



Report Series No. 64

The Role of the Legislative Council in Combating Corruption (The blocs and lists commission and the parliamentary work groups)

April 2013

Part One: The role of the committees of the Palestinian Legislative Council in combating corruption: the West Bank

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Introduction:

The Palestinian Legislative Council is the legislative power within the constitutional structure of the Palestinian National Authority. It has genuine responsibilities and powers, such as those of legislating and overseeing the actions and policies of the executive authority. This is in addition to the Council's roles of parliamentary representation of citizens and of consolidating its relationships at home and abroad. The Legislative Council operates within a framework of balances and overlap with the executive and judicial authorities as outlined in the 2003 Amended Basic Law, in the context of the principle of separation of powers and considering the people to be the source of these powers. The Council possesses tools and methods for the exercise of its legislative and oversight powers and functions. These mechanisms were established by the Basic Law and the Council's Standing Orders, both as regards the method of enacting laws and the method of exercising oversight, and include passing votes of confidence or no confidence in the government, asking questions, interrogation, fact-finding committees, approving the public budget and final account, holding hearings and so forth.

The Legislative Council is also one of the basic components of the National Integrity System. It is, in particular, a crucial element of the system of accountability within society, and it also represents the voice of citizens and is their eyes on the performance of the executive authority. Generally speaking, it is the primary safety valve against any practices, acts and attitudes which breach the values of democracy, the principles of sound governance and the sovereignty of law and human rights in Palestinian society, and in particular against all forms or manifestations of corruption or the infringement of the values of integrity, transparency and accountability. The Council plays this role through its enactment of legislation that reinforces these concepts through the use of binding legal rules or oversight that limits such imbalances within public institutions, and by holding perpetrators to account in cooperation with the other competent authorities.

Assessing the Legislative Council's role in fighting corruption would perhaps be easy under normal circumstances. However, this seems to be more complicated in the current reality of the fragmented and divided situation of the three authorities, in particular the legislative authority. The political division arising from the power struggle in 2007, and the emergence of an alternative power in the Gaza Strip under the Hamas leadership, has led to the weakening - or even paralysis - of the role of the Legislative Council, and therefore to the occurrence of a genuine imbalance in the overall system of accountability, with significant damage to the effectiveness of oversight. Accordingly, the context for consideration of the Council's role is not typical given the breakdown in its true function and the difficulty of enforcing the abovementioned constitutional tools of legislation and oversight.

Thus, in the context of the analysis undertaken in this report, it may be more logical to consider the work of the Legislative Council and its role in combating corruption under the existing reality rather than assessing its work in terms of the legal situation, while recognising that the phase covered by this report is both exceptional and unnatural. The fundamental point is to comprehend the extent to which the law is respected and its tools implemented - something the Legislative Council has attempted to strengthen since the political division in 2007, but without success. The Council in the West Bank has therefore been forced to employ mechanisms based on the creation of a role for the 'parliamentary blocs and lists commission' and the formation of parliamentary work groups, given that it has been impossible to hold regular sessions of members of parliament as a number of them are in detention, coupled with the situation of the political division. Meanwhile, the legislative work of the Council's members and committees resident in Gaza has continued through reliance on agents and the granting of power of attorney by some of the members located in the West Bank. AMAN has previously stated its view regarding the illegality and unconstitutionality of the work of the groups in the West Bank and the group that meets in the Gaza Strip. However, this report has a particular, specific aim.

This report is part of the process of AMAN's periodical review and examination of the extent of robustness of the National Integrity System. It focusses on the effectiveness of the Legislative Council in overseeing the work of the executive authorities and in preparing legislation and forming policies related to curbing corruption. It aims to learn about the Council's experience in this exceptional phase and the challenges its work entails, and to issue applicable conclusions and recommendations which contribute towards reinforcing the role of the Palestinian parliament as a primary protector of the National Integrity System in Palestine.

Accordingly, this report deals with the regulatory framework of the work of the Legislative Council in the present situation. It focusses on the work groups and parliamentary blocs and lists commission, the Council's legislative and oversight roles and the impact of each in combating corruption, and the Council's role as regards anti-corruption policies. It employs a methodology based on examination of a number of fundamental indicators of the Council's role in the fields of legislation, oversight and policy, and inspection and analysis of the documents and legislation under which the Council operates and the reports issued by it, in addition to interviewing stakeholders in this area.

Section One: The regulatory framework of the Legislative Council's work in the current situation:

Since the middle of 2007 and until the time of writing, the Palestinian Legislative Council has lived through a period of difficult circumstances and deep-rooted problems that have rendered its work as a constitutional institution almost impossible. The Council's activities have broken down completely: sessions have not been regularly held and the work of its commissions, committees and departments has been paralysed. The Council itself has become divided. While the Council has continued to be convened in Gaza by the Hamas 'Change and Reform' bloc (and by its members alone, without the other blocs, lists and members), a fundamental change has been witnessed in the West Bank, where the Council has not been convened as a body. Rather, the blocs and members located in the West Bank have begun to undertake certain business related to public interest issues either collectively or individually, within the framework of their role as elected members and within the limits permitted by law. In doing so they are invoking certain stipulations from the Basic Law, in particular Article 56: "Each Member of the Council shall have the following rights: To submit to the executive branch all legitimate requests necessary to enable the Member to carry out parliamentary functions..." Added to this is the corresponding Article 15 of the 2004 Law of Rights and Obligations of the Members of the Legislative Council and the Standing Orders of the Council, which provide mechanisms and tools that can be employed to breathe life into the work of the Council at the levels of oversight and legislation.

As it seemed evident that the Council's return to normal operations, the ending of the political division and the release of the detained MPs by the Israeli occupying powers were not likely in the foreseeable future, the members of the Council and the representatives of the blocs and lists held a meeting on 5/6/2008 at which they debated options of how to activate the role of the Council's members and blocs while the convening of regular Council sessions remained a practical impossibility. The major development involved restructuring the operational mechanisms of the Council and its members on the basis of principles and tools suited to the present situation, such that an exacerbation of the division in the body of the Council is avoided (given that hopes for its reconstitution will remain a national priority) yet at the same time some role is retained for the Council's members, albeit a minor one, until they are able to operate normally. The members in attendance therefore adopted a number of approaches, of which the three most important are as follows: holding a periodical general meeting of the members and representatives of the blocs and lists on the first and third Thursday of every month; the formation of the so-called 'blocs and lists commission' as a coordinative framework that includes representatives of the blocs and lists and the general secretariat of the Council; and the distribution of the members of the Council into legislative and oversight work groups that meet periodically to discuss the issues assigned to them.

There follows a clarification of the structure of this organisational framework for the Council's work and of the major functions and mechanisms through which it operates:¹

One - The periodical general meeting:

The periodical general meeting comprises all of the members of the Council, including the representatives from the blocs and lists commission, the members of the work groups and the Council's general secretariat. This meeting is in effect the body of the Council and it is convened periodically on the first and third Thursdays of every month. All of the reports, recommendations, observations and issues on which the work groups and the blocs and lists commission are working are discussed here, in addition to design of the approaches and recommendations related to these issues in terms of both the legislative and oversight role of the Council. The business of the periodical general meeting is documented in minutes which are retained by the Council.

The following table shows the periodical general meetings held by Council members during the period from 2008-2012:

Year	Number of periodical meetings
2008	10

¹ Report of the General Secretariat regarding the status of the Palestinian Legislative Authority. The Legislative Council, 2008. P. 26.

2009	7
2010	2
2011	3
2012	8
Total	30

Two - The blocs and lists commission:

The blocs and lists commission is the leadership and coordination framework for parliamentary work under the current situation within the West Bank. It consists of representatives of the parliamentary blocs and lists and the general secretariat. In addition to the Change and Reform bloc (Hamas), the blocs and lists commission has been joined by the bloc of the Fatah parliamentary movement (three members), the Third Way (one member), the Alternative (two members), Independent Palestine (one member) and the Martyr Abu Ali Mustafa (one member). It has been agreed that no member of the commission may be a coordinator of a work group, although the members of the commission do have the right to participate in all of the business of the work groups. The blocs and lists commission convenes at periodical meetings scheduled for the second and fourth Thursdays of every month, unless necessity dictates otherwise. Its business and meetings are coordinated by the general secretariat of the Council. Its meetings are valid with the attendance of an absolute majority of its members, and its decisions and recommendations are issued by consensus, or if that is impossible by the absolute majority of members. Minutes of its business are prepared and documented in accordance with the documentation mechanisms applied at the Council.

The duties of the blocs and lists commission comprise the following matters: coordination of the work of the members of the Council and the parliamentary work groups through the classification and distribution of cases to the groups; following up the recommendations of these groups in coordination with the general secretariat of the Council and the relevant authorities; discussion of the reports, recommendations and observations presented by the work groups; following up the implementation of recommendations with the executive authority, and in particular monitoring recommendations related to legislation, such as the decree laws issued by the president, after studying them and identifying the extent to which they are necessary or otherwise; following up the results and recommendations adopted at the periodical meeting; monitoring the matters of foreign delegations and participation, in particular those related to representing the Council and issues of a political nature; monitoring matters related to the judicial authority, and working to ensure the continuance of the principle of separation of powers and the independence of the judiciary.

The following table shows the meetings held by the parliamentary blocs and lists commission during the period from 2008-2012:

Year	Number of meetings
2008	12
2009	3
2010	7
2011	2
2012	7
Total	31

Three - The work groups:

Work groups have been formed by the blocs and lists commission on a sectoral basis to perform certain duties which have been assigned to them in place of Council committees (given the impossibility of forming such committees). These include monitoring the performance of government, the services it provides to citizens and the policies, operational procedures, strategies and legislation that have been or may be issued in the form of decree laws by the president of the Authority. Each group comprises a total of no less than five members of the Council. In allocating the members to the groups, their specialisation and wishes are taken into consideration. It is also possible that one member may participate in more than one group, up to a maximum of three groups at any one time. Every group has a coordinator from among the members of the Council. Six main sectoral work groups have been formed, each of which has particular functions. These are as follows:²

1. The work group for economic and financial affairs: This undertakes the monitoring of issues of investments and projects, granting concessions, foreign aid and development plans, the public budget and the government's financial reports, in addition to the related decree laws.
2. The work group for monitoring public services: This undertakes the monitoring of healthcare and educational services, transport, electricity, water, telecommunications and so forth, in addition to the related decree laws.
3. The work group for monitoring social issues: This undertakes the monitoring of issues of labour, workers, unemployment and poverty, and social support and health insurance, in addition to the related decree laws.
4. The work group for monitoring internal affairs and local governance: This undertakes the monitoring of security policies and plans, reform and development programmes and issues of local governance, in addition to the related decree laws.
5. The work group on issues of public opinion, freedoms and civil society: This monitors issues of rising prices and spoiled goods, and reviews reports related to rights and freedoms and so on, in addition to the related decree laws.
6. The work group on Jerusalem, land and opposing settlements and the wall: This monitors the work mechanisms related to Jerusalem, the policies of occupation with respect to Jerusalem and its citizens, affairs of land, its exploitation and the mechanism by which it is administered, opposing settlements and monitoring government work mechanisms on the subject of settlements, resisting the apartheid wall and monitoring the recording of damage caused by it, in addition to the related decree laws.

As regards the work mechanisms of the groups, each group holds periodical meetings as required and according to operational needs to discuss cases that fall within their area of work, and reports are prepared in this regard. Such reports are presented at the members' periodical meetings for discussion and the taking of the appropriate measures in this regard. Work groups can visit the competent authorities, including ministries and public bodies; they have the right to request information and correspond with these authorities to this end. Such authorities must supply them with the documents, governmental reports and information requested. The groups also have the right to invite ministers and officials to attend hearings regarding issues of concern. Accordingly, the groups' work mechanisms can be summarised as follows:

- Holding meetings: These take place on a weekly basis at least. Meetings are valid with the attendance of the absolute majority of members, and the recommendations issued by the group are adopted by consensus, or if this is

² The services group was later merged with the social issues groups, whereby the number of work groups was reduced to five.

impossible by the absolute majority of the members of the group. A joint meeting of two or more groups can be held if necessary.

- Preparation of reports: The work groups prepare reports on matters of interest if required. They also discuss any reports issued by the government or by other authorities if they relate to its work.
- Organising hearings: The groups can invite a minister or official for a special hearing with the aim of obtaining answers or clarifications regarding specific matters that fall within its area of concern, provided that stakeholders in the subject-matter of the meeting are invited.
- Receiving complaints: The groups can receive individual and collective complaints, in particular those related to public affairs. These are then transferred to the Council's complaints office for study and the presentation of recommendations in this regard to the group concerned, which in turn discusses the subject of the complaint and adopts the recommendations in order to follow them up with the relevant authorities.
- Field visits: The work groups can organise inspection visits to institutions and sites that fall within its area of interest and its duties, in order to comprehend operational requirements or to follow up a case under consideration by the group.

The following table shows the meetings held by the work groups during the period 2008-2012:

Work group	Year	Number of meetings
The work group for economic and financial affairs	2008	12
	2009	3
	2010	7
	2011	5
	2012	17
	Total	44
The work group for social issues and services	2008	14
	2009	6
	2010	12
	2011	Dozens of hearings were held as part of the inquiry into the Council's medical and Hajj files.
	2012	9
	Total	41
The work group on issues of public opinion, freedoms and civil society	2008	6
	2009	14
	2010	10
	2011	N/A ³
	2012	N/A
	Total	30
The work group for monitoring internal affairs and local governance	2008	9
	2009	N/A
	2010	2
	2011	1
	2012	N/A
	Total	12
The work group on Jerusalem, land and opposing settlements and the wall	2008	N/A
	2009	N/A
	2010	N/A
	2011	N/A
	2012	N/A

³ "N/A" means that the work group did not hold group level meetings during the year.

Section Two: The legislative role of the blocs and lists commission and the work groups, and its impact in combating corruption:

It is the Legislative Council that is genuinely competent to enact laws reinforcing the values of integrity, transparency and accountability and combating corruption in Palestinian society. An observer of the legislative role of the Council may perceive three dimensions to consider with respect to this subject under the current situation: the position of the Council towards the process of enacting laws in general, its position regarding the laws and legislation proposed by the government and its position regarding the decree laws issued by the president of the Palestinian Authority. Added to this is its vision regarding how to handle the Arab and international conventions and how to bring Palestinian legislation into line with them, and also the extent to which the Council is granted exclusivity as regards anti-corruption legislation and making other Palestinian legislation compliant with it. (Discussion of legislation here includes the regulations and instructions issued under the law.) The above five topics shall be dealt with in more detail:

One - The attitude towards the process of autonomously enacting laws in the present situation:

The general approach or attitude of the current Legislative Council, in terms of its regulatory bodies and work mechanisms (including the periodical meetings, the blocs and lists commission and the work groups in the West Bank), is one of abstaining from proposing new laws to be approved under exceptional mechanisms, considering that under the divided Council this would harm the public interest and would not contribute towards the establishment of carefully and professionally examined laws. The Council also wishes to avoid creating any precedent for the enactment of laws without the usual mechanisms for the reading and adoption of laws, which would reinforce the division or whet the executive authority's appetite for an uncontrolled increase in such exceptional enactment of laws.⁴ Accordingly, it has been observed that the Council has not passed any laws, nor have any laws been presented by it to the president of the Palestinian Authority for the purpose of promulgation. Moreover, although some of the draft laws that remained on the agenda of the Legislative Council from the period of the first Legislative Council have been subject to debate, none of them has been issued. The same is true as regards the proposed draft laws (amounting to approximately 21 in total) presented by new members or the government during the first eighteen months of the term of the Council. These too remain unissued (with the exception of the Public Budget Law of 2006) owing to the failure to complete the procedures for their adoption. They were presented during the first legislative session from February 2006 to June 2007. It has been observed that the Council made an amendment to the Public Budget Law of 2006,⁵ under which the Council granted the government the ability to delay the presentation of the draft budget law for that year. This is one of the causes of the defect in the subsequent years from the perspective of the government's failure to comply with presenting the draft budget law to the Council - or delay in preparing this draft - in contravention of the rules and laws in force.⁶ It is also evident that none of the proposed draft laws have been connected with fighting corruption. The bills have comprised the following: protection of injured people; the national fund for higher education; water; amendment of the Civil Status Law; the Sharia courts; amendment of the Law of the Judicial Authority; amendment of the Law on the remuneration and salaries of members of the Legislative Council, the government and governors; regulation of the profession of interior design and decorating in Palestine; the rights of imprisoned members of the Legislative Council; Dar Al-Fatwa and Islamic Research; amendment of the General Elections Law; the prohibition of torture; amendment of the Law of Criminal Procedure; amendment of the Law of Civil and Commercial Procedure; amendment of the Law on the Constitution of Regular Courts; the Palestinian commission for prosecution of crimes of the Israeli occupation against Palestinians; protection of fisheries; passport fees; pursuit of the pharmaceutical profession; and amendment of the Disabilities Law.⁷

Two - The attitude towards the laws proposed and implementing legislation established by the government:

The general approach of the Legislative Council regarding the laws proposed by the government to the president for promulgation in the form of decree laws involves coordinated work between the respective general secretariats of the Council and the Council of Ministers, whereby the Legislative Council is supplied with the proposed draft laws to provide its observations before they are presented to the

⁴ Interview with Dr. Ahmad Abu Diya, general director of the committees of the Legislative Council and work groups coordinator, on 16/1/2013.

⁵ See Article 1 of Law No. 7 of 2006 on the amendment of Law No. 6 of 2006 regarding the presentation of the draft Public Budget Law.

⁶ The MP Qais Abd Al-Karim mentioned this at the workshop organised by AMAN to discuss the draft of this report on 7/4/2013.

⁷ Harb, Jihad. *The second Legislative Council: Evaluation of the performance of the first legislative session, February 2006 - June 2007. The Palestinian Initiative for the Promotion of Global Dialogue and Democracy.*Miftah, 2007. P. 20.

president. However, this approach has not achieved tangible results given the weakness (or more recently the complete absence) of mechanisms for coordination with the government. The Council sees the government's approach of enacting legislation through the issuance of decree laws as a substitution for the role of the Council as the genuinely competent legislature. Accordingly, the Council considers itself separate from the government's legislative plan. Similarly, communication with the general secretariat has not been successful in achieving the intended aim; there has therefore been no true communication between the Council and the government in this area, nor even effective participation in the workshops held by the government to discuss draft laws. The government has also generally taken the approach of presenting draft laws to the president directly without showing them to the bodies of the Council for provision of their observations, as it is inoperative. In view of this, the blocs and lists commission has formed agreement with the president on the referral of draft laws for review prior to their promulgation in the form of decree laws. There is therefore a direct channel of communication with the office of the president other than by means of the government.

With respect to the implementing legislation established by the government (which includes the regulations and rules that must be established in order to implement laws), this has not been on the agenda of the Council's commissions. Neither the Council nor the work groups have monitored this subject regularly and no clear mechanism has been established to deal with this matter in the context of its legislative and oversight role. However, the Council has followed up certain decisions issued by the Council of Ministers where they have been subject to complaints presented to the Council, as these constitute issues of public concern.

There follows a list of the most significant implementing decisions, regulations and decrees issued by the executive authority related to combating corruption and reinforcing integrity:

No.	Legislation	Issuing authority	Date of issue
1	Decree No. 174 of 2008 regarding the formation of the National Anti-Money Laundering Committee.	President of the Authority	16/06/2008
2	Ministerial Decree No. 1 of 2009 regarding compliance with the code of rules of governance for public joint-stock companies in Palestine.	Minister of National Economy	25/11/2009
3	Decree No. 56 of 2010 regarding the appointment of the chairman of the Anti-Graft Commission.	President of the Authority	09/03/2010
4	Decree No. 19 of 2011 regarding the reconstitution of the National Anti-Money Laundering Committee.	President of the Authority	01/02/2001
5	Council of Ministers' Decree No. 7 of 2011 on the regulation of employees of the Anti-Corruption Commission.	Prime Minister	07/06/2001
6	Decree No. 10 of 2011 regarding approval of the amendment of the Arab Convention on Combating Money-Laundering and the Financing of Terrorism.	President of the Authority	27/06/2001
7	Council of Ministers' Decree No. 6 of 2012 on the Code of Conduct and Ethics in Public Service.	Prime Minister	23/10/2012

Three - The handling of decree laws issued by the president of the Palestinian Authority:

Since 2007, the president of the Palestinian Authority has issued dozens of decree laws related to economic, financial, security and social affairs. Published in Al-Waqae' Al-Filistiniya, these include both amendments to existing laws and the issuance of new laws. The general attitude of the Legislative Council towards these decree laws is that there should be no increase in them, and that rules should be established to limit their excessive issuance given that they constitute exceptional legislation. Such decree laws must be subject to review by the Council's bodies (the blocs and lists commission and the work groups) for study and the presentation of observations in their regard to the president. Accordingly, under the mechanism agreed between the parliamentary blocs and the president, the Council is supplied with drafts of these decree laws for inspection and debate by the Council's work groups, and for the provision of recommendations regarding them to the office of the president. However, this mechanism has not been followed; it has essentially been subject to the opinion and inclination of the president. The majority of decree laws have been issued by the president without referral to the Council. The laws issued by the president that were in fact referred to the Council amounted to a mere 12 draft decree laws, which is a tiny proportion. Similarly, the president has promulgated decree laws despite previously referring them to the Council and the Council adopting the position that they should be amended in accordance with its observations; they were nonetheless issued without the observations being adopted (such as the decree law on income tax). Meanwhile, the president respected the opinion of the Council regarding the non-issuance or delay of certain decree laws, such as compulsory health insurance and the law amending the Child Law. In specific cases the president issued certain decree laws with the Council's approval following examination, such as the decree law regarding Dar Al-Fatwa.

The operational mechanism between the presidential institution and the Council regarding the review of decree laws prior to their issuance reflects a form of uncertainty and instability. Whether decree laws were referred to the Council or otherwise was subject to the opinion of the presidential institution, which has created a double standard in the handling of these decree laws.⁸

⁸ The MP Qais Abd Al-Karim mentioned this at the workshop organised by AMAN to discuss the draft of this report on 7/4/2013.

The following table shows the decree laws either presented or not presented to the Legislative Council and its position with regard to them, in addition to the decree laws that were issued and published in Al-Waqae' Al-Filistiniya.⁹

No.	Decree law	Date of referral	Position of the Council
1	Decree Law of 2012 regarding the amendment of the Law of the Constitutional Court.	25/11/2012	Recommendation of non-issuance. (It was not published.)
2	Decree Law of 2012 regarding the amendment of the Detainees Law.	30/12/2012	Recommendation of issuance. (It was not published.)
3	Decree Law of 2012 regarding the Public Budget of 2012.	17/12/2011	Observations were made on this, but were not adopted. (It was published.)
4	Decree Law of 2011 regarding the amendment of the Income Tax Law.	03/03/2011	Observations were made on this, but were not adopted. (It was published.)
5	Decree Law regarding the National Archive	31/1/2011	Recommendation of referral to the Executive Committee of Fatah and the Yasser Arafat Foundation for statement of its opinion. (It was not issued.)
6	Decree Law regarding the higher education student loans fund	18/12/2012	Under examination.
7	Decree Law of 2012 regarding the Palestinian Dar Al-Fatwa	22/2/2011	Recommendation of issuance. (It was published.)
8	Decree Law regarding the amendment of the Child Law	13/1/2011	Recommendation of non-issuance. (It was not issued.)
9	Decree Law regarding approval of the salary and financial rights of the chairman of the Anti-Corruption Commission	24/1/2011	Recommendation of seeking guidance on unifying this according to the previous model of the authority or public oversight institutions. (It was not issued.)
10	Decree Law regarding Companies	25/11/2012	Under examination.
11	Decree Law of 2008 regarding amendment of the Traffic Law	Unspecified	Recommendation of issuance. (It was published.)
12	Decree Law regarding compulsory health insurance	Unspecified	Recommendation of non-issuance. (It was issued.)
13	Decree Law of 2012 regarding fees paid for powers of attorney and judicial declarations	Not referred	It was published.
14	Decree Law of 2012 regarding land registration and transfer fees	Not referred	It was published.
15	Decree Law of 2012 regarding the Sharia Courts	Not referred	It was published.
16	Decree Law of 2012 regarding lifting immunity from a member of the Legislative Council ¹⁰	Not referred	It was published.
17	Decree Law of 2012 regarding approval of the amendment of the loan agreement formed with the European Investment Bank to finance the energy sector rehabilitation project	Not referred	It was published.
18	Decree Law of 2012 regarding amendment of the Law of Election of the Local Authority Councils	Not referred	It was published.
19	Decree Law of 2012 regarding approval of the appointment of the chairman of the State Audit & Administrative Control Board	Not referred	It was published.
20	Decree Law of 2012 regarding amendment of the Decree Law regarding public electricity	Not referred	It was published.
21	Decree Law of 2011 regarding amendment of the Investment Promotion Law	Not referred	It was published.
22	Decree Law of 2011 regarding amendment of the Expropriation Law	Not referred	It was published.
23	Decree Law of 2011 regarding approval of the appointment of the chairman of the General Personnel Council	Not referred	It was published.

⁹ Confer the Al-Muqtafi Palestinian legal and judicial system. The Institute of Law, Birzeit University. (A digital legal data bank.) Accessed on: 25/01/2013.

¹⁰ This decree law was appealed before the Supreme Court in its constitutional capacity. The Court confirmed in its decision issued in 2013 that consideration of this decree law falls outside of its jurisdiction.

24	Decree Law of 2011 regarding the Public Budget	Not referred	It was published.
25	Decree Law of 2011 regarding amendment of the Charitable Associations and NGOs Law	Not referred	It was published.
26	Decree Law of 2011 regarding amendment of the Law of Penalties in force in the northern governorates and the Law of Penalties in force in the southern governorates	Not referred	It was published.
27	Decree Law of 2011 regarding chambers of commerce and industry	Not referred	It was published.
28	Decree Law of 2011 regarding the Industry Law	Not referred	It was published.
29	Decree Law of 2011 regarding amendment of the Palestinian Federation of Industries and the specialist industrial federations	Not referred	It was published.
30	Decree Law of 2011 regarding Palestinian Institute for Public Finance and Taxes	Not referred	It was published.
31	Decree Law of 2011 regarding approval of the reappointment of the governor of the Palestinian Monetary Authority	Not referred	It was published.
32	Decree Law of 2011 regarding amendment of the Legal Profession Law	Not referred	It was published.
33	Decree Law of 2011 regarding public procurement	Not referred	It was published.
34	Decree Law of 2010 regarding approval of the appointment of the chairman of the Anti-Graft Commission	Not referred	It was published.
35	Decree Law of 2010 regarding approval of the decision to unify the salary and financial rights of the chairman of the State Audit & Administrative Control Board	Not referred	It was published.
36	Decree Law of 2010 regarding the Public Budget of 2010	Not referred	It was published.
37	Decree Law of 2010 regarding prohibition and opposition to the products of settlements	Not referred	It was published.
38	Decree Law of 2010 regarding approval of the appointment of the chairman of the General Personnel Council	Not referred	It was published.
39	Decree Law of 2010 regarding amendment of the Anti-Graft Law	Not referred	It was published.
40	Decree Law of 2010 regarding the Land Authority	Not referred	It was published.
41	Decree Law of 2010 regarding amendment of the Legal Profession Law	Not referred	It was published.
42	Decree Law of 2010 regarding banks	Not referred	It was published.
43	Decree Law of 2010 regarding cancellation of Military Order No. 353 regarding opposition committees	Not referred	It was published.
44	Decree Law of 2010 regarding approval of the retirement of the chairman of the State Audit & Administrative Control Board	Not referred	It was published.
45	Decree Law of 2009 regarding the public budget of 2009	Not referred	It was published.
46	Decree Law of 2009 regarding the Public Electricity Law	Not referred	It was published.
47	Decree Law of 2009 regarding approval of the government	Not referred	It was published.
48	Decree Law of 2009 regarding the Palestinian commission for regulation of the telecommunications sector	Not referred	It was published.
49	Decree Law No. 16 of 2009 regarding approval of the amendment of the formation of the Council of Ministers	Not referred	It was published.
50	Decree Law of 2009 regarding dealing on foreign stock exchanges ¹¹	Not referred	It was published.
51	Decree Law of 2009 regarding an appendix to the Public Budget Law of 2009	Not referred	It was published.

¹¹ This decree law was appealed before the Supreme Court in its constitutional capacity. The Court confirmed in its decision issued in 2009 that the issuance of this decree law was necessary.

52	Decree Law of 2009 regarding amendment of the Decree Law of 2009 amending the Income Tax Law	Not referred	It was published.
53	Decree Law No. 20 of 2009 regarding approval of the amendment of the formation of the Council of Ministers	Not referred	It was published.
54	Decree Law of 2008 regarding amendment of the General Retirement Law	Not referred	It was published.
55	Decree Law of 2008 regarding amendment of the Income Tax Law	Not referred	It was published.
56	Decree Law of 2008 regarding amendment of the Law regulating the Public Budget and Financial Affairs	Not referred	It was published.
57	Decree Law of 2008 regarding the public budget of 2008	Not referred	It was published.
58	Decree Law of 2008 regarding the amendment of the Companies Law	Not referred	It was published.
59	Decree Law of 2008 regarding approval of the loan agreements formed with the Islamic Development Bank regarding the project of electrical connection between the Republic of Egypt and the Gaza Strip	Not referred	It was published.
60	Decree Law of 2008 regarding the regulation of exercise of the right to strike in the civil service	Not referred	It was published.
61	Decree Law of 2008 regarding the amendment of the Local Authorities Law	Not referred	It was published.
62	Decree Law of 2008 regarding the amendment of the foundation for the administration and development of funds for orphans	Not referred	It was published.
63	Decree Law of 2008 regarding the Sports Law	Not referred	It was published.
64	Decree Law of 2007 regarding general elections	Not referred	It was published.
65	Decree Law of 2007 regarding approval of the loan agreement to support the blockaded Palestinian residential complexes	Not referred	It was published.
66	Decree Law of 2007 regarding stamp duties and the Law of Stamp Duty	Not referred	It was published.
67	Decree Law of 2007 regarding prohibition of the extra-judicial executive power and militias of the Hamas movement	Not referred	It was published.
68	Decree Law of 2007 regarding amendment of the General Retirement Law	Not referred	It was published.
69	Decree Law of 2007 regarding cancellation of the Law of Social Insurance	Not referred	It was published.
70	Decree Law of 2007 regarding the public budget of 2007	Not referred	It was published.
71	Decree Law of 2007 regarding amendment of the Insurance Law	Not referred	It was published.
72	Decree Law of 2007 regarding approval of the loan agreement presented by the German government	Not referred	It was published.
73	Decree Law of 2007 regarding preventive security	Not referred	It was published.
74	Decree Law of 2007 regarding approval of the organisational and staffing structure of the State Audit & Administrative Control Board	Not referred	It was published.
75	Decree Law of 2007 regarding tax exemption	Not referred	It was published.
76	Decree Law of 2007 regarding combating money laundering	Not referred	It was published.

From inspection of the list of decree laws shown in the above table it can be seen that some of them relate to subjects directly connected with combating corruption, such as money laundering and graft. However, it is evident that these were not referred to the Legislative Council under the mechanism arranged with the office of the president.

Some of the decree laws relate to important financial matters such as the public budget and approval of loan agreements, or the imposition of taxes or tax exemptions. These matters must originally be dealt with in a law issued by the Council if it is to be able to exercise subsequent oversight of the government. However, it is noted that these were not referred to the Council, with the exception of the decree law amending the Income Tax Law. (The Council expressed observations on this decree law, but these were not adopted).

In the same context, many of the decree laws that have been issued by the president have provoked debate regarding their constitutionality. This relates on the one hand to the extent to which they are in harmony with the Basic Law, and on the other hand to the question of whether the president has the right to issue decree laws on matters or subjects dealt with in the Basic Law, or whether this is restricted to the ordinary laws. Examples of this include the amendment of the Law of the Constitutional Court, which permits the dismissal of the Court's judges under the so-called presidential substitution of members of the Court within a particular time period,¹² and the issuance of a decree law lifting immunity from a member of parliament, in addition to decree laws approving the appointment of the chairman of the State Audit and Administrative Control Bureau or the president of the Monetary Authority. It is noted that the Council has not crystallised a mechanism for handling decree laws of this type - which may comprise contraventions of the constitution - or the inconsistency in responses to such decrees of either objecting to them or remaining silent. It is also important that the Council establishes a studied position when reviewing decree laws regarding which the Supreme Court in its constitutional capacity has passed judicial decisions, as is the case in relation to the subjects of immunity and foreign stock exchanges.

Four - The handling of anti-corruption conventions and treaties, and bringing legislation into line with them:

The harmonisation of legislation and laws with the international and Arab treaties and conventions constitutes a major legislative policy aimed at the introduction of international standards and the adoption of those of them that are appropriate. The major anti-corruption agreements include the 2003 United Nations Convention against Corruption and the 2010 Arab Convention against Corruption. It is noted that the Council has not researched the topic of these conventions either within the blocs and lists commission or the work groups. This can be attributed in particular to the fact that the Basic Law does not provide a role for the Council in the area of signing, ratifying or approving conventions of this type. It is the government that ratifies them, without reference to the Council. In any event, the Council has not dealt with these conventions, and these topics have not been raised at all within the work groups or in terms of harmonising legislation with such conventions. There is no evidence that the Council has an interest in or clear mechanism for dealing with this subject under the current situation.¹³

Five - The level of exclusivity in dealing with anti-corruption legislation:

Under the executive authority's monopolisation of the legislative process the Council's clear weakness in the legislative area in general has become apparent, in particular with respect to the handling of legislation related to combating corruption. The president of the Authority has issued pieces of anti-corruption legislation without referring them to the Council, such as the decree law of 2007 regarding combating money laundering, the decree law of 2010 regarding approval of the appointment of the chairman of the Anti-Graft Commission and the decree law of 2010 regarding the amendment of the Anti-Graft Law. It seems the only draft law in this area that was referred to the Council was the decree law regarding the approval of the salary and monetary rights of the chairman of the Anti-Corruption Commission. This was referred to the Council on 24/1/2011, and the Council expressed an opinion of the need to include the salary of the chairman of the Commission within the text of the law in the form prescribed in the Anti-Graft Law, rather than issuing a special decree law regarding this salary. A model similar to the examples found at the institutions of the Authority or the public oversight commissions should be adopted to deal with this subject. For example, the salary should be specified by the president of the Authority without the inclusion of a pension, as occurs at the Monetary Authority, or alternatively the salary of the chairman of the Commission should be equal to the salary of the chairman of either the State Audit and Administrative Control Bureau or the Supreme Judicial Council, and should include a pension. It is observed that the president did not subsequently issue this decree law.

The referral of the decree law regarding the salary of the chairman of the Anti-Corruption Commission, and the holding of a meeting to debate it by the blocs and lists commission and the members of the Council, gave rise to great controversy regarding the decree law of 2010 on amendment of the Anti-Graft Law. This is despite the fact that it was issued and published without originally being referred to the Council, as we have stated. The MPs present raised fundamental questions about this decree law, reflecting a divergence in attitudes

¹² It should be noted that the Council's blocs and lists commission opposed the publication of this decree law owing to its unconstitutionality, following the row that was provoked in its regard within legal and judicial circles. It was not published despite having been promulgated and signed by the president on 30/10/2012. It was referred to the Council subsequently on 25/11/2012, 25 days after it was signed by the president.

¹³ Confer: *Palestinian anti-corruption policies and legislation: An analytical study*. Researched by Ali Abu Diyak and Nasser Al-Ris, with the supervision of Dr. Azmi Shuaibi. AMAN, 1st edition. 2008.

towards it. The majority of members supported the upholding of the Anti-Graft Law without the amendment contained in the amending decree law. This amendment created an element of contradiction between this law and the other laws in force. It excluded the members of the Executive Committee from the authorities subject to its provisions and annulled the role of the Legislative Council in approving the appointment of the chairman of the Commission, in addition to removing the Commission's power to intervene in judicial decisions. Meanwhile, some MPs opposed discussion of this subject, considering that it would be subject to debate subsequently on review of the decree laws as a whole or at a session held by the Council under the stipulations of the Basic Law (Article 43).¹⁴ Also, the Anti-Corruption Commission is currently conducting a review with the purpose of proposing amendments to the Anti-Corruption Commission Law.¹⁵

¹⁴ Meeting of the parliamentary blocs and lists commission and the members, convened on Wednesday, 2/3/2011.

¹⁵ This was mentioned by Prof. Risha Amarneh from the Anti-Corruption Commission at the workshop organised by AMAN to discuss the draft of this report on 7/4/2013.

Section Three: The oversight role of the blocs and lists commission and the work groups, and its impact in combating corruption:

The Legislative Council's role of oversight of the business and policies of the executive authority, in particular those with an impact on public affairs, is pivotal in achieving accountability and ensuring integrity and transparency in the work of the governmental departments and public institutions. Without oversight it is impossible for the Council to hold officials to account or to pass a vote of no confidence in a minister or the government as a whole. The oversight role is also of importance in reinforcing separation of powers in the framework of mutual oversight that prevents one of the authorities overwhelming another, as this would imbalance the stability of the political system. The Basic Law, the Standing Orders of the Legislative Council and the Law of Rights and Obligations of the Members of the Legislative Council have designed the tools that the Council can use in achieving effective oversight of the executive authority. These include (without limitation): presenting to the executive authority all necessary and legitimate requests required to enable the members of the Council to exercise their parliamentary duties, and asking questions, interrogating, forming fact-finding committees regarding any public matter or public department, and passing votes of no confidence in the government or a minister.¹⁶ It is notable that during the period from the election of the second Legislative Council and until the middle of 2007, the Council used (albeit in a limited manner) some of the tools of oversight, such as questions, interrogation and fact-finding. However, it did not use the tool of passing votes of no confidence.¹⁷ But the most important period is that extending from the middle of 2007 until today. How has the Council exercised its oversight of the executive authority through the bodies it formed (the blocs and lists commission and the work groups), in particular with respect to anti-corruption issues or achieving integrity and transparency? And has its oversight been effective? This will be clarified here through discussion of the following issues:

One - The tools used to exercise the role of oversight in the current situation:

The general approach among the members of the Legislative Council represented at the blocs and lists commission, the work groups and the general periodical meeting of members is to employ the oversight tools that can be used, in particular those that do not require the holding of a session. In this context, it is observed that the Council has not used the tools of questions, interrogation and votes of no confidence as these require the holding of a session of the body of the Council. In practice, however, the Council has used some of these mechanisms in its exercise of oversight over the executive authority at a lower level. The accountability mechanisms used included the following:

1. Sending letters of inquiry on a particular topic: The aim of such letters is to seek clarification regarding a particular subject through corresponding with a minister or ministry undersecretary. In most instances this method has been used pursuant to complaints submitted by citizens that have a public interest dimension, or pursuant to information received by a member or work group. Examples include the sending of a letter to the transport minister to seek clarification regarding the subject of the failure to grant a citizen permission to supply fuel after equipping a fuel station, and the sending of a letter to the foreign affairs minister regarding excessive granting of VIP diplomatic passports. This method was sometimes effective, through the receipt of written responses from the authorities addressed, but in particular cases certain authorities did not reply to the letters sent.
2. Requesting a meeting with a minister: The aim of this method is to make an enquiry of a particular minister regarding a particular subject that has a public interest dimension. An invitation is sent to the minister concerned to attend a meeting of the competent work group, perhaps also with the attendance of members from outside of the group. Examples include the requesting of a meeting with the education minister regarding educational issues (overcrowded classrooms, failure to activate the role of school counsellors, dismissed teachers, recruitment policies and mechanisms), and the requesting of a meeting with the Minister of Awqaf regarding the subject of the Hajj (poor services, pilgrims' accommodation in Meccah, high rates for car hire for transportation). It is observed that the ministers invited for this purpose responded to the invitation and attended with staff from the ministry, answering the members' enquiries.
3. Forming fact-finding committees on serious issues: This is one of the constitutional tools that the Council has used, for example in the form of work groups on serious issues. These include, for example, the formation of a fact-finding committee regarding the death of a citizen inside the preventive security prison in Jenin. It is noted that the use of this tool

¹⁶ Confer Articles 56-58 of the 2003 Amended Basic Law.

¹⁷ Harb, Jihad. Ibid.. P. 23 ff..

has been limited and has not been on a broad scale. The Council has not performed a clear role with respect to many of the issues that merited the formation of such committees, such as the cases of spoiled food.¹⁸

4. Field visits: The aim of this method is to understand the operational requirements at a service institution, or to conduct fact-finding into a particular matter. Examples include visiting Ramallah government hospital regarding the case of the death of premature babies, visiting detention centres and the visits made to citizens.

From the perspective of the extent of efficacy of these means employed, it can be said that they were of limited effect and did not achieve genuine oversight of the executive authority. This can be attributed to numerous causes, among them: the absence of a genuine parliamentary power or clear and effective follow-up of the reports and recommendations issued; the lack of serious engagement on the part of the government with the reports and recommendations issued by the work groups; the government's lack of subjection to the oversight of the Council, as it fundamentally did not have the confidence of the Council; and the lack of interest of the members of the Council and the members of the work groups in attending meetings, which weakened the role of the groups.¹⁹

Two - Oversight of the public budget and financial agreements (loans):

The organisation of the public budget and agreements regarding public loans are matters in which both the legislative and executive powers participate, in the context of the Legislative Council's oversight of the government's financial policies. Accordingly, the draft public budget must be presented to the Council for adoption and issuance within a law. Similarly, the final account of the budget of the Palestinian Authority must be presented to the Council, and public loans must also be agreed in the form of a law. It is not permitted to commit to any project that entails the expenditure of sums by the public treasury during a future period, unless with the agreement of the Legislative Council.²⁰ It is noted that the draft budget was not presented to the Council in several years (2007, 2008, 2009, 2010 and 2011); in most years the budget was prepared by the government and presented to the president directly to be issued under a decree law. The only year in which the draft public budget was presented was 2012. Following its presentation, the work group for economic and financial affairs studied it and prepared a draft report in this regard containing observations on the draft budget.²¹ This draft and these observations were discussed at the general periodical meeting of 26/3/2012 in the presence of the prime minister and the finance minister. The public budget department at the Ministry of Finance then studied the observations and presented a written response to the Council. In sum, the Council's observations were not accepted, although in this reply the government did respond to the enquiries presented by the members of the Council.

Similarly, numerous loan agreements have been formed or amended and issued by decree law, without their referral to the Council for the expression of an opinion. These include the decree law of 2012 approving the amendment of the loan agreement formed with the European Investment Bank to finance the project of the rehabilitation of the energy sector; the decree law of 2008 approving the loan agreements formed with the Islamic Development Bank for the project of the electrical connection between the Arab Republic of Egypt and the Gaza Strip; the decree law of 2007 approving a loan agreement to support the besieged Palestinian residential compounds; and the decree law of 2007 approving the agreement for the loan presented by the German government.

The failure to present the draft public budget, the final budget account or these loan agreements has clearly contributed to a weakening of the oversight role of the Council and the accountability of the government. This is particularly the case as the financial performance of the government (which includes implementation of the budget, financial expenditure and administration of public finances) may comprise imbalances or corruption that the Council cannot seriously monitor as long as it has not approved the budget, or while in some instances no periodical reports are presented regarding financial performance.²² This also indicates the executive authority's monopolisation of financial affairs, without regard for the legislative authority or its role. It is also apparent that the Council has not developed a clear mechanism for monitoring the final account or the implementation of the budget. Reports were presented to the Council by the State Audit and Administrative Control Bureau regarding the final account for 2008, 2009 and 2010,²³ without follow-up by the Council.

¹⁸ Report of the General Secretariat regarding the status of the Palestinian Legislative Authority. The Legislative Council. 2008. P. 20.

¹⁹ Interview with Mr. Ibrahim 'Azim, recorder of the committee for oversight of human rights and freedoms, on 24/12/2012.

²⁰ Confer Articles 61, 62 and 92 of the 2003 Amended Basic Law.

²¹ These observations included: Governmental non-compliance with the constitutional deadline for the presentation and adoption of the public budget; failure to complete the details required by the law of 1998 on the regulation of the public budget and financial affairs; failure to provide the details of the development budget; failure to mention the subject of inflation and rising prices and the methods of limiting them, and so forth. Confer: *Draft report of the work group for economic and financial affairs regarding the draft public budget law for the financial year 2012*. The Legislative Council.

²² *United Nations Convention against Corruption - Compliance Review*. Researched by: Dr. Yaser Ammouri and Mahmoud Alawneh, with the supervision of Dr. Azmi Shuaibi. AMAN. Palestine, 2010. P. 65.

²³ This was mentioned by Mr. Ayman Shahin of the State Audit and Administrative Control Bureau at the workshop organised by AMAN to discuss the draft of this report on 7/4/2013.

Three - Oversight of the performance of the ministries and public institutions, and fact-finding on cases of violation or corruption:

Through the blocs and lists commission and the work groups, the Council exercised some forms of oversight of the performance of the public institutions, albeit in a limited fashion. The Council formed fact-finding committees regarding certain cases that have a public interest dimension or regarding matters related to the performance of the public departments. It also prepared several reports regarding cases and complaints received by the Council or based on information received by MPs. However, it was observed that the executive authority's handling of recommendations issued was inconsistent, ranging between a taking serious approach in some cases and a failure to treat them with the necessary seriousness in other cases. There follows a clarification of the major fact-finding committees and the most important reports prepared by the Council through the work groups, related to practices or suspicions involving one of the forms of violation or corruption:

1. Fact-finding committee regarding the matter of the Palestinian Medical Council:

This committee was formed on 14/3/2011 by the work group for social issues and the parliamentary blocs and lists commission to investigate numerous complaints presented by doctors, most of which relate to the high fees for examinations and payment for services, the double standards in obtaining a certificate of competence, and the abuse of doctors by the Secretary General of the Medical Council and the career staff, and so forth. The committee held 23 hearings with administrative and technical staff. In its report the committee concluded that financial and administrative violations and transgressions had occurred in the work and procedures of the Palestinian Medical Council, in addition to the misuse of sites and the poor administration and wastage of public funds. The main violations and transgressions include suspicions of financial and administrative corruption and flagrant contravention of the laws in force. The committee delivered its report to the president of the Palestinian Authority and the other relevant authorities (including the Anti-Corruption Commission) for the taking of the appropriate measures. This matter was referred to the Corruption Crimes Court and it is under consideration by the Court.²⁴

2. The fact-finding committee regarding the embezzlement of funds from the account of the Ministry of Detainees:

This committee was formed on 24/11/2008 by the work group for social issues and detainees' affairs, pursuant to a complaint presented to the Council regarding the embezzlement of funds from the account of the Detainees' Ministry. The committee conducted meetings with government officials, public institutions and stakeholders. It also reviewed some of the official reports issued by the government authorities (including the report of the fact-finding committee on forgery and fraud formed by the Detainees' Ministry). The committee reached a number of conclusions and results, foremost among them that the embezzlement of funds from the Ministry's account was proven, and that there was weakness in the financial and accounting system and the administrative and structural system, and so forth. The committee recommended the referral of the matter to the public prosecutor for completion of the investigation, and also asked the Ministry of Detainees to introduce immediate administrative and financial reforms to the Ministry's systems to entrench the principles of integrity and transparency at work. This matter was referred to the Corruption Crimes Court and it is under consideration by the Court.

3. The fact-finding committee regarding the matter of the 2010 Hajj, pilgrims from the families of the Jerusalem detainees and the Palestinians of '48:

This committee was formed jointly on 7/11/2010 by the work group for Jerusalem and the work group for social issues, based on complaints presented to the Council by the committee for families of prisoners in Jerusalem related to the temporary cancellation of their travel on Hajj in the 2010 season, and pursuant to the numerous complaints and reports regarding the performance of the ministries and institutions related to the Hajj season for that year. The committee held 22 hearings and released a report explaining its conclusions regarding this matter. The issue emerged as a result of ambiguities and transgressions in various areas including: the distribution of allocations; the rental of the official Hajj mission headquarters in Mecca; the associated pilgrims' missions; the replacement of the seats of the families of detainees and martyrs; handling of the problem of pilgrims from the families of Jerusalem detainees and the Palestinians of '48; and the air transportation of pilgrims. The Council's recommendations have not yet been accepted despite the fact that some of the suspicions form part of a matter before the Anti-Corruption Commission. This matter was referred to the Corruption Crimes Court and it is under consideration by the Court.

4. The report on diplomatic (VIP) passports:

The work group for internal affairs and local government studied the subject of VIP diplomatic passports and held several meetings with officials at the foreign affairs and interior ministries. It prepared a report that concluded that there had been violations in the process of the issuance of such passports, with respect to the authority commissioned with issuing them and the individuals who have the right to

²⁴ Regarding this and other matters (the Hajj issue; the Detainees' Ministry issue; the airlines issue), at the workshop organised by AMAN to discuss the draft of this report on 7/4/2013, Prof. Mustafa Farhan of the delegated prosecution of the Anti-Corruption Commission mentioned that this had been referred to the Corruption Crimes Court.

obtain them. The members of the Council discussed this subject at the general periodical meeting convened on 20/1/2010 and they concluded that some diplomatic passports had been issued in a manner that contravened the applicable regulation and the law, and that there was evidence of contraventions and transgressions in the issuance of some of these passports to people who were not entitled. The prime minister was asked in a letter sent on 25/1/2010 that an investigation committee be formed by the competent authorities to study these contraventions and transgressions then inform the parliamentary blocs and lists commission and the MPs of the results reached by the investigation. This matter remains under monitoring by the delegated prosecution of the Anti-Corruption Commission.²⁵

5. The report regarding the Jericho rest house and the administration of border crossings:

The work group for internal affairs and local government studied the subject of the Jericho rest house and the administration of border crossings by undertaking a field visit to the rest house and the border crossings on 15/7/2008. It also held a workshop on the subject with the relevant authorities. It prepared a report on this topic which identifies the problems and the obstacles faced by citizens, which the report summarised as obstacles arising from the policies and procedures of the Israeli occupation, in addition to other issues including rising prices of food and drink, the unsuitability of the arrivals and reception hall, the failure to collect fees from citizens in accordance with the rules and the law, and the absence of an electronic system for verifying documents, which delays citizens who are arriving and departing.

6. The report regarding the Planning Ministry:

The committee for oversight of freedoms, public opinion and civil society arranged a report regarding the Planning Ministry, pursuant to the report presented to the Council by the State Audit and Administrative Control Bureau. At its meeting on 6/10/2010 the committee discussed the report on this Ministry, in which some imbalances and financial and administrative transgressions were highlighted, foremost among them: the contravention of various provisions of the Supplies Law, the financial regulation and the items of project budgets; a shortfall in the number of employees at the Ministry as compared with the organisational structure and associated duties; the weakness of internal oversight rules (the oversight unit), and the inability to undertake expenditure according to the schedule of project budgets.

In summary it can be stated in this respect that the number of fact-finding or report preparation committees on issues that have a public interest dimension was relatively small. Perhaps the main reasons for the lack of intensity in the Council's use of these tools can be attributed to the failure of members to attend meetings periodically and regularly. In addition, the formation of committees is generally subject to initiative on the part of members and depends on their interests; this has not been carried out to the required level. Similarly, the preparation of reports has at times been bogged down by difficulties in terms of information gathering, and sometimes the official authorities have refrained from presenting necessary data or documents. This raises the question of whether the information ever existed, or whether it perhaps does exist but they do not wish to present it or let anyone see it. Moreover, perhaps this issue is yet more significant in that such information does exist but may arouse suspicions regarding violations or corruption. Similarly, certain types of issues of a technical nature require the involvement of experts or specialists from outside of the Council, which may necessitate financing and costs. There are also no specific mechanisms at the Council for following up reports and recommendations issued by the work groups. In many instances such matters end with the filing of reports to the competent authorities, or merely waiting for a change within government (the substitution of a particular minister) or the report being retained in the registries of the Council.

Four - Monitoring the oversight reports issued by the competent oversight authorities:

The work groups and the blocs and lists commission monitored, to a limited extent, some of the reports issued by the oversight authorities, such as the report of the State Audit and Administrative Control Bureau and certain reports issued by ministries or public institutions, in addition to various reports issued by the Independent Commission for Human Rights. As regards the reports of the State Audit and Administrative Control Bureau,²⁶ it has been observed that the Council is regularly supplied with these by the Bureau. They are monitored in accordance with a mechanism that includes the preparation of a summary of the issues contained in the report and the requesting of a meeting with the minister or official concerned with the subject, and the hearing of his opinion regarding the content of the report. In some cases the minister may present a written report regarding the subject or express his opinion verbally, then the data and information related to the subject under discussion are recorded, and the topic may be raised in the media by means of a press release. The effectiveness of the handling of reports issued by the oversight authorities in general is uncertain, nor are there clear, organised mechanisms that ensure beneficial follow-up and the holding to account of the authorities for any violation or transgression. Similarly, the handling of the annual report on the status of human rights remains more a formality of protocol than a technical and

²⁵ This was mentioned by Prof. Mustafa Farhan of the delegated prosecution of the Anti-Corruption Commission at the workshop organised by AMAN to discuss the draft of this report on 7/4/2013.

²⁶ According to the 2003 Amended Basic Law (see Article 96), and the Law of the State Audit and Administrative Control Bureau of 2004 (see Articles 8, 26 and 28), the Control Bureau undertakes to present annual, quarterly, special or on-demand reports to numerous authorities, among them the Legislative Council.

objective process. It has also been noted that the work groups have not taken the initiative of requesting performance reports from the official authorities in the context of reinforcing the Council's oversight over the performance of the executive authority and its agencies.

Five - Receiving and following up complaints:

The Council receives complaints through the complaints department, which was created in 2008 pursuant to Articles 101-104 of the Council's Standing Orders. The department operates in accordance with a regulating mechanism whereby complaints are submitted in writing by an individual, group of individuals or institution, and the extent of their legality is examined. They are then followed-up through written correspondence with the authority that is the subject of the complaint; such authorities usually respond to the complaint and the allegations set out within it, and the submitter of the complaint is notified of the response. The mechanism for monitoring complaints follows the general Standing Orders of the Council. There are no detailed rules, which has driven the complaints department to establish an unofficial draft document to guide the work of the complaints department, in addition to templates that have been prepared for this purpose. However, they have not been adopted by the Council as it has not been convened. It is evident that there are various problems with respect to the matter of receiving complaints, from the point of view that there is more than one party. Complaints are made to the department, while others are received by the work groups and yet more are received by the individual MPs themselves. This makes it difficult to record and monitor complaints at an institutional level. It has also been observed that the complaints received by the complaints department are generally claims of a financial and administrative nature, rather than issues of corruption. The reason for this may be that citizens have begun to go to the Anti-Corruption Commission as it is the prominent name in this field. However, this does not mean that the Council has received no complaints related to suspicions of corruption; nonetheless, in most instances this has been through the work groups rather than the department, and such complaints have been limited in number. With respect to certain serious complaints that have a public interest dimension, information is gathered for the work groups and analysed by the department, given their serious nature (such as the subject of the death of premature babies).²⁷

It is evident that the number of complaints that the complaints department and the Council as a whole officially receives each year is low, in particular as the current situation of the Council is not an encouragement to citizens to turn to it. From the perspective of the efficacy of this tool in terms of oversight of the executive authority, this ranges between effective - when the subject of the complaint relates to simple matters such as financial and administrative claims, regarding which written responses are received - and ineffective, when the matter relates to complaints arising from dismissal from service and arrest as a result of the division and the political situation; the Council does not receive clear responses in this area. Similarly, the public's lack of knowledge of the complaints that fall under the jurisdiction of the Council, and the Council's failure to undertake media campaigns in this regard, diminish the effectiveness of the role played by the Council in the area of accountability, and the monitoring and oversight of governmental performance by means of complaints.

²⁷ Interview with Mr. Abdulrahim Taha, Director General of the complaints department at the Legislative Council, on 7/2/2013.

The following table shows the number and subjects of complaints received by the complaints department at the Council during the period 2008-2012:

Year	Number of complaints	Subject of the complaints
2008	48 complaints	Public services, including: <ul style="list-style-type: none"> Accrington Urban District Council Disposal of refuse Services provided by the Council Inter-urban services Salaries Provision of services
2009	24 complaints	<ul style="list-style-type: none"> Planning applications Provision of services Abuse of power Disposal of refuse Salaries Acceptance of applications Calculation of rates Services provided
2010	14 complaints	<ul style="list-style-type: none"> Abuse of power Services provided Disposal of refuse Planning applications Provision of services
2011	8 complaints	<ul style="list-style-type: none"> Provision of services Salaries Disposal of refuse Accrington Urban District Council Services provided Disposal of refuse Salaries Disposal of refuse Services provided
2012	10 complaints	<ul style="list-style-type: none"> Disposal of refuse Salaries Disposal of refuse Services provided Disposal of refuse Salaries Disposal of refuse Services provided

Six - Coordination and cooperation with civil society institutions at accountability sessions:

The mechanism employed by the work groups of organising sessions in the context of the Council's oversight role (in particular when the matter relates to meetings with ministers or officials to enquire about a particular matter or to discuss a fact-finding report into a particular case) is secret and no non-members of the Council are invited to attend. This also applies to civil society institutions - such sessions are not open to the public. However, in the context of the fact-finding process, the work groups concerned may invite and hear the opinion of certain stakeholders in the issue presented, including associations, as occurred in relation to the incident of the death of the children in the area of Jaba'.

As regards the meetings organised by the work groups in the context of the Council's legislative role, in particular with respect to the discussion of decree laws, these are traditionally open to any non-member of the Council who wishes to attend. However, there is no clear mechanism for inviting civil society institutions to attend and express a view. From another perspective, the members of the Council participate individually or by means of work groups when they are invited to meetings or workshops organised by civil society institutions on various subjects, in particular if they relate to review of legislation or the performance of public institutions. Examples

include the meetings organised by AMAN, Miftah, the Independent Commission for Human Rights and so forth. By way of example, a number of parliamentarians who are members of the Council have contributed to the activities carried out by AMAN, foremost among them organising the accountability hearings held for the finance minister (a team was formed in 2008-2009 to analyse the budget, and this team organised a hearing for the finance minister during AMAN's annual conference). Members of Arab Parliamentarians Against Corruption also contributed to the preparation of the Annual Palestine Corruption Report as part of the Arab report prepared by the Arab Parliamentarians Against Corruption organisation, in addition to other activities such as meetings regarding the review of legislation related to corruption or the review of reports regarding integrity, transparency and accountability in the work of public departments. They also participated in the march demanding the formation of the Anti-Corruption Commission in 2009. Finally, it has been observed that there is some concern within the Council regarding the activities of some civil society institutions with respect to their presentation of draft laws, as this contradicts the Council's policies regarding the need to halt the legislative process during this phase.

Section Four: The role of the blocs and lists commission and the work groups in designing anti-corruption policies:

The Legislative Council has an essential role in public policies, reform programmes and national development plans in general. The crystallisation of anti-corruption policies is one of the areas in which the Council is supposed to play a role - in the framework of its oversight and legislative duties - through participation in supporting the legal framework and the development of legislation that combats corruption, and through monitoring the performance of public institutions to reveal violations or corruption, and asking the competent authorities (including the Anti-Corruption Commission and the public prosecutor) to follow up by investigating any suspicions of corruption that emerge during oversight of performance.

Perhaps one of the main policies is the Anti-Corruption Commission's development of the National Strategy on Anti-Corruption 2012-2014.²⁸ With respect to the Council's participation in this, the Anti-Corruption Commission presented a draft strategy to the members of the Council and held several meetings to discuss it. The MPs on the Council made a number of observations; however, in sum this was more a formality than an effective means of participation. The strategy was not subjected to precise or studied review by the work groups. However, the strategic plan meanwhile explicitly mentions the Legislative Council and its necessary role in more than one place, as follows:

- It states that the authorities that discussed the strategy include members of the Legislative Council and the general secretariat of the Council.
- It states that the Legislative Council is an indispensable contributor among the authorities participating in the implementation of this strategy, despite its situation.
- It states that the breakdown in the work of the Legislative Council and the resulting obstruction of its oversight role is one of the weak points in the area of analysis of the internal environment.
- It states that the Legislative Council is one of the main partners in combating corruption.
- The strategy states that the role of the Legislative Council is one of the parties of the National Integrity System implementing the strategy, as follows:

The Legislative Council carries out a range of essential tasks which support anti-corruption efforts and enable the implementation of the Strategy. These can be summarised as follows:

1. Finalising and ratifying anti-corruption related legislation.
2. Activating the oversight role of the Legislative Council by overseeing the performance of the executive authority and its implementation of its programmes, in addition to placing restrictions upon it as regards the public budget in terms of revenue and spending.
3. Dedicating hearings at the Legislative Council for government officials.
4. Setting an example and establishing a model through development and application of a guide to rules of parliamentary conduct.²⁹

With respect to aspects of the relationship between the Legislative Council and the Anti-Corruption Commission, this is represented by more than one facet, among them the following: compliance by the Legislative Council with presenting the financial disclosure declarations requested by the Anti-Corruption Commission; the Anti-Corruption Commission supplying the Legislative Council with the Commission's annual report; the holding of joint meetings between the Council and the Commission, foremost among them meetings regarding discussion of the anti-corruption strategy or presentation of the Commission's annual report; and referral by the Legislative Council of matters related to suspicions of corruption to the Commission, pursuant to the fact-finding reports (such as the matter of the Hajj and aviation, and the matter of the Medical Council). In the framework of this relationship, it has been observed that there is a difference in points of view between the members of the Council and the Commission regarding some of the matters transferred by the Council to the Commission for the completion of investigations into them (as has been observed), from the point of view of the Commission's failure to clarify the procedures it has taken regarding these matters and the level of seriousness of the follow up.

²⁸ Confer the National Strategy on Anti-Corruption 2012-2014. Anti-Corruption Commission website: www.pacc.pna.ps

²⁹ The Legislative Council has not yet established a guide relating to rules of parliamentary conduct.

Outcomes and recommendations:

This report has dealt with the work of the Legislative Council under its exceptional, rather than natural, situation, in view of the state of the political division Palestine has witnessed since the middle of 2007. This has disrupted the role of the Council as a legislative authority and a parliamentary institution, and prevented it from undertaking its legislative and oversight role in the desired manner. The Council has attempted to operate by extraordinary means, given the difficulty or impossibility of applying the constitutional and legal stipulations or following parliamentary rules and principles. The blocs and MPs who are not from the Change and Reform bloc have therefore resorted to forming work mechanisms, including the periodical general meetings, the blocs and lists commission and the parliamentary work groups; this is for as long as it is impossible for the Council to operate as a body and committees as would be the case under normal circumstances. In the context of the diagnosis presented in this report, it was necessary to understand the regulatory framework for the Council's operations under the current situation and the method by which the Council has exercised its oversight and legislative role, and its role in forming anti-corruption policies, given that parliament is one of the pillars of the National Integrity System.

The report has arrived at a number of outcomes and conclusions, foremost among them:

1. The work mechanisms created by the members of the Council through the periodical meetings, the blocs and lists commission and the work groups have operated in a limited capacity and on selective issues. Their work has not been characterised by the necessary comprehensiveness and efficacy in terms of review of legislation and oversight of the performance of the executive authority.
2. Despite the creation of the aforementioned mechanisms for development of a collective work spirit, in view of the impossibility of convening the Council as a body its work has in many instances remained of an individual character owing to the ineffectiveness of many of the work groups and the members' failure to commit to periodical meetings and attendance at sessions.
3. The executive authority's response to the Council's existing work mechanisms has been weak. Despite the understandings with the president's office regarding the referral of draft decree laws to the Council, most such decree laws have been issued without referral and the opinion of the Council on them has not been obtained. Similarly, the relationship with the government from the legislative perspective is both rigid and absent in view of the difference of opinions: the Council believes that there should be no increase in legislation, and the government believes otherwise.
4. Through the aforementioned bodies, the Council is establishing a clear mechanism for dealing with secondary legislation, whether that which is issued by the Council or that which is required to be issued by the government (such as the regulations and rules required to implement the laws).
5. Some anti-corruption legislation has been issued in the form of decree laws without referral to the Council and without its opinion being obtained. This includes the decree law of 2010 on amendment of the Anti-Graft Law and the decree law of 2010 approving the appointment of the chairman of the Anti-Graft Commission.
6. The Council has failed to crystallise a vision and organised mechanism regarding how to handle decree laws. The approach is both selective and random in nature: while the Council has expressed a position in some cases it has remained silent on others.
7. In many years the government has failed to refer the draft public budget to the Council, nor has it presented the final account. This has robbed the Council of one of the important tools of oversight and accountability.
8. The Council has neither expressed an interest nor crystallised a mechanism regarding dealing with the international and Arab anti-corruption conventions. This subject has not been researched under the Council's work mechanisms.
9. Despite the fact that the Council undertook a fact-finding procedure into a few particularly serious cases regarding which complaints were received, and despite the related reports it prepared, follow-up of these reports has nonetheless been weak and has not followed an organised mechanism guaranteeing the implementation of the recommendations issued, in particular in matters related to issues of corruption. The executive authority and the oversight authorities have not taken such recommendations seriously.
10. The Council has not taken the initiative of requesting performance reports from official entities in the context of its oversight role. Similarly, handling of the reports received from the oversight bodies in the fields of financial and administrative oversight and human rights has not followed a periodical, effective mechanism.
11. Despite the creation of a complaints department at the Council, the continued receipt of complaints by the work groups or individual MPs, without their being recorded by the department, has created confusion and a failure to entrench the monitoring of complaints received by the Council at an institutional level.
12. The Council has not conducted a precise and studied review of the National Strategy for Anti-Corruption. Rather, it expressed observations on the Strategy when it was presented to the Council by the Anti-Corruption Commission.

Based on these outcomes and conclusions this report recommends the following:

1. On the political level: We recommend that the Legislative Council is reconstituted as soon as possible to ensure the entrenchment of the principle of the people as the source of authority, and as an essential step in ending the political division and reinforcing accountability and the National Integrity System. In this arena, it is important to reinstate democratic life and to organise new elections of the Legislative Council.

2. On the level of the legislative role of the Council under the current situation, we recommend the following:

- It is necessary to crystallise a clear plan of how to deal with the decree laws issued by the president, and a mechanism by which to study and review them to ensure that a considered position is adopted on them, in particular as regards those that relate to combating corruption.
- It is necessary to crystallise a clear mechanism to deal with the secondary legislation issued by the government, such as rules and regulations ensuring the application of the laws, and to verify that they do not contravene the word and spirit of the law.
- Pressure must be put on the government and the presidential institution towards refraining from issuing exceptional legislation for which there is no need, and towards developing a study to specify the principles and standards of the condition of necessity that would justify such legislation (decree laws).
- It is necessary to put pressure on the government to present the draft public budget law and final account to the Council, and to take the Council's observations seriously.
- It is necessary to crystallise a mechanism for dealing with the international and Arab anti-corruption conventions. They must also be researched and studied by the Council to ensure that the legislation is in harmony with them.

3. On the level of the oversight role of the Council under the current situation, we recommend the following:

- It is necessary to establish mechanisms for organised follow-up of public interest matters and the performance of public departments, and to conduct greater fact-finding regarding any suspicions of violations or corruption to ensure the enforcement of genuine oversight without this being restricted to specific issues.
- It is necessary to crystallise a clear mechanism for monitoring the results, recommendations and reports issued by the Council's work groups, in order to ensure that the competent authorities deal with their content more seriously, in particular when the completion of investigations into suspicions of corruption or malpractice is required.
- It is necessary to establish a plan to monitor the performance of the public institutions and to request reports from them regarding such performance, and to scrutinise these reports and follow them up by requesting the holding of sessions with officials if necessary.
- It is necessary to deal with the reports received by the Council from the oversight authorities - in particular the State Audit and Administrative Control Bureau, the Anti-Corruption Commission and the Independent Commission for Human Rights - in a studied and organised manner and in accordance with established principles and standards that guarantee follow-up of the content of these reports, as regards data and information that necessitate the holding to account of particular authorities or particular officials.
- The complaints mechanism at the Council must be activated from the perspective of undertaking media campaigns to explain to the public the scope of the Council's jurisdiction in receiving complaints. From an institutional perspective, the process of recording complaints - in particular those received by individual MPs - must be activated, so that they are included within the Council's follow-up mechanisms.

4. On the level of the Council's policy role, we recommend the following:

- It is necessary to give particular importance to the National Strategy for Anti-Corruption, and to work on studying it and reviewing it with care to ensure its development such that the aim of ending corruption in Palestinian society is realised.
- It is necessary to design a clear mechanism of understanding between the Council, the State Audit and Administrative Control Board and the Anti-Corruption Commission to ensure the benefit of joint oversight in combating corruption.
- It is necessary to monitor the work of the ministerial committee formed for self-evaluation of the implementation of the Convention against Corruption, and to find out what point in its work this committee has reached, and to request a report from it in this regard.
- The Council must establish a guide of rules of parliamentary conduct to reinforce the status of the Council as an example and model in reinforcing the values of integrity and accountability, both internally and in its relationship with citizens and the other authorities.

5. In terms of activation of the role of the blocs and lists commission and the work groups, we recommend the following:

- It is necessary to focus on comprehensive, collective work rather than taking a selective, individual approach, to ensure that greater achievements can be realised.
- It is necessary to commit to attending meetings and abide by the specified standards within the work groups.
- It is necessary to involve relevant civil society institutions within the discussions at the blocs and lists commission and work groups, in particular when the matter relates to hearings with officials or the discussion of fact-finding reports on a public matter.
- it is necessary to take effective steps in the event that an official fails to attend following an invitation by the Council, or when a particular authority refrains from presenting data or information officially requested by the Council.
- Some of the work groups which are characterised by inactivity must be reactivated, in particular the Jerusalem, freedoms and civil society work group.
- It is necessary to reactivate the role of the Council's staff within the operations of the work groups, and in preparing reports and studies and the necessary follow-up of the issues presented.
- The Council must undertake a comprehensive review of its role since the state of division for the purpose of designing future approaches and conducting a comprehensive, root and branch evaluation. To this end, it must hold a conference through which scenarios for dealing with the current situation are presented, in particular from the point of view of the Council's relationship with the executive authority and the means of developing and activating the Council's performance.

Part Two: The role of the committees of the Palestinian Legislative Council in combating corruption: the Gaza Strip

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Introduction:

Some of the most significant elements in the success of the oversight of the business of the executive authority are enacted through the existence of an effective Legislative Council, with the participation of all political movements. However, the political division and other political factors have played a significant role in obstructing the Legislative Council's work and in impairing the legislative and oversight roles of the Council and its committees, in the comprehensive sense, at its headquarters in Gaza and the West Bank, as have the policy and practices of the occupation in separating the West Bank from the Gaza Strip and detaining numerous members of the Legislative Council.

The inspection of reports and information related to the issues of central or non-central governmental and administrative wastage or corruption.³⁰

From an in-depth reading of the chart of the Palestinian elections during the second legislative season (2006-2013), it is evident that the Change and Reform parliamentary bloc took hold of a majority of the seats in the Legislative Council. When the disagreement developed into an armed dispute between the two sides the outcome was the division of the Palestinian people and the distribution of the powers of a single nation. The Hamas movement took on the responsibility of management of the Gaza Strip in legislative, executive and judicial terms, whereas the Fatah movement took upon itself the administration of the West Bank in the three aforementioned areas. This situation has continued to this day.³¹

The Legislative Council's oversight of the business of the executive and decentralised authority is one of the most important methods of anchoring the principle of the sovereignty of law. In establishing this, constitutions have sought to include the right of parliamentary oversight at the heart of the constitutional document. Such constitutions include the Palestinian Basic Law, which provides an explicit stipulation regarding the competence of the Legislative Council in overseeing the performance of the executive authority in Paragraph 2 of Article 47, which states: "The Legislative Council shall assume its legislative and oversight duties as prescribed in its Standing Orders, insofar as they do not contradict the provisions of this law." The provisions of Articles 75-80 of the Standing Orders of the Legislative Council deal with the right of MPs to ask questions and interrogate ministers, in addition to procedures for holding a vote of no confidence in ministers. Articles 48-57 of the Standing Orders of the Palestinian Legislative Council also stress the formation of permanent committees and parliamentary accountability.³² The Palestinian Amended Basic Law outlines some of the mechanisms and factors of parliamentary oversight - including discussing parliamentary questions, proposing a general subject for debate, interrogation and votes of no confidence - leaving the details of the exercise of the aforementioned power by the Legislative Council and its permanent committees to the Standing Orders of the Council. Article 51 of the Basic Law stipulates that the Council shall establish its own standing orders to regulate the process of work within it: "The Council shall accept the resignation of its Members and establish its own Standing Orders, as well as procedures for questioning its Members, in a manner that does not contradict the provisions of this Basic Law or general constitutional principles. The Council shall be solely responsible for maintaining order and security during sessions and committee meetings. Security personnel may not be present in the Council premises unless requested by the Speaker or by a Committee Chair, as the circumstances may require."³³

This paper will discuss the role of the committees of the Palestinian Legislative Council in the Gaza Strip in combating corruption, in addition to clarifying the extent of effectiveness of its oversight using its existing mechanisms. It does so under three sections, as follows:

Section one: The legislative function of the Council and its role in combating corruption.

Section two: Legislative oversight and the role of the Council in combating corruption.

Section three: The public budget and the role of the Council in combating corruption.

Section one: The legislative function of the Council and its role in combating corruption.

During its ordinary and extraordinary sessions, the Legislative Council in the Gaza Strip has held 106 sittings, of which 90 were ordinary sittings, with eight special sittings and eight emergency sittings. During these it issued 41 laws and 334 decrees covering the various political, economic, financial and social fields, local governance and internal legislative and regulatory

³⁰ Arab Parliamentarians Financial Oversight Toolkit. Arab Parliamentarians Against Corruption. Beirut, Lebanon, 2009. Pp. 9-ff.

³¹ Interview with Dr. Nafiz Al-Madhoun, secretary general of the second Legislative Council and legal advisor and director of the legal department at the first Legislative Council. Interviewed on 13/1/2013.

³² Standing Orders of the Palestinian Legislative Council. P. 5.

³³ Four years of giving despite the blockade. The Legislative Council in Gaza. Ibid..

issues. Most of these decrees came via the recommendations that were presented to it by the Council's committees. Similarly, it asked **22 questions and only conducted one interrogation**.

The **committees** formed the backbone of the Council's oversight and legislative work and exercised a role of utmost importance for the parliament's exercise of its legislative, oversight and guidance competences, and for all of the work it exercises with respect to the activities of the different agencies and institutions of the executive body in the various fields. It is no exaggeration to state that the committees are the main executive agencies of the parliament. Their role is not restricted to proposing and preparing draft laws, but rather exceeds this to include exercising an extremely important role of oversight of the performance of the executive authority, through the right to use the recognised tools of oversight over the business of the government and the administrative apparatus of the state (both central and non-central).

The various committees of the Legislative Council held approximately 661 meetings and 344 hearings of ministers and the directors of commissions and institutions. They published more than 169 reports and undertook around 277 field visits to governmental departments and institutions and held around 92 workshops attended by a large number of lawyers, economists, religious scholars, social scientists and others working at the civil society institutions.³⁴

The legislative function of the Council and its role in combating corruption. One of the main tasks carried out by the Legislative Council is the issuance of laws, in its capacity as the expresser of the will of the people in application of the principle of the separation of powers, which bestows upon the Legislative Council the authority of issuing laws regulating the course of work within the state. Between 2006 and 2012 the Legislative Council issued 41 laws, which focus on a variety of fields. This paper will restrict itself to considering the laws through which the legislator sought to **combat corruption**, focussing on these laws in succession, in accordance with the following classification:

One - Laws that reinforce transparency in public work.

Two - Laws that aim to develop public administration and the associated structure.

Three - Laws that reinforce transparency and combat corruption in the private sector.

Four - Laws that reinforce the judicial and administrative oversight bodies.

This study takes in a collection of laws issued by the Legislative Council that fall into the foregoing categories, as follows:

One - Laws that reinforce transparency in public work.

- **Law No. 8 of 2008 regarding the Official Gazette.**

This law includes a group of provisions which bind the government and the Legislative Council to publishing the decrees issued by them within the Official Gazette. Such publication permits citizens to inspect and monitor the business of the executive and the legislature and reinforces popular oversight for the sake of accountability and combating corruption.³⁵

Two - Laws that aim to develop public administration and the associated structure.

1. Law No. 6 of 2011 regarding preparation of the public development plan, through which the legislator seeks to establish a comprehensive government programme for public development in the territories of the Palestinian Authority in the various sectors. This law is of utmost importance in the area of combating corruption as it is a fundamental basis for approval of the budget. It also promotes the means of oversight of the programme and plans of the ministries and governmental bodies, as the budget cannot be approved without it being inspected. This of course reduces the cases of corruption - either financial or administrative - that may occur in the work of the ministries and bodies. Under this law the government's work programmes and policies will be specified to promote development and the combating of corruption through control of expenditure on development projects that return benefit for citizens and facilitate the oversight role of the Legislative Authority over the business of the government.³⁶

2. Law No. 5 of 2012 regarding the General Commission for Borders and Border Crossings.

Border crossings are very important locations that represent the sovereignty and prestige of the State, in terms of control of these crossings and control of passage through them for both individuals and goods. The creation of a law regulating borders and border crossings has long provided suitable circumstances for employees and officials to limit the risks of enticement to tamper with state sovereignty, and to prevent acts of administrative and financial corruption which could affect this vital,

³⁴ *Four years of giving despite the blockade, 2006-2010.* The Legislative Council in Gaza, 2011. This is in addition to minutes and reports of the Legislative Council during the past three years set out in the draft report regarding the past three years.

³⁵ *Four years of giving despite the blockade.* The Legislative Council in Gaza. P. 75.

³⁶ *Draft report of the Legislative Council on the performance of the Legislative Council during the period 2010-2012.* General Secretariat of the Legislative Council, Gaza.

sovereign area, and to curb the crimes of bribery and the exploitation of influence of all forms, or the smuggling of goods and customs tax avoidance, among other such activities.

Three - Laws that reinforce transparency and combat corruption in the private sector.

- **The Companies Law No. 7 of 2012.**

This law seeks to control and combat the processes of tax evasion³⁷ through establishing mechanisms of organised bookkeeping by companies and reporting by approved auditors, therefore leading to increased revenue for the state, an escalation in the development process and a reduction in the phenomenon of tax avoidance undertaken by numerous companies under the former law. It reinforces the protection of small shareholders in public joint-stock companies from the transgressions of boards of directors, as the new law establishes rules and standards for the conduct of such boards. This law acts to control accounting processes between partners to counter acts of embezzlement. The law reinforces the role of the Companies Controller such that it is now possible for him to attend the meetings of general assemblies and boards of directors of companies, and to ask them to supply him with their company balance sheets in accordance with international and Palestinian accounting standards and by means of licensed auditing companies. This in turn contributes significantly to combating corruption within the institutions of the private sector, which in turn has a significant impact on the state's economic performance.³⁸ Undertaking an in-depth examination and reading of the foregoing laws reveals that they are not aimed directly at combating corruption in accordance with the United Nations Convention against Corruption; rather, they indirectly affect some of the procedures and provisions that provide for oversight and limit corruption.³⁹

³⁷ *Arab Parliamentarians Financial Oversight Toolkit*. Arab Parliamentarians Against Corruption. Beirut, Lebanon, 2009. P. 53.

³⁸ Interview by Parliament magazine (issued by the Legislative Council in Gaza) with the MP Dr. 'Atif 'Adwan. Edition 104, published on 27/12/2012.

³⁹ *Four years of giving despite the blockade*. The Legislative Council in Gaza. P. 79.

Section Two: Legislative oversight and the role of the Council in combating corruption

The parties of parliamentary oversight are the members of parliament (the Legislative Council), which exercises oversight of the executive authority - and not only over the business of the executive authority, but also that of its members. This responsibility extends to the decisions of ministers in the scope of their constitutional and functional powers and the acts of those subordinate to them. Similarly, parliamentary oversight of the business of the executive authority is not restricted to what this latter does in its governmental capacities, but rather this includes its decisions of an administrative nature.⁴⁰

One: Activation of the mechanisms of institutional accountability at the Legislative Council - 2006-2013:

The Amended Basic Law, the Law of Rights and Obligations of the Members of the Legislative Council and the Standing Orders of the Palestinian Legislative Council bestow numerous means of oversight upon the members of the Council for the purpose of undertaking the task of oversight.

- **Parliamentary questions:**

MPs have exercised their oversight role in an acceptable manner during the first year of the work of the Council. They have asked nine questions dealing with various subjects and officials.

There has been a clear decline in the number of questions directed at officials during the years of the political division: the number of questions during 2008-2012 was no more than 13 questions, as follows:

1. The question asked by the MP Dr. Yehya Al-'Abadisa to the Minister of National Economy Ziad Al-Zaza regarding the blockade, traders' manipulation of prices and the spread of the phenomenon of the monopolisation of essential goods. (Third ordinary session, fifth meeting, 7-8/5/2008.)

This may be attributable to the single political party within the two powers and their singularity of purpose, and also to the circumstances of the Palestinian division.

- **Interrogation:**
- **Votes of no confidence:**

This tool has been used by the Council, albeit only once. The conducting of ministerial changes for certain ministers is deemed sufficient.

- **Fact-finding committees**

It is worth noting that the permanent committees of the Legislative Council operating in the Gaza Strip through the MPs of the Change and Reform parliamentary bloc have undertaken many meetings and hearings with officials, in addition to workshops through which they have dealt with numerous roles that concern public affairs. They have issued numerous reports and recommendations in this regard; Table No. 3 specifies the figures of the activities and events of the parliamentary committees during the second legislative season.

⁴⁰ Prof. Al-Sawi, Ali . "Characteristics of Parliamentary Oversight." *Al-Jami'a magazine*, No. 3. Iraq, 2001. P. 22.

Table 3 shows the various activities of the committees during the period from 2006 to 31/12/2012.

No.	Committee	Meetings	Hearings	Field visits	Reports	Workshops	Draft bills
1	Budget	86	30	10	28	16	7
2	Oversight	130	83	73	16	7	0
3	Legal	103	36	26	9	27	62
4	Economic	96	94	27	19	3	4
5	Education	124	82	92	31	28	13
6	Political	19	0	0	10	1	0
7	Jerusalem	29	1	11	7	4	2
8	Interior	34	18	38	49	6	1
Total		661	344	277	169	92	89

Section Three: The public budget and the role of the Council in combating corruption

This section of the paper deals with the Legislative Council's financial oversight and its role in combating corruption during the financial years 2006-2013, under the following headers:

One - The Legislative Council and its role in the process of establishing the public budget.

Two - The role of the Legislative Council in oversight of revenues.

Three - The role of the Legislative Council in oversight of expenditure.

Four - The Legislative Council and its relationship with the oversight institutions.

One: The Legislative Council and its role in the process of establishing the public budget:

To respond to this question it seems necessary to begin by reviewing the budgets that the Legislative Council has approved through the Change and Reform parliamentary bloc in the Gaza Strip. Between 2006-2013 the Legislative Council has agreed five ordinary budgets for 2006, 2010, 2011, 2012 and 2013, in addition to one exceptional budget in 2009. In 2007 and 2008, however, no budget was approved, and spending and revenues continued under a 'one-twelfth' budget from 2006, owing to the situation of the blockade and political division during this period. The public budget of the financial year 2006 was approved by the Legislative Council in plenary session, and was agreed in accordance with the legal rules after much heated debate between the various parliamentary blocs and lists, which demanded a number of amendments to the draft budget law.

The Legislative Council exercised this essential oversight role during the financial years 2006-2012, with the exception of the financial years 2007-2008 when it sufficed with continuing under a 'one-twelfth' budget. This is an indication that the Council did not fulfil its oversight role during that period.

From review of the session minutes and decisions of the Legislative Council related to this phase during the other financial years, it is evident that there is a communication problem between the finance minister and the budget and financial affairs committee at the Legislative Council. This results from the roles of both prime minister and finance minister being combined in the person of the prime minister, Mr. Ismail Haniyeh; the subject of the budget is therefore only discussed with the undersecretary of the finance ministry, Mr. Ismail Mahfouz. This has had a huge impact on the imposition of the Legislative Council's policies on the government, and sometimes the legislature has had the greatest role in specifying the final form of the public budget.

During the financial years 2006-2013, the Legislative Council has not once exercised subsequent parliamentary oversight of the budget. There appears to be no single cause adequate to justify the Council's failure to undertake this procedure. It seems reasonable to believe that this matter can be attributed to the lack of parliamentary knowledge of the importance of this role, and sufficing with oversight that has occurred during the process of implementation of the budget.

Two - The role of the Legislative Council in oversight of revenues:

Transparency in the administration of public revenues is an important factor both nationally and internationally, given the positive reflections this has on countries and societies. Besides contributing to strengthening economic growth and social cohesion, it reinforces the credibility of institutions and the confidence of investors, and it helps in limiting the phenomenon of corruption and the wastage of national wealth.⁴¹ Revenues include all of the resources that the state collects from the companies and institutions owned by the state and from tax revenues and fees. Taxation receipts are considered to be the most appropriate means of funding public expenditure. They are distinguished by the fact that they are sovereign revenues, and are imposed on all residents in the country definitively and without direct recompense. The tax burden is in principle distributed according to the contribution of each taxpayer. Oversight of the processes of production and collection of revenues is of the utmost importance, as effective oversight has a positive impact on the state, the economy and society.

This is clarified through the following recommendations:⁴²

1. Expediting the application of the law regulating Zakat which was adopted by the Legislative Council in 2008, in order to ensure better realisation of revenues in light of the tax evasion undertaken by many high earners. The application of this law has encountered many obstacles, some of which are related to the law itself and the legislation issued under it, while others are connected with the human staff working at the Zakat Commission. However, the most significant portion of these obstacles

⁴¹ Arab Parliamentarians Financial Oversight Toolkit. Arab Parliamentarians Against Corruption in cooperation with Revenue Watch Institute. 1st edition. Beirut, 2001.

⁴² *Four years of giving despite the blockade, 2006-2010*. The Legislative Council in Gaza, 2011. Decree No. 1231 Gh.G.1/4. P. 177.

relate to the extent of governmental compliance with facilitating the application of the provisions of this law, given the fact that the application of this law will affect all of the revenue coming into the public treasury account.

2. The formation of a ministerial committee by the Finance Ministry to establish a clear vision and mechanism to control all aid, gifts and in-kind subsidies. Aid, gifts and in-kind subsidies since the war in the Gaza Strip have constituted a large part of total revenue, whether presented to the government directly or by means of local and international institutions. The government has adopted this recommendation, whereby it has formed a ministerial committee to control the donations and gifts received by the government. The budget and financial affairs committee at the Legislative Council has received a detailed report on the subject.
3. Supplying the Legislative Council with a comprehensive report on the amount levied by the Ministry of Interior on its employees and on MPs and ministers, and the amount levied by the government on the salaries of all public employees for the benefit of the workforce (a proportion of 5%). The aim of this is to verify the means of expenditure of these funds, and to hold contraveners to account for levying taxes illegally or spending collected revenues outside of the framework of the treasury single account. The government must comply with providing all requirements to all responsible entities, in particular the Ministry of Interior and National Security.

Three - The role of the public budget in financial oversight of expenditure:

To reinforce the principle of transparency and improve the mechanism of oversight of public funds, the budget and financial affairs committee sought to impose a group of restrictions on the executive authority during 2008-2012, foremost among them preventing the government from paying any additional costs for which no allocation had been earmarked in the budget law. However, the government's failure to comply with this clause is apparent. Nonetheless, the budget and financial affairs committee, taking into its assessment the political circumstances and in particular the war on Gaza, asked the government to obtain the Legislative Council's approval of these expenses within a budget appendix in 2011. The limitations imposed by the committee include a contraction of job creation during the financial year 2011, and that recruitment is focussed more on the revenue departments at the Ministry of Finance and the other ministries. The budget and financial affairs committee at the Legislative Council asked the government to form a committee for administrative reform and to activate the Anti-Graft Law and issue the decrees required to reinstate the Anti-Graft Commission, which has been inactive since the issuance of the law in 2005.

In the framework of overcoming the contraventions that occurred in the disposal of state properties, the budget committee asked for the dissolution of the Land Authority and the reinstatement of the previous land registry department at the Ministry of Justice and the survey department at the Ministry of Public Works and Housing. This in turn increases transparency in the transfer of ownership of the state's land and decreases contraventions that may occur in this regard.

Four - The Legislative Council and its relationship with the oversight institutions:

1. The State Audit and Administrative Control Bureau.

The State Audit and Administrative Control Bureau suspended the work of its employees in the Gaza Strip after the events of the division, until the Legislative Council in the Gaza Strip recommended the appointment of a director and deputy director for the State Audit and Administrative Control Bureau⁴³ in 2010. The government did in fact partially comply with this recommendation and a deputy was appointed for the director of the State Audit and Administrative Control Bureau, namely Mr. Yusef Al-Kayyali, and his appointment was approved by the Legislative Council. He commenced work and began to prepare the oversight report on the institutions and ministries, and presented it to the Legislative Council in accordance with the law. The Council cooperated with the Bureau in this regard, whereby the committees of the Legislative Council held numerous hearings for officials whose names were contained in the reports to verify the truth of the statements made in those reports regarding contraventions committed by a number of officials at the various institutions and ministries. The reports of the Bureau assisted the Legislative Council in controlling public spending and holding contraveners to account.

As follow-up of the matter of the appointment of a director for the State Audit and Administrative Control Bureau by the Legislative Council's⁴⁴ budget and financial affairs committee, the organisational structure of the Bureau was approved by the Legislative Council. For the purposes of development of the work of the Bureau, Mr. Ismail Mahfouz (former undersecretary of the Ministry of Finance) was appointed as director of the State Audit and Administrative Control Bureau in late 2012 - more than two years after the recommendation by the budget and financial affairs committee at the Legislative Council. This is a serious indication of the

⁴³ *Report of the budget and financial affairs committee for the financial year 2010.* Budget and financial affairs committee archive, Legislative Council in Gaza. The recommendation advised that "the government be asked to appoint a director and deputy director for the State Audit and Administrative Control Bureau, provided that the candidates meet the conditions of competence and capability with respect to financial and administrative matters, in accordance with the provisions of the law."

⁴⁴ The Legislative Council's Decree No. 1273/Gh.'A.1/4 of 2011.

government's failure to comply with the recommendations of the Legislative Council and its committees in many instances.⁴⁵ (The Bureau was not activated in Gaza until the end of 2010. The reports issued previously cover the earlier time periods of 2006-2008 - the nature of the situation at that time during the war has been widely reported. The Bureau and the surrounding environmental circumstances were unsuitable; work is under way to develop them.) According to the director of the Bureau, the parliamentary investigation committees formed by the Legislative Council sought the help of the Bureau's employees to assist them in investigating some of the cases presented to the Legislative Council.⁴⁶

2. The Palestinian Independent Commission for Human Rights

In the framework of human rights monitoring by the Legislative Council's committees, the human rights committee of the Legislative Council has followed up many complaints submitted by citizens regarding the security agencies' violation of the rights and freedoms of some citizens in the Gaza Strip. The Legislative Council insisted on adoption of the draft law of the Independent Commission for Human Rights that was approved by the previous Legislative Council in public debate, in order to complete the legal framework regulating the work of the Commission. However, the Commission's council of commissioners asked the Legislative Council in Gaza to delay implementation of this law until the Palestinian reconciliation, and in fact this has occurred. Cooperation is ongoing between the Commission and the Legislative Council at the level of the committees, and in particular the oversight and human rights committee. This is in spite of the lack of satisfaction felt by the Council regarding the performance of the Commission in Gaza, because of the Commission's annual report regarding violations of citizens' rights during 2010.

3. The Anti-Graft Commission

In view of the importance of the role undertaken by the Anti-Graft Commission in fighting corruption, the budget committee at the Legislative Council asked the government to activate the Anti-Graft Law and appoint a director for the Commission, in accordance with the law, to work in the Gaza Strip. However, the government has not yet adopted this recommendation.

4. Civil society institutions

Civil society institutions play a major role in oversight of the performance of the executive authority, through receiving complaints from citizens and undertaking field visits to governmental institutions, bodies and departments. The Legislative Council cooperates by means of its various committees in this area. Many meetings have taken place between the committees of the Legislative Council and officials from the Palestinian civil society institutions to coordinate efforts, either at the legislative or oversight level, or at the level of financial oversight and the application of taxation legislation. The budget and financial affairs committee and the economic committee have met with representatives of the association of businessmen and the owners of factories and companies. Similarly, the education and social affairs committee have met with a number of members of institutions representing disabled persons, to discuss their financial affairs and in particular their right to employment and to the various taxation and customs exemptions.

⁴⁵ The Legislative Council's Decree No. 1334/Gh.'A.1/4 states that. "The appointment of Mr. Ismail Muhammad Ali Mahfouz as director of the State Audit and Administrative Control Bureau is unanimously approved." The Legislative Council's Decree No. 1335/Gh.'A.1/4 stipulates that Mr. Ismail Muhammad Ali Mahfouz shall commence work as director of the State Audit and Administrative Control Bureau after swearing the legal oath before the Council in accordance with the rules.

⁴⁶ A team of experts from the State Audit and Administrative Control Bureau worked with the members of the parliamentary investigation committee on the matter of underground border crossings (tunnels on the Palestinian-Egyptian borders), to assist them in procedures of research and investigation.

Section Four: Outcomes and recommendations

First: Outcomes:

1. It is apparent that the Palestinian Legislative Council remains weak in the area of oversight of the business of the government in general, in particular since the political division that the Palestinian people experienced less than a year after the second legislative elections. The nature of this relationship limits the ability of the Council to carry out its role of oversight in particular.
2. It is evident from the experiences of parliamentary oversight that it has been possible for MPs to use limited means of oversight in relation to issues which do not glaringly affect the stability of the current situation, nor infringe the interests of the major groups in the country. However, the absence of highly capable technical staff specialised in accounting and legal sciences to work with the Council's various committees has led to poor utilisation of the tools of oversight stipulated in the Standing Orders of the Legislative Council, which are available to the committees and the Council's members.
3. The introduction of audiovisual media within the Legislative Council has contributed to providing a suitable climate for the promotion of oversight work through placing the MPs themselves under direct popular oversight.
4. The situation of political division that the Palestinian people have experienced during the past six years has clearly and manifestly impacted the performance of the Legislative Council, in terms of oversight, legislation and finance. This has in turn led to a severe weakness in financial oversight, which in turn encourages corruption, rather than blocking or curbing it.
5. The Legislative Council may be forced, according to its constitutional and legal rights, to approve the public budget as it is. This in fact occurred during the financial years 2009, 2011 and 2012.
6. The cause of the weakness of parliamentary oversight of the budget and final account can be attributed to the technical and accounting issues contained in the budget, and the shortage of information and data presented by the government, in addition to the shortness of the time period scheduled for debate of financial laws in general.
7. The State Audit and Administrative Control Bureau undertakes certain procedures and makes recommendations. However, few of the entities subject to the oversight of the Bureau comply with these recommendations, and the financial contraventions remain ongoing. This is confirmed by the reports of the Bureau itself.
8. A clear shortfall is apparent in the area of prior oversight of the budget. This results from a group of factors, foremost among them the Palestinian political division and the policy of the blockade which has been imposed on the Gaza Strip, in addition to the occupation's attempt to isolate it from its foreign and domestic surroundings.
9. Subsequent parliamentary oversight of the implementation of the public budget is important as it constitutes political oversight of this power. However, the failure to present a draft final account to parliament diminishes the efficacy and success of such oversight, in particular when the ministers who implemented the budget have been substituted. To redress this, financial legislative decrees must be issued on the necessity of presenting the draft within a short period following the end of the financial year, establishing a penalty if this occurs later than the specified deadline.
10. There are serious problems with respect to parliamentary oversight, because it stops short at judging outcomes and discussing aggregates rather than undertaking technical oversight. This leads to the distortion of such parliamentary oversight.
11. The Anti-Graft Commission is entirely absent, and the government has failed to take any steps towards applying the recommendations of the budget and financial affairs committee regarding the activation of the Commission.
12. There is an inconsistency within the laws in both the Gaza Strip and the West Bank, which leads to a clear imbalance in the application of the law in some instances.

Second: Recommendations:

1. Highly competent technical staff who are specialised in accounting and legal sciences must be secured and provided to the parliamentary committees, in particular the budget and financial affairs committee at the Palestinian Legislative Council.
2. A permanent technical office must be established at the Legislative Council with the aim of monitoring the phases of the budget and the spending of public money, or a post of 'parliamentary budget official' must be created so that an objective analysis can be presented to the members of the Council and its committees regarding the financial position of the state, the direction of the national economy and the financial cost of proposals.
3. The Legislative Council must be supplied with libraries and computers to assist MPs in obtaining the information necessary for their work in the field of parliamentary oversight.
4. MPs who wish to develop their abilities in the field of oversight work and fighting corruption must be supplied with assistants, including researchers and specialists, and educational programmes and courses must be organised for MPs with the participation of legal academics and parliamentarians.
5. The government must implement the law and present final accounts. If there is a delay in presenting such reports this must result from a shortcoming, which must then be considered and researched in order to eliminate it.
6. The capabilities of the State Audit and Administrative Control Bureau must be developed for it to undertake its oversight role and to ensure the publication of its annual reports.
7. Work must be performed more widely on each individual section of this working paper, in particular as regards the subject of the public budget.
8. The technical abilities of the employees of the Legislative Council must be developed so that they become more competent in analysing the budgets.
9. The role of the Legislative Council's committees in oversight of public performance must be reinforced.

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**An AMAN programme with funding from the governments of Norway, the
Netherlands and Luxembourg**

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