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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

State of Palestine

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

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

The implementation by the State of Palestine of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review was issued on 6 October 2015 ([CAC/COSP/IRG/I/4/1/Add.25](#)).

Under the Basic Law of the State of Palestine, the political system of the State is democratic, representative, parliamentary and based on the separation of powers. The executive branch consists of the President, who is elected directly by popular vote, and the Prime Minister, who forms and leads the Government. The legislative branch consists of the Legislative Council, an elected body that comprises 132 representatives and is equivalent to a parliament. However, that body has not met since 2007.

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

The State of Palestine directly applies the international instruments to which it is a party. By virtue of Decision No. 4 of 2017 of the Constitutional Court, such instruments take precedence over domestic law.

Provisions of Palestinian law enacting chapters II and V of the Convention are contained in several laws, including Act No. 1 of 2005 (the Anti-Corruption Act), as amended; the Penal Code; the Code of Criminal Procedure; and Decree-Law No. 20 of 2015 on anti-money-laundering and combating the financing of terrorism, as amended by Decree-Law No. 13 of 2016.

The following entities are involved in combating corruption: the Palestinian Anti-Corruption Commission, the National Committee on Anti-Money-Laundering and Countering the Financing of Terrorism, the Financial Follow-up Unit, the State Audit Administrative Control Bureau, the Public Prosecutor and the Court for Crimes of Corruption.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

The State of Palestine has adopted the National Anti-Corruption Strategy for the period 2015–2018, in addition to other measures to strengthen public administration. The Strategy, which is the second of its kind, was formulated in consultation with a range of Government and non-Government stakeholders. It sets forth specific priority measures, the implementing and participating actors and a time frame. It is being implemented in a decentralized manner; it relies to a significant extent on voluntary bilateral agreements (workplans), which provide greater detail and specify the budget and which are concluded between the Palestinian Anti-Corruption Commission and relevant institutions. The Commission reviews implementation of the agreements,

including implementation by the committees. The Strategy includes benchmarks for implementation but not for impact. A decision was taken to analyse the effectiveness of the Strategy, but this has not happened. The Commission has been tasked with periodically reviewing anti-corruption measures and laws. It has done so in cooperation with the partners responsible for implementing the Strategy.

Strengthening international cooperation is one of the four focus areas of the Strategy. The State of Palestine has acceded to the Arab Convention on Combating Money-laundering and the Financing of Terrorism and the Arab Anti-Corruption Convention. It is a member of the Middle East and North Africa Financial Action Task Force (MENAFATF) and the Arab Anti-Corruption and Integrity Network. It also participates in the working groups of the Conference of the States Parties to the United Nations Convention against Corruption.

The Commission, which was established pursuant to Act No. 7 of 2010 amending Act No. 1 of 2005 on illicit gain, is the main anti-corruption agency. It has a broad purview encompassing prevention and law enforcement. In 2019, the Commission had 56 staff members.¹ Article 3, paragraph 1, of Act No. 7 of 2010 provides for the Commission to be administratively and financially independent, with a distinct budget within the national general budget. The President of the Palestinian National Authority may dismiss the Chair of the Commission under certain specified circumstances, for example, in the event that the Chair no longer meets the requirements for appointment, such as maintaining their good reputation.

The other institutions involved in implementing the Strategy and anti-corruption measures are the State Audit Administrative Control Bureau, the Ministry of the National Economy, the Ministry of Justice, the Ministry of Education and Higher Education, and the General Personnel Council.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The Civil Service Act (Act No. 4 of 1998) and its implementing regulations and, in particular, Decision No. 45 of 2005 of the Council of Ministers, regulate the appointment, employment, retention, promotion and retirement of Government employees.

Articles 14–29 of the Civil Service Act have to do with employment. In accordance with those articles, the Palestinian National Authority is responsible for appointments to high-level posts, including ministers and the Department of Financial and Administrative Control. Some category 1 officials are appointed by the Council of Ministers. Civil servants in the other four categories are appointed by the relevant Chief of Department.

Posts filled by examination are identified by the Civil Service Bureau in consultation with the relevant department. Competitions are managed by a selection committee comprising representatives of the relevant department and the Civil Service Bureau. The committee is responsible for announcing vacancies, reviewing applications and approving candidate lists. The Civil Service Bureau is responsible for announcing the successful applicants (arts. 20–22 of Regulation No. 45). With regard to appeals against recruitment decisions, there is practice showing that objections to the outcomes of recruitment interviews are made by means of an appeal submitted by the concerned party to the General Personnel Council; however, that procedure has not been codified. Complaints with respect to decisions concerning recruitment may be submitted through the judiciary.

The National School of Administration, which was established in 2016, offers various curricula for public officials. In addition, there are numerous institutions that train officials, including the Palestinian Judicial Institute, the Financial Institute and the

¹ Following the joint meeting, the authorities of the State of Palestine stated that the Commission now had 105 staff members.

Teacher Training Institute. It is nevertheless important to make public officials aware of the risks of corruption through specialized and appropriate training sessions.

Civil servants' salaries are regulated according to the principle of grade and rank, taking into consideration qualifications and experience.

The rotation of public officials, such as senior officials and position holders at the Department of Taxes and Customs, is the main procedure applied to mitigate the risk of corruption.

In the State of Palestine, elections are held to appoint members of local councils and the Legislative Council. Those elections are regulated by, respectively, Act No. 10 of 2005, as amended, concerning local council elections, and Decision No. 1 of 2007 concerning general elections. The two instruments define the minimum requirements for candidacy and which conditions would lead to the loss of eligibility.

Articles 68 and 69 of Decision No. 1 of 2007 regulate the financing of electoral campaigns for the presidency and for the Legislative Council. External and foreign sources of financing are not permitted in any form. Candidates must submit detailed information concerning all sources of financing and expenses, which can be subject to external review.

There are no rules regulating the financing of political parties.

The State of Palestine has adopted a code of conduct (Council of Ministers Decision No. 04/23/14 of 2012) that applies to all public officials, including public sector retirees. Chapter III of the code of conduct, entitled "Strengthening integrity and combating corruption", addresses conflict of interests. It provides that any potential or actual conflict of interests must be declared, as must be any external interests that the official may have. Those texts set out the rules for making declarations. Gifts cannot be accepted except in certain specific circumstances. A risk assessment conducted by the Palestinian Anti-Corruption Commission points to the need for additional guidance concerning how to register gifts and how to apply the rules of the code of conduct in practice. Plans have been made to prepare articles addressing those points.²

Public officials are required to declare any unlawful earnings or corruption, but various provisions require that written reports be submitted to the direct supervisor and the Commission. Legal, personal and occupational protections are afforded to whistle-blowers and people who, in good faith, provide documented information concerning corruption (Act No. 7 of 2010, art. 11). The Commission has provided examples of instances in which it intervened to rescind administrative decisions against whistle-blowers. It might, however, be useful to provide greater clarity regarding the current legal framework, including as regards the allowable whistle-blowing channels.³

In the State of Palestine, public prosecutors belong to the judicial service and are therefore subject to the regime established pursuant to Act No. 1 of 2002 (the Judiciary Branch Act). Judges are recruited through a competition organized by the Supreme Council of the Judiciary. However, the means for organizing the competition have not been codified. Act No. 1 of 2002 concerning the judiciary branch prohibits judges from specific activities that might conflict with their integrity, such as foreign activities or divulging information (arts. 28 and 29 of the Act). Those provisions state that, when assuming their functions, judges shall declare to the Supreme Court their assets and those of their spouses and minor children. The Supreme Council of the

² Following the joint meeting, the authorities of the State of Palestine stated that the Council of Ministers had adopted Decision No. 10 (2019) regulating gifts and Decision No. 1 of 2020 regulating conflict of interest declarations.

³ After the joint meeting, the authorities of the State of Palestine stated that the Council of Ministers had issued Decision No. 7 of 2019, dated 28 November 2019, concerning the protection regime for whistle-blowers, witnesses, informants and experts in cases of corruption and their relatives and close relatives. The decision sets out the available whistle-blowing channels.

Judiciary has issued a judicial code of conduct pursuant to Decision No. 3 of 2006 that draws to a large extent on the Bangalore Principles of Judicial Conduct. The code defines obligations intended to strengthen integrity. For instance, it prohibits judges and their family members from accepting gifts (art. 17 of the Act).⁴ In order to ensure impartiality, article 30 of the Judiciary Branch Act details 30 instances in which judges must recuse themselves. Chapter 10 (arts. 153–163) of the Code of Civil and Commercial Procedure (Act No. 2 of 2001) sets out issues that would entail misconduct proceedings against judges for fraud, deceit or a serious professional error.

Moreover, as a measure to ensure the integrity of the judicial system and mitigate the risk of corruption, the State of Palestine has introduced the Mizan II case management platform, which handles the allocation of cases and the exchange of information between, on the one hand, departments and courts and, on the other hand, external entities and institutions involved in judicial affairs.

Public procurement and management of public finances (art. 9)

Public procurement is regulated by Decree-Law No. 8 of 2014 (the Public Procurement Act); by Council of Ministers Decision No. 5 (2014) regulating public purchases, as amended by Council of Ministers Decision No. 3 of 2016; and by relevant regulations adopted by the Supreme Council on Procurement Policy, as the body responsible for developing policies and monitoring and assessing the performance of the public purchasing system in the State of Palestine. That legal framework applies to all procurement for supplies and for consultancy and other services. It covers all public institutions for which the national budget is used (art. 1, para. 2). Article 3 addresses exempted areas, such as defence procurement; the printing, issuance and exchange of currency; and exchange purchases between procurement agencies.

Council of Ministers Decision No. 5 of 2014 provides for five procurement processes, namely, open competition, limited competition, ranking of price bids, framework agreements and single-source purchase/fulfilment. When purchasing, priority is given to open competition, and the procurement agency undertakes not to split the contract. Council of Ministers Decision No. 3 of 2016 defines the stages of the procurement process.

Council of Ministers Decision No. 5 of 2014 requires the publication of a call for tenders setting out the necessary information, including the documentation required from bidders. In the event of an international competition, the call for tenders must be published in English in the bulletin of the United Nations Development Programme. Calls for tender are also published through the harmonized public procurement portal (www.shiraa.gov.ps).

The criteria for examining, assessing and comparing bids and qualifications are set forth in article 38 of the Public Procurement Act and were established on an objective basis.

The tendering process is launched in an open meeting, and any bidder may attend (art. 82 of Council of Ministers Decision No. 5 of 2014).

Complaints with respect to a purchase decision can be submitted to the purchasing agency. The decision concerning the complaint can also be reviewed by the review unit under the Supreme Council on Procurement Policy, which consists of experts (arts. 56 and 57 of the Public Procurement Act). All decisions taken by purchasing entities are also subject to judicial appeal (art. 58 of the Public Procurement Act), and complaints and requests for review have the effect of suspending the process.

⁴ Following the joint meeting, the authorities of the State of Palestine stated that the Government had adopted a new code of conduct pursuant to a decision of the transitional Supreme Council of the Judiciary in June 2020.

Chapter 8 of the Public Procurement Act sets forth specific commitments for procurement officers and bidders, including confidentiality, the avoidance of conflicts of interest and collusion, and the need to ensure that fair competition can take place. Experts in the review unit are required to make annual financial disclosures (art. 26 of Council of Ministers Decision No. 5 of 2014). The Supreme Council on Procurement Policy holds regular training sessions for procurement officers.

Article 64, paragraph 4, prohibits bidders who are in breach of the law from participating.

The annual budget of the State of Palestine is proposed by the Government and adopted by the Legislative Council. Since 2007, however, budgets have been adopted by means of a decree-law adopted by the President of the Palestinian National Authority. The budget is published upon adoption.

Council of Ministers Decision No. 43 of 2005 concerning the finances of public ministries and institutions sets out the financial and accounting principles and rules incumbent on any ministry, department, public institution, authority or public agency funded from the general budget of the National Authority, including any institution that enjoys financial and administrative independence but does not have its own financial regulation. Reports on income and expenditure are sent to the Ministry of Finance for audit. The monthly reports of the Ministry of Finance concerning income and expenditure are published via its electronic portal.

Chapter 13 of Council of Ministers Decision No. 43 of 2005 concerning the finances of ministries and public institutions sets out the modalities for internal review and the responsibilities of monitors (art. 146) and the inspection and inventory committees (art. 147). In its central role, the Internal Audit Department of the Ministry of Finance operates according to an annual workplan agreed by the Minister. It is responsible for, among other things, ensuring that public resources are used appropriately and efficiently, and submitting reports to the Minister regarding the outcomes of audits, recommendations and summaries of effective risks (art. 151).

The State of Palestine has established the Bisan digital platform, which is linked to the general budget and to centres of responsibility. The platform ensures that funds cannot be disbursed without prior approval for allocation. It is linked to the financial monitoring system of the Ministry of Finance in order to ensure full respect for the relevant procedures.

The State Audit Administrative Control Bureau fulfils the external review function through four-year strategies. It submits quarterly review reports to the President of the National Authority, the Legislative Council and the Council of Ministers for appropriate action (art. 26). Activity reports of the Bureau are made public on its website. Article 36 (b) of Act No. 15 of 2004 (State Audit Administrative Control Bureau Act) requires persons responsible for expenditure at agencies monitored by the Bureau to respond to the Bureau's comments.

In accordance with article 32 of the Act, the Ministry of Finance provides the Bureau with quarterly reports reviewing appropriate corrective proposals and measures to restore financial equilibrium. However, because the Legislative Council has not met, it has not been able to monitor follow-up to the measures.

Council of Ministers Decision No. 43 of 2005 sets out rules for the preservation of financial records and prohibits their destruction before a specified time (art. 14) or when they are under investigation. However, no measures have been taken to enforce those obligations.

Public reporting; participation of society (arts. 10 and 13)

The State of Palestine has not adopted a specific law on access to information, although a draft law has existed for several years. Nevertheless, various laws require specific organizations to prepare and publish several documents, including annual reports and budgets. Numerous organizations, including the Palestinian

Anti-Corruption Commission publish additional information voluntarily on their websites. Information access requests can currently be submitted, but the decision to reply rests with each organization.

With regard to simplifying administrative procedures, the Commission has supported a risk assessment of the Ministry of Transport and Communications and is planning additional risk assessments focusing on the legal and organizational environment in various sectors. A decision has also been taken to strengthen e-management.

As provided for in the Strategy, the State of Palestine has taken several measures to raise awareness of corruption among several target audiences, including women and children. In cooperation with the Ministry of Education and Higher Education, the Commission has implemented a project entitled “The role of education in combating terrorism”, which comprises various initiatives, including train-the-trainers and extracurricular activities for education supervisors, teachers and students. Several activities have been organized for university students, including training on how to carry out research, write media reports on corruption, organize competitions and put in place study plans. Various forms of cooperation with the media are in place, including training for investigative journalists, targeted media interviews and television programmes on ways to prevent and combat corruption.

The Commission receives reports and complaints on corruption (Act No. 7 of 2010, article 9), including those received anonymously. The Commission informs the whistle-blower, if their identity is known, of the decision taken regarding their report.

Private sector (art. 12)

The Strategy recognizes the important role of the private sector in combating corruption; one of its goals is to foster such efforts. In 2015, the Commission signed a three-year plan (2015–2017) with the Ministry of the Economy to strengthen the prevention of corruption in the private sector. As a result, more than 1,000 private sector employees have been trained, more than 60 working papers have been presented, and a code of conduct for private sector employees is currently being adopted through a partnership between the Commission and the Ministry of the Economy.

The Corporations Act (Act No. 12 of 1964), the Capital Market Authority Law (Act No. 13 of 2004) and the Securities Act (Act No. 12 of 2004) provide for the prosecution of private sector entities that contravene their obligations under the those Acts, including through fraud and unfair practices.

In order to strengthen accountability and oversight standards in the private sector, several regulations require companies to apply international financial reporting standards, which have been circulated in the country since 2010. The Corporate Governance Code (2009) adopted by the National Corporate Governance Commission requires public companies and financial institutions to establish codes of conduct and encourages them to put in place systems to avoid conflicts of interest.

A ban on post-employment restrictions on public sector officials accepting private sector posts has been imposed only for the Governor and Deputy Governor of the Palestine Monetary Authority, who must refrain from accepting such jobs for a period of one year. Efforts are currently under way to strengthen transparency in the establishment and management of companies in order to prevent the misuse of the procedures that regulate private companies. A memorandum of understanding has been concluded between the Palestinian Anti-Corruption Commission and the Ministry of the Economy in order to address those two issues in the new draft Corporations Act.

The establishment of off-the-books accounts, the recording of non-existent expenditure and the use of false documents are prohibited under paragraphs (c), (d) and (j) of article 37 of the Tax Code (2011).

Deductions may apply to taxes only as stated in articles 12 and 13 of Decree-Law No. 8 of 2011 (the Income Tax Act). Expenses that constitute bribes are therefore not tax-deductible.

Measures to prevent money-laundering (art. 14)

The Palestinian legal regime to prevent money-laundering consists of Decree-Law No. 20 of 2015, the instructions issued by the National Committee on Anti-money-laundering and Combating the Financing of Terrorism, and the implementing regulations of the Council of Ministers.

Palestine has drawn up a list of banks and non-banking financial institutions subject to the preventive anti-money-laundering regime based on the activities listed in annexes 1 and 2 to Decree-Law No. 20 of 2015. The financial institutions include banks, currency exchanges, specialized lending institutions, insurance companies, securities markets, financial leasing companies and mortgage finance companies. The non-financial professions include real estate agents and brokers, traders in precious metals, lawyers and accountants, and providers of services related to insurance and companies.

Oversight powers rest with the Monetary Authority in the case of banks and lending institutions, and with the Capital Market Authority in the case of non-banking institutions. The professions are overseen by the body pertinent to each sector, for example, the Bar Association for lawyers, the Accounting Association for accountants and the Ministry of the Economy for traders. However, oversight and sanctioning powers for institutions subject to Decree-Law No. 20 of 2015 have not been defined from a legislative standpoint.

With a view to preventing money-laundering, article 6 of the Decree-Law requires financial institutions and non-financial professions to apply “know your customer” standards and check identity documents (for natural or legal persons) and identify the beneficial owner. Article 5 of Instruction No. 6 of 2016 concerning banks sets out the procedures that should be followed in order to fulfil that obligation. However, instructions have not been issued regarding all the non-financial professions.

By virtue of article 23 of the Decree-Law, Palestine established the Financial Follow-up Unit to collect and analyse information concerning money-laundering. It is administrative in nature and has the task of collecting, analysing and publishing information concerning money-laundering. The National Committee on Anti-money-laundering and Combating the Financing of Terrorism was established by virtue of article 19 of the Decree-Law. Its tasks include formulating public policy to prevent and combat money-laundering. The two bodies are also responsible for local coordination and international cooperation.

Under article 35 of the Decree-Law and Instruction No. 1 of 2016 concerning the declaration of currency, securities, e-currencies, precious stones and minerals at crossings into the territory of the State, the State of Palestine has established a regime for cross-border declarations of incoming and outgoing cash and marketable securities. Article 1 details the declaration thresholds. The failure to declare, or the submission of a false declaration, are penalized under article 44. The Palestinian Customs Directorate is responsible for implementing the cross-border declaration regime. It has the power to impound items, in particular in cases of suspected money-laundering.

Article 8 of the Decree-Law establishes a “know your customer” requirement for wire transfers and makes it a requirement that information connected to the transaction should be kept throughout the chain of payment processes. Instruction No. 2 of 2016 on anti-money-laundering and combating the financing of terrorism, concerning banks, defines the essential information that must be verified in detail and specifies which documents are required. It provides that transactions should be rejected automatically if the information is not provided in full in accordance with article 7, paragraph 4.

Palestine is endeavouring to develop cooperation in the area of anti-money-laundering, in particular with several Arab States, in the context of bilateral agreements with the Financial Follow-up Unit. Palestine is a member of MENAFATF and is expected to undergo its first mutual evaluation in 2020.

2.2. Successes and good practices

- Efforts have been made to involve women's groups in implementing national anti-corruption strategies.
- The Mizan II e-management platform is used for court cases.
- Cooperation between the Palestinian Anti-Corruption Commission and the Ministry of Education and Higher Education is being strengthened.
- The Commission is cooperating with the media, in particular to train investigative journalists.

2.3. Challenges in implementation

It is recommended that the State of Palestine:

- Strengthen the monitoring and evaluation of the National Anti-Corruption Strategy and relevant laws and measures by, for instance, determining impact assessment benchmarks (art. 5, para. 3).
- Review procedures for the appointment and dismissal of the Chair of the Palestinian Anti-Corruption Commission in order to ensure that it has the necessary independence (art. 6, para. 2).
- Consider establishing additional guidelines and training for public officials and institutions concerning the risk of corruption, and implementing specific regulations from a practical standpoint.
- Consider establishing an effective regime for administrative appeals against the results of civil service recruitment competitions (art. 7, para. 1).
- Consider strengthening regulations concerning the financing of political candidates; and consider taking appropriate measures to enhance transparency in the funding of political parties (art. 7, para. 3).
- Continue to consider clarifying the various reporting channels and measures available to public officials who report information on corruption, and the procedures in place for their protection (art. 8, para. 4).⁵
- Continue efforts to strengthen the effectiveness of the regime for the declaration of gifts (art. 8, para. 5).⁶
- If the Legislative Council does not meet, ensure that the implementation of review recommendations is followed up (art. 9, para. 2 (e)).
- Impose administrative and criminal penalties for the failure to preserve accounting books and records (art. 9, para. 3).
- Continue to assess the legal and regulatory environment across sectors and organizations to determine whether simplification, e-management or other measures would strengthen public access and transparency (art. 10).

⁵ After the joint meeting, the authorities of the State of Palestine stated that the Council of Ministers had issued Decision No. 7 of 2019, dated 28 November 2019, concerning the protection regime for whistle-blowers, witnesses, informants and experts in cases of corruption and their relatives and close relatives. The Decision sets out whistle-blowing channels.

⁶ Following the joint meeting, the authorities of the State of Palestine stated that the Council of Ministers had adopted Decision No. 10 (2019) regulating gifts and Decision No. 1 of 2020 regulating conflict of interest declarations.

- Strengthen transparency by adopting a draft law on access to information and take other measures, such as putting in place a public policy and guiding principles for the public sector (arts. 10 and 13).
- Consider codifying the means of organizing competitions for recruitment to the judiciary service, while bearing in mind the requirements set forth in article 7, paragraph 1, of the Convention (art. 11).
- Consider imposing a period of break in employment for appropriate categories of public officials and defining its duration, as necessary (art. 12).
- Consider taking measures to promote transparency regarding the ownership and management of corporate entities, and prohibiting the misuse of measures regulating those entities (art. 12).
- Continue efforts to issue guidelines/instructions on the application of the measures required under the preventive anti-money-laundering regime in respect of all reporting parties; and take legislative action to clarify which institutions are responsible for oversight and the imposition of sanctions for each reporting party (art. 14, para. 1).

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

- Capacity-building and the organization of specialized training courses for staff of the Palestinian Anti-Corruption Commission.

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Palestine has not adopted a law on mutual legal assistance; for that purpose, it relies on relevant provisions of Decree-Law No. 20 of 2015. Efforts are being made to adopt a draft law on legal assistance in criminal matters.

Requests for legal assistance in the State of Palestine are received through the channel of the Ministry of Foreign Affairs and referred to the central authority, namely, the Ministry of Justice, which in turn transmits them to the prosecution service or the judiciary for a response.

Palestine has not adopted measures allowing for the automatic exchange of information with other States parties without prior request.

Palestine has acceded to the Arab Convention on Judicial Cooperation, the Arab Anti-Corruption Convention and the Arab Convention on Combating Money-laundering and the Financing of Terrorism.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Financial institutions and non-financial professions are subject to the due diligence requirements set forth in article 6 of Decree-Law No. 20 of 2015. In its instructions, the National Committee on Anti-money-laundering and Combating the Financing of Terrorism specifies the measures that each institution should take. Those requirements include compliance with “know your customer” standards for natural and legal persons and the verification of the identity of the beneficial owner (art. 6, para 1, of the Decree-Law); continuous monitoring of the business relationship (art. 6, para. 3, of the Decree-Law); regular updating of the customer’s information; and notification of suspicious transactions (art. 14 of the Decree-Law). Financial institutions and non-financial professions are required to adopt a risk-based approach (art. 6, para. 8, of the Decree-Law), including through enhanced scrutiny of foreign and local senior

officials and their family members, colleagues and relatives (Instruction No. 1 of 2018 concerning politically exposed persons). Action is being taken to implement risk mitigation measures pursuant to the national risk assessment outcomes formulated in the first quarter of 2019.

Palestine has adopted guidelines for all banks on anti-money-laundering and combating the financing of terrorism. The Monetary Authority has adopted a procedural guide for that purpose. The National Committee on Anti-money-laundering and Combating the Financing of Terrorism has issued instructions for financial institutions explaining which cases require enhanced scrutiny. Article 11 (b) of Decree-Law No. 20 of 2015 provides for officials and employees to receive continuous training. Palestine has not put in place a regime to notify financial institutions of lists of persons who should be subjected to enhanced scrutiny.

The requirement to preserve records is enshrined in article 10 of Decree-Law No. 20 of 2015. Statements and documents related to local and foreign financial transactions must be preserved for a period of no less than 10 years from the date of the end of the financial transaction or the termination of the business relationship, or from the date on which the investigation was closed if the account was closed owing to an offence of money-laundering or financing of terrorism.

Processing banking transactions without a licence is prohibited under article 6 of the Banking Act (Act No. 9 of 2009). Under paragraph 11 of Instruction No. 2 of 2011 concerning the Monetary Authority, on bank licensing in Palestine, applicants are required to declare the headquarters of the bank to the Monetary Authority. The State of Palestine prohibits financial institutions from working with registered banks unless they have a physical presence. Under article 4 of Decree-Law No. 20 of 2015, foreign banks cannot allow their accounts to be used by banks that do not have a physical presence.

Palestine has established a financial disclosure regime covering a wide range of public officials and other job categories, including employees of political parties and unions. That regime includes spouses and minor children. The Anti-Corruption Commission is responsible for receiving and examining such disclosures (art. 16 of Act No. 1 of 2005), except for disclosures involving the President of the Palestinian Authority and members of the Council of Ministers, the Legislative Council, the judicial service and the prosecution service, who are to submit their disclosures to the Supreme Court. Failure to comply is punishable with a fine of no more than 1,000 Jordanian dinars for every month that the disclosure is overdue. Submission of a false declaration is punishable with a fine of no more than 1,000 Jordanian dinars (arts. 28 and 29 of the Anti-Corruption Act). The State of Palestine can exchange information concerning financial disclosures through the Ministry of Justice; however, this has not yet happened. Disclosures submitted by Government officials do not include cases in which the public official has an interest, signature authority or other power over financial accounts.

The Financial Follow-up Unit has concluded five memorandums of understanding with its counterparts in Jordan, Morocco, the Russian Federation, the Sudan and Tunisia. During the joint meeting, it was stated that the Financial Follow-up Unit would join the Egmont Group in the very near future.⁷

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

The general rules under Palestinian law do not prevent foreign States from initiating a civil action to claim an interest in property acquired through a criminal act or request compensation for damage resulting from a criminal act (art. 3 of the Civil Wrongs Ordinance (Act No. 36 of 1944)). The affected party can, alongside its criminal case,

⁷ After the joint meeting, the authorities of the State of Palestine stated that the financial intelligence unit had officially joined the Egmont Group on 3 July 2019.

initiate a civil claim to request compensation for damage in accordance with articles 194–204 of the Code of Criminal Procedure. However, those measures have not yet been invoked in a case in which a foreign State was the claimant. Palestinian law does not include measures enabling another State party, when a decision is being made on confiscation, to lay claim to property acquired through the commission of an offence established in accordance with the Convention.

In Palestine, a framework for mutual legal assistance has been put in place for money-laundering offences only. Article 45, paragraph 3 of Decree-Law No. 20 of 2015 provides for the direct enforcement of foreign confiscation orders, once these have been certified, for money-laundering and financing of terrorism offences.

Proceeds of predicate offences can be confiscated by means of the legal measures relative to money-laundering set forth in article 40 of Decree-Law No. 20 of 2015.

Palestinian law allows for confiscation if the perpetrator of a money-laundering offence dies or absconds (art. 40 of Decree-Law No. 20 of 2015).

Palestine enforces freezes and seizures connected with money-laundering offences in accordance with article 45, paragraph 2, of Decree-Law No. 20 of 2015.

Palestine has not taken additional measures to preserve property with a view to its confiscation.

Palestinian law does not set out conditions for the enforcement of foreign orders of confiscation, freezing or seizure.

Palestine allows the requesting State to submit reasons to keep in place temporary measures through direct implementation of the Convention.

The rights of good parties acquired in good faith are listed with a view to compensation after the confiscation order has been enforced in connection with money-laundering offences, in accordance with article 41 of Decree-Law No. 20 of 2015.

Return and disposal of assets (art. 57)

Confiscated funds are deemed to belong to the State of Palestine and are transferred to the public treasury in accordance with article 42 of Decree-Law No. 20 of 2015. No measures have been taken to return assets in accordance with article 57 of the Convention.

The State of Palestine may deduct expenses accrued in investigations, judicial prosecution or judicial proceedings through direct implementation of the Convention.

The State of Palestine has not concluded any agreement concerning the disposal of the assets. As of the date of the joint meeting, it had not yet received a request for the return of assets.

3.2. Challenges in implementation

It is recommended that the State of Palestine:

- Continue efforts to adopt a draft law on mutual legal assistance including the requirements set forth in chapter V of the Convention (art. 51).
- Continue efforts to implement a risk-based approach; and take appropriate measures commensurate with the identified risks with a view to their effective mitigation (art. 52, para. 1).
- Ensure that the penalties for failure to comply with the financial disclosure regime act as a deterrent (art. 52, para. 2).
- Encourage the expansion of the financial disclosure regime to include cases in which the public official has an interest, signature powers, or other powers over a financial account in a foreign country, to provide for the preservation of

appropriate records of such accounts, and to provide appropriate penalties, as necessary (art. 52, para. 6).

- Ensure that foreign States are permitted to appear before the courts with a view to applying article 53.
- Take the necessary measures to enable other States parties, when a decision is being made on confiscation, to claim property acquired through the commission of an offence established in accordance with the Convention, which has force of law (art. 53 (c)).
- Expand the scope of measures allowing the enforcement of foreign confiscation orders to all the offences set forth in the Convention (art. 54, para. 1 (a)).
- Consider expanding the scope of confiscation without a conviction to include all the offences set forth in the Convention (art. 54, para. 1 (c)).
- Expand procedures for identification, tracing, freezing and seizure in accordance with article 54, paragraphs 2 (a) and (b), and article 55, paragraph 2, to include all the offences set forth in the Convention.
- Consider taking additional measures to preserve property for confiscation, for instance on the basis of an arrest or criminal charge related to the acquisition of such property (art. 54, para. 2 (c)).
- Take the necessary measures to implement article 55, paragraph 1, and ensure that an effective system is in place to protect the right of bona fide third parties to the freezing, seizure or confiscation of proceeds and instrumentalities connected with all the offences established in accordance with the Convention, including when legal assistance is provided to a State party in respect of such measures (art. 55, para. 9).
- Take measures to forward information on the proceeds of offences established in accordance with the Convention to another State party without prior request (art. 56).
- Take the necessary measures to comply with article 57, paragraphs 1, 2 and 3 of the Convention.
- Consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation for asset recovery, and assess whether participating in asset recovery networks and groups could help enhance that process (art. 59).

3.3. Technical assistance needs identified to improve implementation of the Convention

- Help carry out a legislative review with a view to drafting a section on international anti-corruption cooperation (arts. 51, 54 and 55).
- Build capacities to analyse asset declarations (art. 8, para. 5, and art. 52, para. 5).
- Legislative assistance with a view to enacting measures to help comply with the requirements set forth in article 57 of the Convention.
- Build capacities with regard to asset recovery, including training sessions for institutions participating in the process (art. 55).