measures and procedures taken in all dimensions of the fight against corruption. In this context, this study will address the various challenges anti-corruption authorities face within the political, economic and social context of the Arab region.

The report does not ignore the best practices followed in these countries and the fields in which significant progress was made. It concludes with specific recommendations that may be applied not only by anti-corruption authorities to improve their performance and effectiveness, but also by Transparency International and its partners in the region in order to gain support for advocacy campaigns to develop the overall NISs in the region. In view of the fact that anti-corruption action is shaped by a state’s overarching political, economic, and social policies, the study will cover the main prevailing anti-corruption patterns and trends in the region – specifically, strengths and weaknesses, best practices, and political, economic, and social contexts where the anti-corruption authorities operate – in order to arrive at some key conclusions and general recommendations for the region.

¹ Transparency International, *The Challenge of Good Governance: Egypt, Lebanon, Morocco, and Palestine*, 2010.

² United Nations Development Programme, *Arab Human Development Report*, 2004.

³ Lebanon and Egypt were excluded as they do not have an independent anti-corruption authority.

POLITICAL, ECONOMIC AND SOCIAL CONTEXTS

The socio-political context of the Middle East and North Africa region, including the five countries examined in this study, is distinguished by its complexity and by the greatly intertwined internal and external factors. Political developments do not follow a natural path of growth and prosperity. The agreements made between the superpowers that triumphed in World War I led to the fragmentation of the Arab region that was ruled by the Ottoman Empire and created fragile political entities even before the socio-economic structure needed to establish the states was ready. The colonisation of these entities (states) by such forces also impeded the development of political life and aborted the religious reform movement, which had been counted on to develop the modern state. Military coups and the control by armies, individual dictatorial or totalitarian regimes, or political parties with exclusionist ideas regarding controlling power all marred the development of a true civil state in which individuals and civic communities, including political parties, contribute to its management in line with the principles and concepts of contemporary governance, such as participation, accountability, and transparency.

Both the long era of Ottoman rule and the Western colonisation of Arab peoples created two classes of people. One was the ruling class of kings, princes, and governors, senior army officers, and tax collectors. The other was the general populace, which looks to the former class with suspicion and doubt since it does not participate in managing public affairs, thereby distorting the idea of a social contract between the state and individuals. With the end of the colonial era and the emergence of national governments controlled by the military, exclusivist parties or ruling families came a new distortion in the social contract: the rise of the rentier state. This meant people began to swap their political freedoms and right to participation for access to jobs, public services, lower taxes, and false stability. Thus, the political climate was ripe for autocratic rule and the spread of corruption. Four centuries of Ottoman rule of the Arab peoples, a half century of Western colonialism, and another half century of authoritarian rulers have caused the Arab peoples to be deprived of having any say regarding the way they are ruled and of participation in the management of their own affairs and the accountability of their rulers. All socio-political life became more complicated, human rights were weakened, the concept of citizenship was disfigured, and economies and true development were crippled.

The fall of the socialist camp by the end of the 1980s and the end of the Cold War led to two extremely important global changes. The first was a change in government jobs and how public institutions organised them. The second was a change in the distribution of political powers in the state, including the participation of individuals in public decision-making and holding their governments accountable. Politically, these changes were embodied in the acceptance of democracy as a fundamental principle for governance. This encompasses the principles of participation, accountability, and transparency. In economic terms, the changes were embodied in the rapid growth of market economies, the privatisation of many public services, and a strong infiltration of the private sector in not only implementation contracts, but also in formulating policies and standards. Both the rapid growth and privatisation had positive and negative impacts on the status of corruption. Greater participation, tougher accountability, and clearer transparency can curb corruption. In contrast, the avarice of the private sector and weak market mechanisms coupled with governments' poor capacities in organising and following up on the implementation of contracts

creates a fertile ground for corruption to grow. While we have witnessed a clear increase in the number of countries characterised by democracy since that time in various regions around the world, nevertheless this contagion failed to reach the Middle East and North Africa region. For this reason, it is not surprising that the 2004 *Human Development Report* demonstrated a fundamental gap in democracy and governance in Arab countries.⁴ It is also not surprising that the *Arab Development Challenges Report* of 2011 pointed to a “growth without development” in the region, and to rates of development that are clearly lower than what is expected for states with the level of income that the states in the region have, whether with regard to the gross domestic product, purchasing power rates, human development indicators, or poverty rates.

Unemployment in these countries is noticeably high among youth, at not less than 25 per cent, and poverty rates are also high, with around 80 million Arabs living on US\$2 a day according to the 2015 Human Development Report. These matters have had serious repercussions for the overall social tensions in the region, paving the way for the spread of radicalism and corruption,⁵ particularly in light of the gap in equality. This prompted the 2011 *Arab Development Challenges Report* to conclude that the level of growth in the region is “much less than the wealth present there should allow”.⁶ The reason for this is the distortion of aspects of public spending, wasting of funds, corruption, and flawed priorities. In this regard, the 2009 *Human Development Report* indicated with clear evidence that spending on armies – with the exception of Tunisia – equals or exceeds these countries’ spending on health or education.⁷

According to the 2011 report, the historical context that led up to the Arab revolutions involves three matters,⁸ which are:

- rapid and haphazard transition into a free market economy after decades of centrally-guided economies
- a political economy based on the rentier social contract, not on political participation and accountability
- misshapen and inappropriate development projects

All these matters have had a negative effect on the implementation of essential economic reforms, thereby leading to a concentration of power in the hands of a political and economic elite. This has put assets and resources in the hands of a specific group of people, with a focus on consumption and the splitting of revenues resulting from assets rather than strengthening value-added production, which creates job opportunities for people and works towards the development of services and social care that are suitable for all. The structural reforms in these countries’ economies have also led to reduced individual incomes, along with the inability of the public sector to create jobs, which was and still is the primary factor in social mobility. This has created a favourable environment for corruption and the spread of bribes, intermediation, and nepotism in order to obtain the few jobs available. It is well-known that imbalanced development and the prevailing approach of subjugation-based stability and patronage create a social climate that is bound to explode. This further fostered the private sector’s tendency to seek rapid returns instead of long-term investments on the one hand, and incites the smuggling of tangible and intangible assets on the other. We have witnessed this with the huge sums of money that were smuggled out of certain countries, particularly in the cases of Tunisia and Libya, and possibly in other countries covered in this study.

⁴ UN Development Programme (UNDP) *Human Development Report*, 2004.

⁵ Chayes, Sarah. *Thieves of the States*, 2015.

⁶ UNDP Arab Development Challenges Report, 2011.

⁷ Ibid.

⁸ Ibid.

The historical setting in which the region developed, and all of the prevailing political, social, and economic conditions within the region, have led to real gaps and challenges, which must be handled in such a way as to block the path of corruption and corrupters. These gaps and challenges, in a nutshell, include:

- absence of democratic traditions and a culture of participation and accountability; this has weakened political and partisan life and diminished the respect for plurality and differing opinions
- poor distribution and sharing of authority has caused legislative authorities to be fragile and has weakened the independence of the judiciary and rule of law
- weak governance structures, including justice and respect for the rule of law, which has meant the state was hijacked by a ruling elite, their supporters, and others who benefit from personal gains
- weak organisational structure of institutions, such as regulatory institutions and civil society organisations, as well as weak community oversight
- poor recognition of human rights, basic liberties, and human dignity, and the spread of the phenomenon of impunity
- poor empowerment of civil society and recognition of its role, and the limiting of the space given to it through restrictive legislation and procedures. Poor sense of citizenship and fragile civil structure
- distorted economic development, which has caused fundamental structural problems in the economy, harmed the middle class, the poor, and the marginalised, and exacerbated social inequalities
- proliferation of corruption, bribes, intermediation, nepotism, abuse of power, illicit enrichment, and diversion of assets

A situation of this sort, which combines autocracy, abduction of the state, unbalanced development, and lost horizons, creates an extremely difficult socio-political climate. It makes the work of anti-corruption agencies in the region fraught with danger. These agencies risk failing to effectively deal with major corruption cases and getting distracted with minor corruption cases instead. Another risk is people's lack of confidence in the usefulness of their existence in the first place. Thus, a state of despair and nihilism results, especially because the fragility of these countries according to the Fragile States Index is very high. The indicators for Jordan, Morocco, Tunisia, and Libya were 76.9, 74.6, and 95.3, consecutively. Since Palestine is subjected to the Israeli occupation, it is not easy to apply international criteria to it. Furthermore, all of these countries failed to achieve any significant advancement in governance and anti-corruption indicators after the so-called Arab Spring. Rather, all of them faced obvious setbacks, as can be seen in Table (2).

Table 2: Governance scores of the five assessed countries, according to the World Bank and the Transparency International Corruption Perceptions Index of 2012 and 2014.

COUNTRY	WORLD BANK GOVERNANCE INDICATORS 2012 - 2014						CPI SCORE 2012	CPI SCORE 2014
	VA	PS	GE	RQ	ROL	CC		
JORDAN	=	-	+	-	+	+	48	49
MOROCCO	-	-	-	-	+	+	37	39
TUNISIA	+	-	-	-	+	+	41	40
LIBYA	-	-	-	-	-	-	21	18
PALESTINE	Not available							

VA = Voice and accountability; PS = Political stability; GE = Government effectiveness; RoL = Rule of law; CC = Control of corruption; CPI = Corruption Perceptions Index; (-) indicates a negative change; (+) means a positive change.

The Arab Policies Studies and Research Centre report, *Arab Indicator 2015*⁹, issued in Doha at the end of 2015, indicated that 92 per cent of those polled believed that financial and administrative corruption was widespread in their countries, albeit to varying degrees, and 45 per cent believed that their governments were not serious about fighting corruption. The study sample covered 18,000 individuals in a number of Arab countries, including four of the countries covered in this study, namely Jordan, Morocco, Tunisia, and Palestine.

⁹ Arab Policy Studies and Research Centre. *Arab Indicator 2015*. Doha, Qatar, 2015.

ANTI-CORRUPTION AGENCIES: FRAMEWORKS, EXPERIENCES AND CHALLENGES

Following the entry into force of Article 6 and Article 36 of the UN Convention against Corruption, calling for the existence of “a body or bodies, as appropriate, that prevent corruption” or “specialized in combating corruption through law enforcement”, several countries in the Middle East and North Africa have passed legislation and facilitated the creation of anti-corruption bodies, with various functions and scopes. The creation of these bodies has contributed to bringing to the public’s attention corruption risks and has shown a growing willingness by governments to tackle these challenges and promote transparency. However, as shown in this report, more effort is needed to further strengthen the independence and efficiency of these bodies. Civil society needs to be engaged and trusted in order to both improve accountability mechanisms and the transparency of these bodies, as well as to build stronger coalitions with stakeholders and inter-agency cooperation.

This section of the report assesses anti-corruption agencies of the five countries covered, analysing the general framework of their emergence and development, and their activities and experiences, followed by conclusions and recommendations on how to improve their functions effectively.

MOROCCO

GENERAL FRAMEWORK

The Central Authority for the Prevention of Corruption (ICPC) was established according to a prime ministerial decree issued on 13 March 2007. This followed Morocco's ratification of the UN Convention against Corruption on 9 May 2007. However, the ICPC did not begin work until the end of 2008, after the appointment of its members.

The ICPC consists of an administrative structure under the prime ministry, which, according to the decree, is to be headed by a trusted, capable, and skilled person with integrity appointed by the prime minister for a non-renewable period of six years. The ICPC is composed of a plenary assembly, executive committee, and general administration.

The work of the ICPC stretched from 2009 to 2015. In July 2015, the Moroccan Parliament adopted a new law establishing an authority called the National Authority for Integrity, Prevention and the Fight Against Corruption (NAIPFC), in implementation of the new Moroccan Constitution of 2011.

With the advent of the so-called Arab Spring following the fall of heads of regimes in Tunisia and Egypt in January 2011, the 20th of February Movement in Morocco was formed. Thousands of peaceful demonstrators in a number Moroccan cities stood up strongly to demand the establishment of a full democracy and an end to corruption, despotism, patronage, rentier economies, and impunity. The political climate was thus disrupted and policies and decision-making were confused.

The 20 February Movement forced a review of the constitution and fortified the demands for a parliamentary monarchy, separation of powers, strengthening of democratic institutions, the independence of the justice system, protection of human rights, and the establishment of regulations and governance authorities. The new Constitution of 2011 allocated two sections (36¹⁰ and 167¹¹) to the National Authority for Integrity, Prevention and Fight Against Corruption. Since the new constitution was declared on 9 March 2011, and after numerous drafts and discussions, the new law to regulate the NAIPFC (hereafter referred to as the Authority) was published in the Official Gazette

¹⁰ Chapter 36:

"The law will penalize any violations related to situations of conflict of interest and the exploitation of [information] leaks that distort fair competition, and any financial breach.

Public authorities are to prevent and penalize, according to the law, all forms of deviation in the activities of public departments and authorities, the use of funds they are authorized to handle, and concluding and managing public contracts.

The law will penalize excesses in exploiting positions of power and privilege, conditions of monopoly and hegemony, and all other practices that violate the principles of free and legitimate competition in economic relations.

The National Authority for Integrity, Prevention and the Fight Against Corruption is to be established."

¹¹ Chapter 167:

"The National Authority for Integrity, Prevention and the Fight Against Corruption is to undertake, specifically, the tasks of initiating, coordination, supervision, and ensuring the follow-up on the implementation of anti-corruption policies, collecting and publishing information in this field, contributing to the synthesis of public life, entrenching the principles of good governance, a culture of public facilities, and the values of responsible citizenship."

on 2 July 2015. However, at the time of writing, the Authority is still not present on the ground, and, as its chairman and members have not yet been appointed, it can only be discussed in broad outline in light of the new law which established the Authority. During this interim period, since 2012, the ICPC has continued operating only with its administrative staff, focusing on limited activities such as education, participating in international meetings, research and documenting their activities.

The new Authority is composed of a chairman, a board of 12 members and an observatory. Its duties are to track corruption, prepare a database and evaluate general policies. The Authority is no longer linked to the prime minister's budget. It will now have an independent budget registered under the general state budget. The chairman of the Authority is to be appointed by the king for a term of five years, which may be renewed once. The remaining 12 members are to be appointed by the king, both houses of Parliament and the head of government, with each institution appointing four members for a period of five years, renewable one time only. The new law sets out the functions of the Authority, which include preparation of an annual report on the outcomes of Authority activities, preparation of programmes for the prevention of corruption crimes and submission of proposals or recommendations to the government or Parliament. The objective is to disseminate and promote the values of integrity and transparency, as well as the creation and implementation of communication, awareness-raising, and sensitisation programmes, and spreading the value of integrity. Part four of the new law regulates how to receive reports and complaints and how to conduct research and investigations.

ACTIVITIES OF THE ICPC: ACHIEVEMENTS AND CHALLENGES

As the new Authority has not yet been inaugurated, only the experience of the first authority (the ICPC) can be evaluated.

During the period of its operation from 2009 to 2015 the ICPC prepared studies, seminars, and reports, and followed up on observations and proposals for draft laws related to its concerns. This included a draft relating to the new integrity authority that would replace the ICPC, as stated in the July 2011 Constitution. It was able to improve the approaches to diagnosing corruption phenomena through strengthening perception indices by enriching sector and judicial approaches, and gathering documentation to diagnose imbalances in governance. It also evaluated relevant policies and shed light on the limited effectiveness of legal preventative and injunctive mechanisms, and the poor efficacy of the institutional system. The ICPC directed proposals and recommendations to the public authorities concerning the appropriateness of criminal policy, reform of discrepancies in the governance of both the public and private sectors, bolstering the effectiveness of monitoring and accountability authorities, and reviving communication, awareness-raising, education and participation.

The ICPC also presented a set of expert opinions and suggestions to keep pace with some major projects, including: reform of the justice system and the right of access to information, addressing conflicting interests, promoting the governance of political life, advancing media means and civil society organisations, and completing the legislative framework for the new National Authority for Integrity, Prevention and Fight Against Corruption. Nevertheless, in spite of these positive advances, it is important to recognise the shortcomings in the legal framework of the ICPC (which is an institution established according to a decree and not by a law). As a consequence, it is simple for

the executive authority alone to change its status, while the policy framework within which it operates is characterised by numerous decision-making levels. It is the king who defines the main choices and there are ministries not subject to the prime minister who have staff and powers that overstep him and are linked directly with the king, such as the minister of the interior. There is also poor coordination of general policies and resistance to change, starting from the head of state and families owning large amounts of the national wealth, for whom it is in their interest to protect the political system. The security apparatus also opposes every opening up in the direction of transparency, accountability and expansion of public freedoms. All these conditions have meant that the suggestions and recommendations of the ICPC were not applied, which affected the fulfilment of its functions related to coordination, supervision, and follow-up of implementation. Meanwhile, according to corruption perception indices, corruption continued to increase in gravity, with obvious limitations in the efficacy of the preventative, injunctive, and control mechanisms in use.

CONCLUSIONS AND RECOMMENDATIONS

Since the new Authority does not exist on the ground, as its chairman and members have not yet been appointed, conclusions and recommendations can only be based on the experience of the first authority, the ICPC, and the contents of the new law, by comparing this to the best practices that occurred with the first experience or those of other authorities.

Strength from the experience of the former authority (ICPC)

- the composition of the authority and the strong presence of the Moroccan transparency organisation and independent persons in its structure
- headed by a leadership with long experience in fighting corruption, strong relations with civil society and independence from government and other institutions
- a participatory approach in the work of the authority, before the end of its mandate
- objective diagnosis of the obstacles to fighting corruption
- the transparency of the work of the authority, in publishing the annual and thematic reports, studies and activities on the authority's website (www.icpc.ma)
- issuing good recommendations for developing a good integrity system
- numerous proposals for draft laws and good observations on government projects

Challenges in the experience of the former authority

- the authority did not have institutional independence as it was established by prime ministerial decree, not by law, contrary to Principle 3 of the Jakarta Principles
- limited financial resources of the authority, and the lack of administrative and financial independence
- weak powers and competencies, in particular the lack of investigative power
- no requirement on the government, Parliament or administration to implement the recommendations of the authority or respond to the request for information
- absence of incentives for the members of the authority, who were working as volunteers and were not full-time workers (with the exception of the administrative staff)
- weak control of the chairman's powers with regard to appointments or the functions and benefits given to staff of the authority
- presence of government representatives who were not independent from their ministries, despite being appointed in an individual capacity

The new National Authority for Integrity, Prevention and the Fight Against Corruption

Since the new Authority has not been inaugurated and is not operational, this evaluation is only based on the new law.

Points of strength in the new Authority law

- the Authority enjoys a legal personality and financial independence
- besides the functions of prevention, education, making proposals and expressing opinions, the Authority also receives notifications and complaints about cases of corruption, investigates their veracity and refers them when required to the courts
- the members work full-time, making it more effective and accountable
- the members are appointed by multiple constitutional institutions (the king, the head of government and the two heads of Parliament), which encourages independence, although it does not guarantee it completely
- the members of the Authority, its secretary-general and its rapporteurs have the necessary protection against any intervention or pressure to perform the duties entrusted to them
- every person under public law or private law, whether natural or juridical, must cooperate closely with the Authority, provide it with the necessary assistance and respond to its requests for information, with the exception of those relating to national defence or the internal or external security of the country

Challenges in the new Authority law

- the appointment of the chairman and members of the Authority for a period of five years, renewable once, does not greatly help independence in powers of appointment. (As a general principle, whenever the secondment period of the chairman or member of an authority of this type is relatively long and non-renewable, this will encourage his independence from the appointing bodies)
- there are no guarantees in the law for the appointment of persons from civil society, as was the case in the old authority
- the royal establishment has the privilege to make appointments, including the chairman of the Authority, who has far-reaching powers as he is the head of the board and the staff, appoints staff, signs agreements, appoints rapporteurs to issue reports in corruption cases, and the file is given to the Authority's council to make a decision to either close the case or refer it to another competent body for disciplinary follow-up or to the public prosecutor for criminal monitoring
- with regard to receiving notifications and complaints, Article 19 of the new law lays down terms which have been criticised by proponents of the protection of witnesses and whistleblowers, as it stipulates that the acceptance of the notification or complaint must be in writing and appended with the signature of the informant or complainant and his name in full, and it should include the identity details of the informant or complainant as the case may be. This condition could deter many people for fear of retribution by superiors, for example, or by gangs or dangerous criminals or people of influence

RECOMMENDATIONS

1. For the appointment of the chairman and members of the new authority, consideration should be given to people known for their integrity, competence and independence from the central political authority, who have experience in fighting corruption and good relations with civil society.
2. Members of the Authority should include representatives from civil society and the private sector who have the qualities referred to in the previous recommendation.
3. Sufficient resources should be allocated to the new Authority for it to undertake its activities effectively.
4. The new Authority should have a participatory and cooperative approach with all partners.
5. The new Authority should operate transparently by publishing its news, reports, budget and all its activities on its own website.
6. The new Authority should agree to undertake investigations into information and notifications of corruption, including those originating from anonymous sources, provided the information is accurate and verifiable.

TUNISIA¹²

GENERAL FRAMEWORK

Following the 14 January 2011 revolution in Tunisia, two enquiry committees were formed: the National Inquiry Committee on Abuses and Violations perpetrated during the recent events (starting from 17 December 2010) and the National Inquiry Committee on Bribery and Corruption. The latter is an authority established on 18 February 2011 pursuant to Decree No. 7 of 2011. This authority was concerned with investigating and collecting information on corruption and bribery during the era of ousted president Zine El Abidine Ben Ali in all state bodies, such as those involved with: real estate, farmland, ownership of public structures, public contracts, major projects, privatisation, communications, the audio-visual sector, the finance and banking sector, administrative and official licences, tax collection, management, secondments, scientific research, university guidance, and the judiciary and legal profession. On 11 November 2011 the authority submitted its final report consisting of 500 pages documenting all breaches, and the authority forwarded more than 11,000 cases of corruption to the various courts.

The committee ended its work on 29 March 2012 after establishing a permanent authority to fight corruption, called the National Anti-Corruption Authority (hereafter the Authority) established per Framework Decree No. 120 of 2011, dated 14 November 2011. The Authority consists of three bodies: the Authority Council, which determines the basic orientation and formulates policies, whose members were appointed at the end of May 2013; the Prevention and Investigation of Corruption Crimes Agency (not yet appointed as at the end of February 2016); and the General Secretariat.

In accordance with the Framework Decree of 2011: “the Chairman of the Authority is appointed according to a directive based on the Government’s proposal from among independent national personalities with distinguished judicial experience.” Chapter 20 of the Decree states that the Authority Council is composed of the chairman of the Authority and members, to be selected as follows:

1. at least seven members who are senior employees and representatives of control, auditing, inspection, and evaluation bodies
2. at least seven members from civil society organisations and professional associations who are known for their competence and experience in issues related to the Authority’s tasks
3. justice judge, Administrative Court judge, and a judge from the Auditing Directorate
4. two members from the media and communications sector

The maximum number of Council members may not exceed 30.

Members of the Authority Council are appointed based on the proposal of the government following consultations with concerned parties. The Council can still be formed even if one or more members

¹² This study is based on the draft NIS Study Tunisia as well as other sources from the Transparency International movement.

are not appointed. The period of representation in the Authority Council is three years, renewable for one further similar period. The Decree provides controls for the integrity of the members.¹³

The Authority operated for a period of two-and-a-half years in unfavourable conditions until the beginning of 2016. On 6 January 2016, the head of the Tunisian government decided to appoint a new chairman to the Authority. Based on an interview given by the new chairman of the Authority to Radio station Mosaïque, it does not seem that any noteworthy changes have occurred.¹⁴

ACTIVITIES OF THE AUTHORITY: ACHIEVEMENTS AND CHALLENGES

The Authority is still suffering from a shortfall in the resources required to enable it to carry out its role effectively,¹⁵ as its budget did not exceed 390,000 Tunisian dinars (around USD 187,200)¹⁶ of which 220,000 Tunisian dinars was allocated for the lease of the Authority's building (around USD 105,600 leaving only 170,000 Tunisian dinars for management, which is a meagre amount, in spite of the fact that the staff receive their salaries from the budget of the presidency of the republic. There are only five full-time members of staff in the Authority, in addition to the research and investigation staff, who have not yet been appointed. The new chairman of the Authority confirmed this data in his responses to Radio Mosaïque, when he talked about the poor resources of the Authority and stressed that it was not possible to fight corruption in an Authority which has only a chairman, a clerk, a registration officer, a filing clerk and two investigators (compared to 30 investigators in the National Commission for the Investigation into Bribery and Corruption, headed by the late Abdelfattah Amor). The new chairman also pointed out that he had received the support of a number of volunteers, which is something which cannot be relied on in any professional, responsible and lengthy work relating to sensitive issues such as fighting corruption. Hence the chairman has made it one of his priorities for the Authority to focus on strengthening its human, technical and financial resources, using the support promised by the president of the republic, the head of government and other bodies. He also spoke candidly about the worsening of corruption in Tunisia, after the change which had happened there.

With regard to the Authority undertaking the various roles entrusted to it, that is, making proposals, educating, awareness-raising and investigating cases of corruption, it does not seem that the Authority in its initial form was able to investigate very much in light of the limited financial and

¹³ According to Section 27: "Each member of the Authority shall notify the Chairman in writing of the following:

- The tasks he has performed in the three years prior to his nomination to the Authority.
- Every proxyship he has arranged with a natural or juridical person in the three years prior to his nomination to the Authority."

The chairman of the Authority and members of the prevention and response staff are duty bound to declare earnings in accordance with the legislation in force. According to Section 28: "No member of the Committee may participate in transactions in a matter related to a natural or juridical person with whom he has a personal interest or familial or in-law relation or any type of liabilities or contracts." Members of the Authority are also forbidden from participating in transactions if they relate to a person with whom they have an interest or relation subsequent to the referral of the case to the judicial authority. Section 30 states that any natural or juridical person with an interest in this may reject any member of the prevention and investigation staff by way of a letter addressed to the chairman of the Authority, giving reasons.

¹⁴ <http://bit.ly/1QS1W7H>

¹⁵ As stated in a newspaper report on the meeting of the Authority Chairman, Samir Annabi, in May 2015 with representatives of the Committee for Administrative Reform, Good Governance, Fighting Corruption and Monitoring of Public Expenditure in the House of Representatives, when Annabi talked about the difficulties the Authority was facing.

¹⁶ But 312,000 Tunisian dinars according to the new Chairman, that is less than before.

human resources allocated to it. However, the remarks of the former chairman of the Authority¹⁷ could be considered a type of education and awareness-raising, but on a limited scale. The Authority, during its existence under his supervision, did not have at its disposal a website to show the activities it had performed and the programmes it had put in place in relation to cooperating with the concerned authorities and ministries, and with civil society, educational institutions and the media. The fact the Authority has not published an annual report since its establishment in the middle of 2013, according to a statement of its previous chairman, is not a good indicator of transparency.¹⁸ Indeed, it is difficult in this case for the average citizen to know of the existence of the Authority and its competencies. Nor was the Authority able to effectively fulfilling their task to propose new draft laws. The former chairman of the Authority stated that they were currently finalising a draft law concerning the new constitutional authority, called the “Good Governance and Anti-Corruption Agency”, pursuant to Chapter 130 of the new constitution, which is considered one of the Authority’s priorities. In terms of the task of carrying out investigations into corruption crimes, the Authority, according to its new chairman, received 12,000 files from the National Commission for the Investigation of Bribery and Corruption, and it inherited 3,000 files from the previous authority. However, according to a study carried out regarding the Authority¹⁹, as well as statements by the new chairman, the Authority still lacks the Monitoring and Inquiry Board and the required number of investigators. It operates in a very hostile environment – as its former chairman stated: “The troika government helped to weaken the Authority when it created another competitor, which is the state administration responsible for governance and anti-corruption.” Moreover, it seems that the current government continues to act in the same manner, according to the former chairman. The most recent manifestation of this orientation is permitting the Truth and Dignity Authority to handle complaints of corruption at the same time. This naturally leads to a conflict of interest between the two authorities.

It also seems that the internal conflicts between the Authority and the government administration on one hand, and between it and the justice system on the other, manifested in not many of the files submitted to the courts being examined, have worked to hinder the Authority’s work, in addition to a lack of staff and resources.

¹⁷ See, for example: 1) www.albayan.ae/one-world/interviews-dialogues/2015-10-10-1.2477515;

2) <http://bit.ly/1RhjiJ>

¹⁸ According to the NIS Tunisia draft study, *Entretien avec M. Samir Annabi, Président de l’INLC*, 11 August 2015.

¹⁹ NIS Tunisia draft study (unpublished).

CONCLUSIONS AND RECOMMENDATIONS

The National Anti-Corruption Authority in Tunisia still has poor financial and human resources. This is a serious indication of the weak political will, especially seeing that the Authority is virtually deprived of the most important apparatus required to investigate corruption cases, when this apparatus is one of the greatest strengths of the law of the Authority.

Recommendations

1. An apparatus should be formed to investigate corruption cases with the necessary speed, and enabling it to work independently.
2. The Authority should be provided with the sufficient financial and human resources to work, including through supporting methods of international cooperation.
3. The chairman and members of the Authority should be appointed for a longer period (five or six years, for example), not renewable, to support their independence from the appointing authorities.
4. A portal or website should be established for the Authority, on which it can publish its news, reports and all its activities, to enhance the transparency of its work.
5. The overlapping of roles and powers between the authorities concerned with monitoring and combating corruption should be tackled.

GENERAL FRAMEWORK

The Anti-Corruption Commission was established in Jordan by Law²¹ No. 62 of 2006. The Commission is administered by a board composed of a chairman and six members known for their fairness, integrity, neutrality and expertise, who do hold public posts. They are appointed by Royal Decree based on the recommendation of the prime minister. The term of the board membership is four years and may be renewed once for the chairman or for any of the members.²² The Commission's first board commenced its work on 19 March 2007 and resigned on 30 September 2010. The second board was appointed on 30 September 2010 and resigned on 1 February 2015. The third board was appointed on 1 February 2015.

The Law requires the chairman and members to work full-time for the Commission, while their financial allocations and salaries are determined by the prime minister. The Commission is considered a national institution of public benefit and is completely independent in its competencies and work. The chairman of the Judicial Council appoints judges from the staff of the Judicial Council to work in the Commission for limited periods.²³ The chairman is entitled to request the delegation or secondment of any individual from the police or the military or security services, or any employee, to work for the Commission.²⁴

The financial resources of the Commission are subject to discussion by the Council of Ministers, and then by the National Assembly, as the Commission's budget is part of the government's public budget. The Commission's financial resources are considered relatively low, but in practice the Commission has been able to overcome some financial and administrative shortfalls through partnerships with regional and international donor institutions.

There are 181 members of staff in the Commission, 46 of whom are on secondment from other institutions and ministries. Most of these focus on administrative matters, investigation and information, with around 88 employees working in these units, while the Commission has one expert and consultant. In the field of awareness-raising and prevention, there are ten employees, but only one in the protection of whistleblowers and witnesses. Hence we can see the disparity between the administrative and technical staff.²⁵

With regard to independence, there is no specific person in the Commission who is able to take decisions alone on any case. The procedures followed make the possibility of pressure being put on any individual very unlikely. It is worth noting that the secondment of judges from the Judicial

²⁰ Mohamad Allaf was sworn in before King Abdullah II on the occasion of his appointment as chairman of the Anti-Corruption Commission, and Eyad Qudah was sworn in on the occasion of his appointment as a member of the Council of the Anti-Corruption Commission. The ceremony, which took place in Husseinia Palace, was attended by the prime minister and the head of the Royal Hashemite Court. (Petra FG) 02:46 25 November 2015 www.jacc.gov.jo/tabid/151/ArticleId/593/language/ar-JO/.aspx.

²¹ Anti-Corruption Commission Law No. 62 of 2006, published in Official Gazette Issue No. 4794.

²² Article 8 of the Commission Law.

²³ Article 14 of the Commission Law.

²⁴ Article 15 of the Commission Law.

²⁵ Anti-Corruption Commission Report of 2014, published on the Commission's website.

Council to work in the Commission has had a positive effect in ensuring neutrality, integrity and independence.

As for the members and Chairman of the Commission, although no interference or pressure to influence their work has been observed, the issue of their being subject to replacement or dismissed is one of the main challenges and obstacles which needs to be remedied to ensure complete independence.

Concerning governance, despite the fact that the Anti-Corruption Commission Law does not require the Commission to inform citizens of the steps and results of its work, apart from the Annual Report, nevertheless the Commission in some cases of public interest has from time to time released some information to the public, where it has informed them about corruption cases after the completion of investigations, particularly if the cases are of public interest, by issuing press releases or holding press conferences.²⁶

In addition, the Commission has developed a website on which it publishes all the information and the activities it carries out, as well as the Annual Report, statistics, studies and the results of meetings. However, the website requires constant updating and development as some of the statistics are old and have not been revised. Also, the Commission has not held periodic meetings on the outcomes of the Annual Report and the offenses and crimes transferred to courts or investigated as a preventative measure.

With regards to accountability, no body monitors or oversees the technical work of the Commission by law. However, the Council of Ministers and the House of Representatives have the right to question the Commission on the annual report, and the volume of achievements and cases it has investigated, which makes this report a rich source of information.²⁷

As regards the functional aspect, the board administers and monitors the work of the staff, who belong to the Civil Service Bureau and are subject to the Public Code of Conduct. However, the investigators are public prosecutors belonging to the Judicial Council and are subject to the Law of the Independence of the Judiciary and the Judicial Code of Conduct.

As for the other financial and administrative aspects, the Commission is subject to monitoring by the Audit Office, and the Law stipulates that the chairman and members should declare all their assets and those of their families.

With regard to integrity, the method followed in the Commission in the investigation of corruption cases is comparable to the best practices of similar establishments, as work on these cases is collective and multi-stage. Consequently, with respect to the criterion of integrity in practice, there is a high level of adherence to directives and regulations. It is difficult for any person in the Commission to practice his work individually or to push in the direction of a specific decision on a defined result without clear and compelling evidence.

No problems have been observed or reported in the area of integrity relating to the work of the Commission or its staff, nor does a review of the annual report indicate any problems relating to the integrity of the Commission in general or the committing of any contraventions which would breach the principle of integrity.

²⁶ See www.jacc.gov.jo on a case of forward selling, and likewise a link to a case relating to a casino.

²⁷ Anti-Corruption Commission Law No. 62 of 2006, Article 11.

ACTIVITIES OF THE COMMISSION:

ACHIEVEMENTS AND CHALLENGES

In accordance with its Law, the Commission exercises broad powers, including all the activities expected from it. However, the preventative role is weak. The Law contains only basic general indicators about the preventative role the Commission can play. With regard to fighting corruption, the Commission takes on the tasks of investigating financial and administrative corruption; detecting violations and transgressions; gathering evidence and information relating to this; initiating investigations; taking the necessary and administrative measures; pursuing anyone committing any act of corruption; seizing his moveable and immovable assets; preventing him from travelling; requesting he be removed from work by the concerned authorities and that his salary, bonuses and the rest of his financial entitlements be stopped, if required; and amending or cancelling any of these decisions in accordance with the legislation in force.

The Commission exercises its investigative role through “public prosecutor” judges seconded to work in the Commission. Their role is limited to investigation. However, the mechanism of investigation, and the procedures in the field of recovery of funds and the collection of evidence, and the bodies who should take on this work, are not stipulated in the national legislation. Hence the legal provisions should be reviewed to ensure the stipulation of the procedures and decision-making authorities involved in the reclamation of funds.

Some issues considered important are still not contained in the Law, such as the criminalisation of what is termed “exerting influence” and bribery in the private sector, which limits the capabilities of the Commission in regard to pursuing all types of corruption, something which would require changes in the role of the Commission in this regard. However, the Law of Economic Crimes covers bribery and corruption in public joint stock companies.

Although the Commission Law gives the Commission the power to initiate investigations of its own accord, the problem of coordination and the uniting of efforts with other institutions with powers to investigate cases of corruption still exists, as investigations can be carried out by the Commission, the Prosecutor General, the Customs Court, the Board of Grievances, the Audit Office and others.²⁸

In order to facilitate the Commission’s investigative function, and to enable it to perform its duty, the Law includes provisions that require all public and non-public bodies to cooperate with the Commission and supply it with the data and information the Commission requests without delay, under penalty of legal liability. Anyone in breach of this shall be punished by imprisonment for a period not exceeding three months or a fine not exceeding 500 Jordanian dinars (around USD 700).²⁹ The Law includes provisions indicating the duties and function of the Committee in the field of protecting witnesses, whistleblowers, informants and experts in corruption cases.

As regards the role of the Commission in awareness-raising, guidance and education, this is still weak, as the Committee has not undertaken broad national activities addressing all sections of society, which would affect and change public attitudes towards corruption or create public awareness of corruption crimes, except in rare instances. In addition, the Law does not include any provisions that indicate the role of the Commission in developing the legislation relating to its work or

²⁸ National Anti-Corruption Strategy 2013–2017.

²⁹ Article 17 of the Commission Law.

even the Commission Law. However, this does not prevent the House of Representatives from taking advice from the board of the Commission. The issue of the conflict of competencies with other regulatory institutions still exists, as well as the lack of improvement of the organisational structure of the Committee, which would enable it to perform its roles fully.

It is noteworthy that the role of the Commission in coordinating with civil society and academic institutions is limited to seasonal meetings or meetings through conferences, although the Commission has invited civil society to meet to discuss partnership frameworks, and it did indeed participate in the second review of the implementation of the UN Convention against Corruption. However, this is not sufficient, not to mention the absence of any role with regard to the private sector.

CONCLUSIONS AND RECOMMENDATIONS

Since its establishment, the Commission has had significant achievements. However, there are still problems and obstacles facing its work. The Commission is in dire need of a review of the Law governing its work, to ensure the extension of its mandate to investigate all types of corruption crimes and to ensure harmonisation with the UN Convention. The Commission also needs to devote institutional efforts to practising the roles of prevention, awareness-raising and education to a greater extent than it is currently doing, and to creating a mechanism to coordinate with the other national institutions performing the same roles. It must also be mentioned that the organisational structure and the internal framework of the Commission require, review to ensure the Commission can perform all the roles assigned to it.

Recommendations

1. Amend the Anti-Corruption Commission Law to include clear provisions concerning the preventative role of the Commission and the raising of awareness of the risks of crime within clear and implementable national plans.
2. Reconsider the organisational structure of the Commission so as to ensure the achievement of the duties and tasks assigned to it, and supply it with sufficient technical, administrative and financial staff.
3. Criminalise all types of acts that fall under the crime of corruption, in line with international standards, in particular the UN Convention.
4. Coordinate efforts and a true partnership – in accordance with the law – with the private sector and civil society institutions.
5. Create a mechanism to coordinate and unite authorities with regard to investigating corruption cases between the Commission and the Prosecutor General in courts, customs, the Audit Office, the Board of Grievances, the Money Laundering Department and other bodies which investigate corruption cases.
6. Review the Law to ensure compatibility with the UN Convention, in particular the recovery of funds.
7. The chairman and board of delegates must be protected by making their tenure longer and not renewable. They should not be able to be dismissed except under strict terms and with certain guarantees, to give more confidence, immunity and independence in the practice of their work.

PALESTINE³⁰

GENERAL FRAMEWORK

The Anti-Corruption Commission was established in the second half of 2010, after the Law of Illegal Gains of 2005 was amended, becoming the Anti-Corruption Law of 2010. The Commission has a legal personality, and financial and administrative independence. The Law defines corruption crimes broadly to include all acts provided for in the Arab and international conventions on anti-corruption ratified by the Palestinian Authority or to which it is a member. The scope of those subject to its law was widened, to include the president of the Palestinian Authority and all staff, in addition to non-governmental organisations, political parties and trade unions.

However, the Law gives the Commission all the necessary means and powers: all parties are subject to the Anti-Corruption Law, except for the private sector.³¹

It should be noted that because of political divisions, the role of the Commission is virtually non-existent.

As regards financial resources, the Commission has a legal personality and administrative and financial independence, and is allotted a special budget within the general budget of the Palestinian Authority.

The Budget Law of the Palestinian Authority allows public independent institutions to set the size of the budget in accordance with their needs to complete the tasks assigned to them. The legislation also gives the Commission the capacity to obtain additional funding, such as obtaining aid or receiving foreign grants in order to achieve its aims.

The Commission's report of 2014 states that its budget was EUR 2.11 million and that the Ministry of Finance made the necessary transfers from the state budget in instalments.

In addition, significant funding comes from international donors such as the "Joint Programme of the United Nations Development Programme and the European Mission to Support the Palestinian Police Aimed at Strengthening Internal Accountability and Supporting Anti-Corruption Efforts", with an estimated approved budget for the project for 2012 of US\$270,000, added to which is a new budget for new activities with the same programme, of US\$282,700. An agreement was also signed between the UN Development Programme and the Commission, in the name of the "Justice and Security Grant for the Palestinian People" on 23 September 2014, with an estimated approved budget for the project of US\$224,826.

³⁰ This study is based on the NIS Palestine report of 2014 published by the AMAN Coalition for Accountability and Integrity.

³¹ Law by Decree No. 7 of 2010 pertaining to the Amendment of the Law of Illegal Gain No. 1 of 2005 issued on 2 June 2010.

The Commission works to improve the capabilities of its staff through the provision of training related to administration and resource planning, and by providing opportunities to participate in courses, workshops and conferences, in order to supplement their knowledge and develop their skills.

As regards independence, the Palestinian political system suffers from severe political polarisation due to the Israeli occupation and internal political divisions, which affects the filling of public positions and has led to most senior roles being filled by politicians. It is therefore difficult for senior positions to be filled by people who are neutral and independent from the Palestinian Authority.³² It is worth noting that the current chairman of the Commission was nominated through recommendation of the Council of Ministers and civil society to the President.

As for transparency, the Commission has a website – www.pacc.pna.ps – where it publishes its annual report and a number of studies. The Commission prepares and submits the annual report on its activities to the president of the Palestinian Authority, the Council of Ministers and the Legislative Council. However, this report does not monitor changes to the national integrity and anti-corruption system in Palestine. Rather, it mostly contains a description of the Commission's activities during the year.

The Commission's website is still in need of development, as it is one of the means of opening up to the public and of transmitting general information relating to its work.

Concerning accountability, the Commission has presented its annual reports from 2011 to 2014 on its website. However, the reports of the Commission do not monitor the changes to the national integrity and anti-corruption system in Palestine, in the view of some,³³ and the Commission still does not provide enough general information to give the concerned parties in society the opportunity to benefit from effective participation in developing national policies to combat corruption or monitor the work of the Commission.

With regard to integrity, despite the adoption of a code of conduct for civil servants by the General Personnel Bureau, the Coalition for Accountability and Integrity (AMAN) NIS study emphasised the importance of adopting a specific code of conduct of the which includes the rules relating to conflicts of interest, gifts and hospitality, or restrictions on appointments after the vacating of positions. There is also no indication of the regular training of staff on the provisions of the general code of conduct, while asset declarations of employees have been received and kept by the Commission. The report mentions that the Commission was working on the completion of its own code of conduct in 2013, but the Commission's website has no information as to whether this happened or not.

ACTIVITIES OF THE COMMISSION: ACHIEVEMENTS AND CHALLENGES

The Anti-Corruption Law gives the Commission powers relating to the prevention of corruption, which include holding and inspecting declarations of financial assets, coordination with all establishments within the Palestinian Authority to strengthen and develop arrangements necessary for protection from crimes of corruption, drafting a general anti-corruption policy in cooperation with relevant parties and drawing up plans and programmes necessary for its implementation, and

³² According to the NIS Palestine 2013 study.

³³ *National Integrity System Palestine 2013*, p. 120.

participating in programmes aimed at preventing this type of crime. The effectiveness of the Commission in coordinating anti-corruption activities is apparent through the preparation of the National Anti-Corruption Strategy 2012–2014 and the National Anti-Corruption Strategy 2015–2018.

According to the structure of the Commission, it has a department for studies, the General Department for Planning and Studies, and it can appoint external researchers to prepare studies and working papers for submission to conferences and workshops. As at the date of this report on the Commission's website there are studies and reports relating to a number of issues, such as the *National Report on the Review of the Implementation by the State of Palestine of Sections 3 and 4 of the United Nations Convention against Corruption*, and the *Regulatory Framework for the Reclamation of Assets at the Local and Global Levels* and the *Principles of Investigation into Crimes of Corruption*, and other important studies.³⁴

In the area of awareness-raising and education, the Commission's report of 2014 includes details of a set of awareness-raising and communicative activities, both in the governmental and non-governmental sectors, in addition to activities in Palestinian universities, colleges and higher education institutes, and numerous media activities and participations in public activities. However, the Commission's awareness-raising activities centre on specifying the activities of the Commission, its role and the provisions of the Anti-Corruption Law, and sometimes specifying the National Anti-Corruption Strategy.³⁵

The Commission has electronic services on its website, whether for the submission of notifications, complaints or suggestions: www.pacc.pna.ps/ar/index.php?p=complain. In the area of investigation, according to AMAN's report, the Commission has conducted investigations into three ministers, two or whom were in office during the investigation, and with two members of the Prosecution General – "a head and a deputy" – and a number of senior employees, on corruption charges. The Commission fundamentally relies on investigation following corruption and it relies on incoming complaints and investigations from citizens and the security, and financial and administrative auditing apparatuses, as well as those it identifies itself by following the media. As at 16 November 2015 the Commission had received a total of 480 complaints and notifications, compared to 450 complaints and notifications in the same period for the previous year. The Commission's figures show a steady increase in complaints about corruption since 2011.³⁶ The Commission believes this shows an increase in the public's confidence in the Commission and an increase in awareness of the Commission being an official body for receiving complaints and notifications relating to corruption.

The NIS report details the sectors about which complaints were raised and their subject. Note that as regards the largest number of complaints, the Commission decided it did not have jurisdiction in relation to them. The subjects in order of frequency were: embezzlement, breach of trust, abuse of power, harming public funds, exploiting position, forgery, illegal gain, refraining from implementing judicial decisions, bribery and neglect in the performance of duties.

According to the Commission's first report on the achievements of 2015, the number of complaints referred to the Public Prosecutor delegated to work with the Commission was 39 complaints and notifications, 35 of which were after initial investigations and enquiries and proof of a crime of corruption being committed, out of the total complaints and notifications followed up by the General Department for Legal Affairs in 2015, four files of which were transferred directly by the chairman of the Commission to the delegated prosecutor due to their containing strong suspicion of corruption.

³⁴ See the link: www.pacc.pna.ps/ar/index.php?p=pacc15.

³⁵ *National Integrity System Palestine 2013*.

³⁶ *National Integrity System Palestine 2013*, p. 39.

The Commission had completed investigations of 433 complaints and notifications as at 16 November 2015, including 219 files from 2014 which were being followed up and 214 complaints and notifications from 2015.

As at 16 November 2015, the Anti-Corruption Prosecutor had referred 18 cases to the Corruption Crimes Court, in addition to following up 27 cases which led to a conviction and three to an acquittal, and one case which was ruled inadmissible.

The report distributed by the Commission dated 16/ November 2015 on cases of corruption referred to the seconded Public Prosecutor reports that 51.3 per cent relate to the public sector, 41 per cent relate to local bodies and 7.7 per cent concern cases relating to charitable associations and non-governmental organisations.

CONCLUSIONS AND RECOMMENDATIONS

The Palestinian Anti-Corruption Commission has an adequate legal framework. It works in a difficult climate because of the Israeli occupation and internal political divisions. It has material capabilities arising from the general budget of the Palestinian Authority and from international cooperation, and it has human resources who have benefitted from training.

Despite its efforts in the field of sensitisation (awareness-raising and education) and investigation, where it has had positive results in referring a number of corruption cases to the courts, the Commission suffers from a number of shortcomings:

Firstly, in terms of efficiency, the structure of the Commission is not designed for the performance of the broad range of tasks which its founders believed would come within its powers, due to their belief that they were solely responsible for everything relating to the combating of corruption in Palestine. This meant they set up a small establishment that was unable to monopolise the performance of this broad range of tasks. This led to the view of the official parties that they were not responsible for fighting corruption in their institutions because there was a specialised body for this issue.

Secondly, the dependency of the Anti-Corruption Prosecution on the Prosecution General, which itself is dependent on the court, means that it is not completely independent. The Commission has brought with it the problem of the lack of independence of the prosecutor, to which is added a new official – the chairman of the Commission, as well as the Attorney General, who is the person who decides to refer corruption cases to the court. This means there are two problems: one of them relating to the independence of the Commission and the second relating to the independence of the prosecutor.

Thirdly, the Commission's work is not sufficiently transparent, as its annual reports do not review developments in the national integrity and anti-corruption system in Palestine, and mostly they contain a description of its activities over the year.

Recommendations

1. The Commission must be given sufficient financial and human resources, including through the mobilisation of international cooperative support.
2. The chairman and members must be appointed for a longer period – five or six years, not renewable – to support their independence from the appointing authorities. The chairman should not be from the ruling party.
3. A solution must be found for the independence of the Prosecutor General, and opportunity should be given to the chairman of the Commission to refer corruption cases directly to the competent courts.
4. The Commission must work transparently, through the development of its website, on which it should publish its news, reports, budget and details of all of its activities.

LIBYA

GENERAL FRAMEWORK

Since the fall of the 40-year long Gaddafi regime and the outbreak of civil war in 2014, the prevailing security environment in Libya and the lack of a strong, stable and united state casts a shadow over any serious attempts to combat corruption. Libya ratified the UN Convention against Corruption in 2005 and in April 2014 the National Anti-Corruption Commission (NACC) was established by the General National Congress. Article 31 of Law No. 63 of 2012 abrogated the previous anti-corruption commission and stipulated that all assets and liabilities should devolve to the newly established Commission in accordance with the provisions of this Law, and it abrogated any text contravening this.

The Commission is responsible for the monitoring of public funds and irregularities in the performance of the government and other public institutions.

Article 7 of the Law states that: "The NACC shall have a council called the 'NACC Council' composed of a Chairman, deputy, and five full-time members appointed by the legislature based on the proposal of the NACC Chairman."

Article 8 adds that: "The NACC shall be chaired by a person renowned for his competency, honesty, integrity, and expertise in the field of transparency and anti-corruption. The appointment, relief from office, and acceptance of resignation of such person shall be effected by a decision of the legislature. He shall be treated as a minister in terms of salary and benefits."

And according to Article 9: "The term of mandate of the NACC chairman, deputy, and board of directors shall be for a period of three years, renewable one time."

And according to Article 10: "The NACC Chairman shall not be dismissed. His mandate shall only be terminated in five specific cases, which are:

1. Resignation
2. Attaining of retirement age
3. Proven inability to perform duties due to medical reasons
4. Consensual assignment to another position or duty
5. Issuance of a disciplinary decision of dismissal."

The members of the Commission enjoy immunity in the practice of their duties.

The Commission has juridical personality, independent financial responsibility and an independent budget within the public budget of the state. Although there are conditions which must be present in the member staff, including previous anti-corruption experience and degrees in finance,

administration, etc., due to the lack of individuals with anti-corruption experience in Libya, these requirements are not followed in practice.³⁷

According to the unpublished Transparency International NIS Libya report completed in 2014, the budget of the Commission is not known, but the Commission itself states that its resources are insufficient.

Until now it does not seem that the Commission has finalised its structure (appointing the chairman and members), because in the meeting of the committee for the follow-up of monitoring apparatuses at the General National Congress on 21 April 2014 the committee announced that it had opened the door to nominations for filling the position of chairman and deputy of the Commission.

Also, the director of the media office at the Libyan News Agency conference advised that the committee would start to accept CVs of candidates from 22 April 2015 until 6 May 2015.

There is nothing to indicate the appointment of a chairman to the new Commission. Indeed, it seems from news published on 16 December 2015³⁸ that the committee is still at the beginning of its proceedings and does not have an official chairman. The news reported the meeting of the chairman and deputy of the Administrative Control Authority with the person entrusted with the works of the Commission at the office of the Administrative Control Authority in Tripoli but it did not mention the chairman of the Commission. The meeting dealt with the importance of cooperation between the two monitoring commissions and studied the competencies of the work of the two bodies so as not to conflict with their work, in order to agree on a mechanism of cooperation between the monitoring authorities concerned with combating financial and administrative corruption. For his part, the person entrusted with the works of the Commission discussed Law No. 11 of 2014 and requested the Administrative Control Authority work on setting up joint workshops and on giving training courses to the new staff at the Commission, and he mentioned the role of the Administrative Control Authority in monitoring work and its having a large number of qualified staff.

ACTIVITIES OF THE COMMISSION: ACHIEVEMENTS AND CHALLENGES

Considering that the Commission was created in 2014 in a highly unstable environment, until now the Commission has not been able to show any amount of transparency in its work. Although it is required to submit an annual report, it has not published any information regarding any activities or investigations and these works are still largely unknown. The Commission set up a website as soon as it was established, but this is not operational³⁹ and cannot be found on the web. According to the unpublished NIS report completed by Transparency International in 2014: “there were accusations of interference in the work of the parliamentary commission responsible for overseeing the Anti-Corruption Commission.” However, it is not possible to objectively evaluate the extent of the political neutrality of the Commission’s work and the independence of its investigations, as it carries out little or no work at all.

³⁷ According to the study on the Libyan Commission completed with the supervision of Transparency International.

³⁸ www.eanlibya.com/archives/47780.

³⁹ The draft study by Transparency International did not give the name of the website and we could not find it, despite searching for it on the web.

The Anti-Corruption Commission under the Ministry of Finance also failed to publish any information about its work. Often this not because it has not participated in any investigations, but because of the current security circumstances, which means that complaints cannot be raised without fear of retribution.

According to the same report, Tariq Al-Walid, the chairman of the Anti-Corruption Commission under the Ministry of Finance, stated in an article on the *Financial Times*⁴⁰ that he would not risk publishing complaints or accusations on behalf of the ministry at the current time. Instead, he uses non-traditional channels through other organisations to whom he gives information on corrupt practices for them to publicise it. This allows the chairman of the Anti-Corruption Commission under the Ministry of Finance to play an unnoticed role. However, the type of organisations that help him in this regard is not known, let alone the effect of these publications.

The Commission has still not engaged in preventative actions related to the combating of corruption, and awareness-raising and education about its risks. While current legislation allows the Commission to submit recommendations with regard to legislative reforms dealing with anti-corruption measures to Parliament, it is uncertain how this possibility has been used. It is not clear if the Commission currently has the necessary capabilities to undertake this task. In addition, the Commission has not worked with civil society organisations on fighting corruption, and it has not provided workers in the public sector with any training opportunities with regard to fighting corruption.

The Commission has significant powers under the 2014 Law, including the undertaking of investigations and detection of crimes of corruption contained in a number of Libyan laws, as well as the UN Convention against Corruption.

The chairman of the Commission may order a freeze of any funds suspected of being acquired through a crime of corruption and he may order administrative seizure. The Commission may, by a decision of its council, require any person suspected of acquiring illicit funds to indicate the legitimate source of his funds, and the Commission must take the necessary measures to protect witnesses, experts and informants against any attack they may be exposed to due to their testimony, expert opinion, or reporting.

Despite this, in practice there are no indications that the Commission is carrying out investigations into corrupt practices or that it has practised any of the broad powers assigned to it in the Law. On the other hand, the entity present in the Ministry of Finance might have completed work in this regard, but in secrecy, due to the fragility of the security environment and the risk of retaliation.

Citizens cannot communicate with either the Commission or the Administrative Control Bureau in Libya, despite the latter having a website⁴¹ and Facebook page.⁴²

It is clear from the website of the Administrative Control Bureau that names are concealed, despite the publishing of photographs.⁴³

⁴⁰ www.ft.com/intl/cms/s/0/9c2a1ce4-6728-11e3-a5f9-00144feabdc0.html#axzz3vhSu3JU3.

⁴¹ www.aca.gov.ly/.

⁴² https://www.facebook.com/permalink.php?story_fbid=1270329759659996&id=748204221872555&comment_id=1270573772968928&comment_tracking={%22tn%22%3A%22R%22%22}.

⁴³ See for example, the page: www.aca.gov.ly/index.php/الهيئة_الادارية_الرقابة_هيئة_بين_اجتماع-188/الاخبار/الفساد_لمكافحة_الوطنية.html.

CONCLUSIONS AND RECOMMENDATIONS

Clearly, the prevailing security environment in Libya and the lack of a strong, stable and united state casts a shadow over any serious attempts to combat corruption. If the former regime did not establish strong state institutions and worked to destroy any institution or organisation independent from it, the "regime" which followed it has still not created a stable regime and institutions able to work in a normal environment.

It is certain that when the situation settles down in Libya, there will be space to recommend the development of an anti-corruption commission having the qualities required to make it an independent institution with sufficient financial resources and competencies, broad powers and productive and cooperative relations with other institutions.

REGIONAL TRENDS: STRENGTHS, WEAKNESSES AND BEST PRACTICES

Table 3: Types of anti-corruption agencies in the five assessed countries

INDICATOR	LIBYA	PALESTINE	TUNISIA	MOROCCO	JORDAN
Year established	2014	2005	2011	2007	2006
Website (yes/no)	×	√	×	√	√
Regulating law (yes/no)	√	√	√	√	√
Number of employees	N/A	N/A	N/A	30	181
Annual budget (EUR millions)	N/A	2.11	.10	1.42	3.30
Strategy (yes/no)	N/A	√	√	√	√
Mandate:					
1) Investigative power	√	√	*√	*√	√
2) Preventing corruption	√	√	√	√	√
3) Awareness-raising and education	×	√	×	√	√
Interaction with civil society	√	√	×	√	√
Coordination with other national bodies	×	×	×	×	×
Is it the only body fighting corruption?	×	×	×	×	×

The five countries discussed in this study set up anti-corruption commissions following their ratification of the UN Convention against Corruption, as part of the requirements of the Convention. Jordan established its commission in 2006, followed by Morocco in 2007 then Palestine in 2010 and Tunisia in 2011, and finally Libya in 2012. The commissions were established in Jordan, Libya and Palestine by laws approved by the legislature, while they were established in Morocco (the current commission) and Tunisia by a prime ministerial decree or framework decree. However, the latter two countries, Morocco and Tunisia, have taken important steps in terms of the legislative authority for anti-corruption commissions, after the events of the "Arab Spring", as the commissions have become constitutional institutions stipulated through the modification of the constitutions of the two countries. However, the laws governing their work have been greatly for reasons believed to be political. The names of the two commissions were also changed to signify a clear change in their roles. The name of the Moroccan commission became "the National Authority for Integrity, Prevention and the Fight Against Corruption" (it had previously been the "Central Authority for Prevention of Corruption"), and the name of the Tunisian commission became the "Good Governance and Anti-Corruption Agency" (it had previously been "the National Anti-Corruption Authority"). Jordan is intending to change the name of its "Anti-Corruption Commission" to "the Integrity and Anti-Corruption Commission", by way of the law modifying the Commission Law which government put to Parliament in the latter part of 2015. The Jordanian Commission Law has been changed twice before. Similarly, the Palestinian commission was established as a result of a modification of the Law of Illegal Gain of 2005. In Libya, the "Anti-Corruption Commission", which had been established in 2012, was dissolved in 2014, and was replaced by the NACC.

Although many of the amendments are moving in the right direction, they show the absence of a clear strategic vision in the fight against corruption, a vision that is based on a consensus across the society and the participation of all active parties. They also point to continued governmental intervention in the work of the commissions, and insufficient independence being given to them, particularly as many of the amendments came from governments and not the commissions themselves.

The five commissions are similar in their organisational structure, as they are each composed of three bodies, regardless of nomenclature. The first body sets policy and takes decisions on the duties assigned to it; the second body is of a technical nature and is responsible for the collection of evidence and data and the preparation of studies and reports, and it receives complaints and conducts investigations (in accordance with the duties assigned to the commission) and refers what it obtains to the first body; the third body is responsible for the administrative, financial and logistical matters necessary for the work of the commission. This system is consistent with the governance of similar commissions in the world, such as those in Hong Kong and Singapore.⁴⁴ However, there is a clear difference in the five commissions as regards the lack of balance in the distribution of their workforce and the financial resources assigned to them. In the Tunisian case, the first body is very large, having 30 members, while the number of technical staff is very limited. Jordan, on the other hand, has seven members, including the chairman, and 181 employees, 33 per cent of whom work in administrative and financial affairs. Most of the financial resources are spent on salaries, and what is spent on research and technical measures is very little indeed. In the case of Jordan, 75 per cent of the budget is spent on salaries and in Tunisia 60 per cent of the budget is spent on the lease of the building the commission occupies. The fact that these commissions are subject to the general employment regulations in the country deprives them of the possibility of attracting skilled and experienced staff. This matter is not consistent with the best practices of many anti-corruption commissions, which can attract employees with the best skills and pay attractive salaries and bonuses to encourage them to give their best and not to fall prey to corruption themselves. The

⁴⁴ Transparency International, Anti-Corruption Helpdesk, *Best Practices For Anti-Corruption Commissions*, 2013.

salaries of staff in the Indonesia Anti-Corruption Commission, for example, are higher than state salaries.⁴⁵

The general regulatory environment in which the commissions operate is complex and difficult, and is characterised by the presence of numerous institutions and bodies whose work overlaps with the work of the commissions. In Jordan there are no less than 15 regulatory bodies, and in Tunisia at least two committees have been formed to investigate corruption cases concerning senior figures in the previous regime and a third committee to pursue cases for the recovery of funds smuggled abroad; and recently the Ministry for Public Service, Governance and the Fight against Corruption has been established. Despite this, all the five countries lack an institutional mechanism to regulate, coordinate and integrate the work of these multiple bodies, and to ensure there is no interference or conflict between them, and to lay the foundations and set the standards for honourable, sound and proper action, to ensure the quality, reliability and fairness of the work of these commissions, and to evaluate their outcomes and the integrity of their staff.

From a review of the studies and evaluations of the five commissions, it is possible to deduce a number of general patterns and trends.

CAPACITY

Under-resourcing and executive dominance in appointments hamper anti-corruption agencies' effectiveness

The capacity of any anti-corruption commission to practice its duties and achieve its goals is defined by the financial resources available to it, its independence in its work and the competency of its staff. A detailed analysis of the capacity of the commissions concerned requires a consideration not only of what is contained in the legislation relating to the commissions, but also of their practices on the ground.

Resources

Laws or decrees regulating the work of the commissions indicate the provision of the necessary resources to them within the state's budget (Jordan, Palestine, Libya and recently Morocco, following the approval of the law of the new Integrity Commission in July 2015) or within the budget for the ministry of finance (Tunisia). The chairman of the commission is the paymaster in all the commissions. Although all the commissions prepare their own budgets, these do not appear as an independent budget within the state's budget, except in the case of Jordan and Palestine. This leaves the other commissions at the mercy of the prime minister (the situation in Libya is unclear, as the commission has not actually been established).

As regards actual practice on the ground, it seems that all the commissions suffer from a lack of sufficient financial resources being allocated to them, particularly as a large proportion of these go to cover salaries and what remains is not sufficient to support the work of the commissions in prevention, awareness-raising, education and strengthening their role in society. It should be noted that some of the commissions receive gifts, grants and aid which compensate them for the shortfall in their budgets.

⁴⁵ Ibid.

Independence

All the laws and decrees establishing the commissions provide for their administrative and financial independence and give them legal capacity, and their internal regulations permit their financial conduct within the limits of their competencies, which includes the appointment of staff. However, the Jordanian and Palestinian commissions are considered public institutions, appointments to which are made on the same basis as in the state, including in regard to salaries. This deprives these two commissions of some independence and their ability to attract talent. The commissions must develop their internal financial and administrative systems to allow them to practice their work efficiently and effectively, whether with regard to transparency in the appointment of technical or administrative staff or transparency in financial transactions under the budgets allotted to them and in a manner which allows effective control of these transactions, whether by the nationally approved regulatory bodies or by society. Independence does not mean that the commissions should work without effective systems outside the scope of regulation.

The other more important aspect in independence is the independence of the chairman and the members of the committee council (the first council). It was noted in the five commissions that the choice or suggestion of the chairman and members was made by the executive authority, sometimes in consultation (Tunisia) or without consultation (Jordan and Palestine). In Libya, they are chosen by the legislature. The new law in Morocco gives the prime minister and both houses of Parliament the right to appoint eight commission members, out of a total 12. However, the king has the exclusive right to appoint the remaining four. In view of the king's moral authority over both houses of Parliament and over the prime minister, this leaves plenty of room for the influencing of their choice of the members who they have the right to choose, which in theory means the king is able to appoint the majority of the members in addition to the chairman.

The other important matter in ensuring independence is the plurality of the membership of the committee council. Despite this, there are no laws relating to the commissions which guarantee intellectual, political and gender diversity in the members of the councils, except in the case of Tunisia. In reality, pluralism is weak, and the representation of women on the commission councils is extremely weak.

Renewal of the term of the chairman and members of the commission council is closely connected with independence. It is noted that the laws of the five commissions provide for the possibility for one instance of renewal, which might affect their independence from the appointing bodies. For these reasons combined, there always rises to the surface accusations of the lack of complete independence of the anti-corruption commissions from the executive authority.

Finally, the most important criterion for choosing the committee chairman and members of its council is the integrity, probity, neutrality, and independence of the person. Hence putting the matter of attesting these characteristics into the hands of one person or one body is fraught with risk or renders the choice prone to political whims, which is not consistent with best practices in this field.

Competency of commissions' staff

Despite what is stated in the laws of the commissions or the decrees establishing them, on the ground they suffer from a severe shortage of qualified staff, in particular technicians and workers in the fields of financial audits, money laundering and electronic crimes, which limits the capacity of the commissions to perform their duties

GOVERNANCE

Anti-corruption agencies aspire to be transparent and accountable but there is still room for improvement

Transparency, accountability and integrity are considered fundamental elements in the governance of anti-corruption commissions. From a review of the reality in respect of the five commissions, the following general patterns and trends can be deduced:

Transparency

The commissions in Morocco, Jordan and Palestine enjoy a good level of transparency in law and in practice. They have websites that have a great deal of information, such as laws, regulations, studies, reports, statistics, work plans and guides. Their work is characterised by a good level of openness to the media and civil society organisations, and their officers take care to participate in related activities in society. The commissions advertise their activities, programmes and plans in a good manner and routinely publish their annual reports. However, the commissions in Tunisia and Libya do not publish their annual report and do not have a website, despite their laws providing for this. However, the law of the Tunisian commission includes significant controls in relation to transparency when studying matters relating to investigation and referral to judicial authorities, as the Commission Law does not permit any member to participate in a study or discuss any case relating to a natural or juridical person with whom he has a personal interest or relation, including by marriage, or any type of liability or contract. Despite all this, civil society organisations and activists in the region do not believe that the level of transparency present in the work of the commissions is sufficient to assist in the development of general policies and trends to strengthen integrity and the combating of corruption.

Accountability

The councils of the commissions with an investigative role (Jordan, Palestine, Tunisia and Libya) enjoy legal immunity from prosecution in the cases they take on. The laws of these commissions define clearly the procedures and criteria related to the forfeiting of membership and the referring of the chairman and members of the councils to investigation and legal prosecution. In Morocco the existing commission does not undertake criminal investigations, but it can take on this task in accordance with the new Moroccan Commission Law. All the commissions submit their annual report to the government or parliament or both of these, and the annual report is published on the website (with the exception of Tunisia and Libya). However, the commissions are not accountable to a supreme overseeing or monitoring authority, other than the authority which appointed them. This weakens the principle of “checks and balances”, which is to be found in other countries. In Hong Kong, for example, four specialist committees monitor the Independent Commission Against Corruption (ICAC), one of which reviews and audits the investigations conducted by the ICAC. In addition, an independent committee was established, called the Complaints Committee, for complaints against the ICAC, headed by a member of the executive board. The Malaysian Anti-Corruption Commission (MACC) resorted to strengthening the checks and balances system by establishing five main committees, two of which are for complaints against the MACC and to review its operations.⁴⁶ On the other hand, the annual reports of the Arab commissions are not discussed with any degree of seriousness by the executive authority or the legislative authority. There was also

⁴⁶ Dr. Muhyieddeen Touq (2014) *Good Governance and Combating Corruption: Perspective of the UN Convention against Corruption*.

noted to be weak accountability and community control, which is sometimes represented in the non-inclusion of community institutions in setting the plans and work programmes of the anti-corruption commissions and assessing their implementation, or in the adopting of a negative attitude towards the whole issue of community accountability. As regards financial accountability, all the commissions are subject to financial control by the financial control authorities approved by the state, or their accounting affairs are handled by a public accountant in accordance with the laws and regulations in force in the state. In the event of the discovery of any contraventions, these are dealt with according to the laws and the measures in force in the country, as is the case for public officials.

Integrity

The laws of all the commissions include criteria relating integrity in their councils, such as rules of disclosure, and financial disclosure and general codes of conduct, with the exception of Morocco, as the council of the previous commission was made up of volunteers who did not receive an official salary. The laws or decrees of most of the commissions explicitly or indirectly prohibit council members from occupying positions that might represent a conflict of interest or may involve the discussion of matters in which they might have a direct or indirect interest (as is the case in Tunisia). To achieve more guarantees of integrity, the law of the Jordanian commission provides for the protection of witnesses and informants. In actual practice, there has to date been no record of any incident that might affect the integrity of the existing anti-corruption commissions, despite the fact that the prevailing belief in some countries is that they do not perform their work with the required seriousness to prosecute the corrupt in senior official positions, but are content with prosecuting cases of minor corruption. However, the Palestinian commission investigated four senior officials, including two ministers, and the Jordanian commission investigated some influential persons silently, without making an official announcement.

From the above it is clear that the governance of the commissions in Jordan, Morocco, Tunisia and Palestine as regards transparency, accountability and integrity is reasonably good (there was not sufficient information or data on the Libyan commission as it had not commenced its work at the time of writing this report). However, of course, it is possible to improve the governance of the commissions by making use of best practices derived from successful international experiences as regards the method of forming their boards, ensuring the intellectual and political diversity of their members, adherence to the principles of checks and balances in their work, and providing their staff with continual training and professional development.

ROLE

Commissions need stronger awareness-raising programmes and better tools to evaluate their impact.

Generally, anti-corruption commissions perform three main functions: investigation and prosecution; prevention; awareness raising and education on the risks of corruption. It was noted that the five commissions differ in their assumptions regarding these functions, according to the political situation and internal conditions in which they exist, and likewise the extent of the internal struggles between the state apparatuses in general. The Jordanian and Palestinian commissions assume the three roles, while the Moroccan and Tunisian commissions do not conduct investigations. It is noteworthy that Tunisia's new laws give its commission this power, but in view of the situation the country has been going through over the last five years, the commission has not practised this role with any effectiveness. It should be noted that the commission laws in Jordan and Palestine give the

commissions strong and effective roles in collecting evidence and data, receiving complaints and notifications, investigation and referral of cases to the public prosecutor in the event of complaints being proven, and the protection of witnesses and whistleblowers. The two laws criminalise delays in submitting data by governmental institutions and departments. The Tunisian law establishes a special apparatus for prevention and investigation but this has not been established since the law was issued – it is hoped that when it is established it will play an important role in this field. The Moroccan law is distinguished by setting strict conditions concerning the receiving of complaints and notifications, which might discourage people from submitting them.

In view of the fact that the commissions in Jordan, Morocco and Tunisia are going through significant changes in legislation, organisational structure and roles due to the approval of new laws in the case of Morocco and Tunisia, and the expectation of the approval of a new law in 2016 in Jordan, any judgement regarding the effectiveness of the practices in these countries will be affected by these changes. One positive aspect is the improvement that occurred in all the countries in terms of putting the combating of corruption within a wider framework to strengthen integrity – something which requires support and reinforcement – and the undertaking by the commissions of the three roles gives a degree of inclusiveness and integration to their work, and will in the long-term work to strengthen integrity and increase efficiency in combating corruption, which is consistent with international best practices. However, it was noted that all the commissions lack real mechanisms and means to evaluate their work and determine the extent of their effectiveness and efficiency, and they lack indicators to monitor the general changes in the corruption scene in their countries, and in the awareness of citizens of the seriousness of corruption. They also lack specific awareness-raising programmes for public servants or the private sector, and programmes to train them on the prevention of corruption in their fields of work, and their capabilities have not improved so far as to allow them to become consultancy centres specialised in how to prevent and combat corruption, whose experience can be made use of by departments, institutions, civil society and the public in general.

CONCLUSIONS AND RECOMMENDATIONS

The anti-corruption commissions in the five countries operate in a difficult and changing environment. Their work is affected by the complicated political and socio-economic context prevailing in the region, and their legislation is characterised by relatively quick changes. All the commissions suffer from a lack of technical staff and poor funding, and their position is tainted by a suspicion that they are not independent from the executive authority. Despite this, the expectations of the public regarding them are high. This all puts pressure on the commissions. It seems that the creation of these commissions has not improved the state of corruption in these countries. Indeed, the evidence points to corruption increasing – at least, this is what people believe to be the case. Hence there is an urgent need to improve the effectiveness, efficiency and credibility of these commissions. There follow some recommendations derived from the situation of these commissions, international best practices and the Jakarta Statement on Principles for Anti-Corruption Agencies of 2012, which could contribute towards this improvement:

CAPACITY

A. Resources

1. The commissions should have an independent budget within the general budget of the state, which is agreed and approved by the legislative authority. The chairman of the commission should be the final paymaster for the allocations contained within it, without prejudice to the requirements of accounting standards and financial controls adopted in the country.
2. The commissions should develop clear rules and standards of proper and honourable conduct for all their staff, including regulatory and disciplinary procedures to protect against the misuse of the authority given to the staff.
3. The financial allocations to the commissions should be increased and a sufficient part of them put towards technical work relating to the roles assigned to them.
4. Donor countries should be encouraged to increase their financial and technical support for the commissions, whose countries are suffering from financial difficulties and which are going through a period of change, through international cooperative programmes.

B. Independence

The integrity, neutrality and independence of the and the Commission and members of its council is the most important criterion for the independence of the Commission. Hence putting the process of selection into the hands of one person or body makes the matter fraught with risk and prone to political whims. The following measures are therefore recommended, in line with international best practices:

1. There should be multiple bodies to nominate, select and appoint the chairman and members, and the decision should not be given to one body.
2. Extensive consultations should be held with all partners to agree on the candidates.
3. The door to candidature should be opened publicly for those wishing to fill the positions.

4. There should be a guarantee of political and intellectual plurality in the composition of the councils.
5. Specified institutions, such as the judiciary, the legislative authority and civil society, should be enabled to appoint their representatives.
6. There should be acceptable representation of all sections of society, including women.
7. The appointment should be for one time and for a reasonable period (five or six years).
8. The termination of the work of the chairman and members of the council should be for purely legal reasons and defined by strict procedures in law, and not left to the discretion of the government.

C. Competency of commissions' staff

1. The commissions should be supplied with a suitable number of qualified staff specialised in performing the roles assigned to the commissions, in particular in the field of collecting evidence, research and conducting investigations.
2. The commission staff should receive ongoing training on all developments in crimes of corruption, criminal investigations, money laundering and electronic crimes.

GOVERNANCE

Transparency, accountability and integrity are fundamental elements in the governance of anti-corruption commissions. The following is therefore recommended:

1. A detailed report should be published on the activities and programmes of the commissions, the results of their investigations and the recommendations they provide, as far as these do not conflict with the confidentiality of the investigations and privacy of individuals, and in line with the rights of individuals to information, as well as the publishing of everything related to strengthening anti-corruption efforts, such as self-assessment reports to review the implementation of the UN Convention against Corruption by countries, and the recommendations and international reports in its regard issued by the UN Office on Drugs and Crime.
2. Consider creating an institutional, governmental, popular organisation which coordinates and integrates the work of all the monitoring institutions, draws up general integrity policies and monitors their work to ensure fairness, integrity and adherence to proper, honourable, sound performance and quality criteria in the work of the institutions.
3. Subject all financial matters and actions to the monitoring authorities, the audit/financial control bureau officially approved in the country, and subject all of the commissions' financial operations to the international accounting standards relating to integrity.
4. Improve the websites of the commissions so they become interactive, to increase the participation of the public in setting standards and rules of integrity, and to improve the communication policy with the public to enhance the credibility of the commissions.
5. Set and approve the rules of the codes of conduct of the staff at the commissions, and not be content with the general rules approved for public servants.
6. Set and develop standards for employment of staff in the commissions that confirm the principles of merit, entitlement and integrity, which are stricter than the general employment criteria, and set salaries which are commensurate with the seriousness of staff functions.
7. Develop rules of disclosure and financial disclosure for staff in the commissions so this becomes routine and open.
8. Tighten restrictions relating to the work of council members after the end of their membership in the council, provided they are not volunteers.
9. Develop mechanisms to increase monitoring and ensure the quality, fairness and integrity of the work of the commissions, including the monitoring by the public of their work.

ROLE

1. The commissions should assume the three globally recognised and approved roles, which are: prevention; awareness-raising and education; investigation and prosecution as they are related to each other and are in line with what is called for by the UN Convention, due to the need to follow a comprehensive and multi-pronged approach to effectively combat corruption.
2. The commissions should be developed to become centres of expertise, which can give advice and consultation to all state departments, and both public and private institutions, on how to strengthen integrity and combat corruption in their field of work, and supply public servants and workers in the private and non-governmental sectors with the necessary specific training to prevent and combat corruption effectively.
3. The commissions should conduct studies and research on the phenomenon of corruption in their countries, in particular concerning the areas and sectors most prone to corruption, and disseminate their results to the public, in order to contribute towards developing public policies aimed at fighting corruption, informing the public and making them aware of the risks of corruption and the role they can play in combating it.
4. The commissions should work on increasing networking and developing cooperation with all partners, in particular with civil society, and coordinate work with national, regional and international institutions operating in the anti-corruption field.

