Report on Effectiveness of Oversight of the Performance of Security Agencies

Executive Summary

This report provides an overview of the challenges that face official oversight of the performance of the security establishment. It presents practical recommendations to relevant authorities with a view to eliminating these challenges and promoting the national integrity system in security operations.

Security agencies and their reporting relationships: According to the Law of Service in the Palestinian Security Forces, security agencies comprise three forces: National Security Forces and Palestinian National Liberation Army report to the Minister of National Security; Internal Security forces (Police, Preventive Security, Civil Defence and Customs Police) report to the Minister of Interior; and General Intelligence report to the President. Any other existing or future security agency(s) falls within one of these three forces. In the Gaza Strip, security forces consist of the National Security Forces, Internal Security and General Intelligence, all reporting to the Ministry of Interior and National Security of the Hamas government.

Legal framework for security agencies: A set of laws and laws by decrees govern the operations of security agencies. These include the Basic Law, Civil Defence Law, Law of Service in the Palestinian Security Forces, General Intelligence Law, Law by Decree on the Preventive Security, Law by Decree on the Police, and Law by Decree on the Customs Police. In addition, several presidential decrees and Council of Ministers' decisions provide a reference framework for the functions of security agencies.

Security sector oversight actors

Palestinian Legislative Council (PLC): Since the internal Palestinian political divide took place in June 2007, the PLC has been out of session.

President's Office: Palestinian laws vest the President with various powers in the security sector. However, the President's Office does not manage a unit for the oversight of security agencies.

Council of Ministers: Palestinian laws vest the Council of Ministers with various powers in the security sector. The Council of Ministers exercises oversight through reports submitted by oversight departments at relevant ministries as well as through complaint reports.

State Audit and Administrative Control Bureau (SAACB) exercises control over the majority of security agencies. However, due to inactivity of the PLC, the SAACB is deprived of many powers vested by law.

Ministry of Finance (MoF) / Directorate General of Military Financial Oversight audits the financial operations of security agencies.

Internal oversight: Several bodies provide internal oversight of the security sector performance. These include the Inspector General of the Palestinian Police, Comptroller General of the General Intelligence, and internal oversight units at the Preventive Security and National Security Forces. In general, internal oversight at security agencies face a set of challenges and obstacles, including inadequate expertise and poor training in oversight functions. Some security agencies lack procedure manuals for internal oversight units. Legal powers for the regulation of oversight functions are not clear.

Judicial oversight: The Judicial Authority exercises various forms of oversight. Unenforced or delayed enforcement of court decisions is a key challenge. The Military Justice Authority has the jurisdiction to enforce law against Palestinian security personnel, who commit criminal offences and violations.

The Public Prosecution exercises various forms of oversight.

Military Intelligence serves as the agency vested with judicial functions over Palestinian security forces.

Independent Commission for Human Rights (ICHR) monitors and documents violations, receives and follows up on complaints, initiates judicial interventions, and exercises oversight using a variety of channels.

Civil society oversight: Some civil society organisations play a role in the oversight of the security sector performance and practices (e.g. Al-Haq, Coalition for Accountability and Integrity (AMAN), and Civil Forum for Promoting Good Governance in the Security Sector).

Donor community: The donors' role is evident in issues with relevance to promoting the concepts of gender, human rights and complaints systems in the security sector.

Effectiveness of oversight functions

1. **Supervision**: Different levels of supervision over security agencies are provided by the Executive Authority, including the President's Office, Council of Ministers, and MoI.
2. **Oversight of plans and programmes**: The MoI provides different levels of control over, and assessment of, plans and programmes. Security agencies also oversee their respective plans and programmes.
3. **Control over the use of funds**: Different bodies exercise control over the use of funds, including the SAACB, MoF Directorate General of Military Financial Oversight, President's Office through the Financial Comptroller of the General Intelligence, and PLC through parliamentary oversight of the government performance.
4. **Oversight of appointments and promotions within security agencies**: Due to dysfunction of the PLC, control over appointments and promotions at security agencies is ineffective. The SAACB does not exercise an oversight role in this context.
5. **Control over detention and management of prisons and places of detention**: Different bodies exercise control over detention and management of prisons and places of detention, including the Judicial Authority, Public Prosecution, ICHR, and civil society organisations. Periodic reports are issued by the ICHR and civil society groups to this effect.

Challenges to the oversight of Palestinian security agencies

In Palestine, security sector oversight actors face many challenges and obstacles, which have affected some security agencies since their inception. Other predicaments have resulted from political and legal developments in the Palestinian context. First and foremost is the internal Palestinian political divide of June 2007 and consequent measures that have reflected on the structures of security agencies in both the West Bank and the Gaza Strip. In their character and sources, these challenges are multiple:

- Inadequate laws that govern functions of security agencies. These include the Military Intelligence, which serves as the agency vested with judicial duties over security agencies, and National Security Forces.
- Lacking bylaws of the laws regulating security agencies: To date, the majority of bylaws needed to govern operations of security agencies have not been finalised. This means that some effective laws have not been fully enforced. This is a responsibility of the competent Executive Authority.
- Ineffective legal framework for the accountability of security agencies: This is particularly the case of pieces of legislation that regulate military justice and the prosecution of security personnel.
- Some provisions of laws by decrees are in conflict with the Law of Service in the Palestinian Security Forces.
- A law that governs the ICHR functions has not been enacted. The ICHR is tasked with monitoring and ensuring requirements for safeguarding human rights under Palestinian laws and regulations.
- The fact that a Law on the Right of Access to Information is lacking undermines civil society oversight of security agencies. The role civil society organisations play is not restricted to human rights abuses.
- A legal framework is not in place to organise the role civil society organisations play in the oversight of public institutions, including security agencies.
- Continued internal Palestinian political divide has dispossessed the PLC of its oversight role. The PLC is the cornerstone in the control over the Executive Authority, including security agencies. Because the PLC is not in session, the outcomes of SAACB reports are effectively rendered meaningless.
- The PLC has prime competence for approving and monitoring the smooth implementation of the general budget. As the PLC is no longer in session, security budgets are not transparent. The general budget does not provide detailed line items of security agencies. Without any clarifications, only vague figures are provided.
- Two key positions in the security forces are vacant, namely, the Director General of Internal Security and General Commander of the National Security Forces, allowing room to exceed the powers endowed on various agencies by the Law of Service in the Palestinian Security Forces.
- Relevant civil society organisations do not make a concerted effort in the oversight process. An integrated plan that promotes civil society oversight role is not in place. Many relevant civil society organisations lack needed expertise, skills and training to carry out oversight functions. Necessary resources are also lacking.

For the oversight of security agencies to be more effective and efficient, several steps need to be taken, most notably:

- Restore the Palestinian political system by holding general elections for a new PLC that is capable of drafting regulations and exercising control over executive bodies.
- Put an end to the Executive domination of other authorities, particularly the Judiciary. This negatively impacts the Judicial Authority's role in control over the Executive, specifically security agencies.
- Allow Palestinian civil society organisations to play a greater role in the oversight of security agencies, particularly by the PLC, Council of Ministers, SAACB, and ICHR.
- Concert efforts of civil society organisations so that they serve as pressure groups to lobby for the control over the Executive Authority, including security agencies.

Recommendations

- To parties to the internal Palestinian political divide: Put an end to the internal divide and agree to set a date for holding the general elections. Accordingly, the PLC will be capable of fully delivering its mission of parliamentary oversight. This role involves periodic control over budgets as well as financial, administrative and operational reports submitted by security agencies. The PLC will also be enabled to complement the laws, which govern the operations of Palestinian security agencies.
- To the Palestinian government: Put an end to Executive hegemony over the Judicial Authority and work towards an effective separation of powers, ensuring that judicial bodies are capable of exercising efficient control over, and holding to account, security agencies. The government will take expedited action to finalise bylaws and regulations for the security laws in force. Reporting directly to the political level, an inspector general of the Palestinian security forces will be appointed. Hence, the security sector will serve as a professional establishment, whose tasks are subject to oversight and inspection. In addition, capacity building will be provided to internal oversight units at security agencies by delivering training to oversight staff and developing regulations and procedures that govern their functions.
- To the PLC or Palestinian President: Given that the PLC is not in session, the status of SAACB should be promoted. The Bureau will be given administrative and financial independence. In addition to enacting security sector laws, an ICHR law need to be promulgated. The ICHR will be granted broader powers to monitor the situation of human rights. Also, a Law on the Right of Access to Information

will be passed to allow the civil society to fulfil its oversight role more effectively.

- To the Judicial Authority: Develop, and eliminate Executive domination of, the judicial apparatus, ensuring that judicial bodies are capable of exercising effective control over, and holding to account, security agencies. Enforcement of court decisions will also be monitored.
- To civil society organisations: Civil society organisations can monitor respect for the rule of law and human rights by security agencies. They can also contribute to building the capacities of security personnel and improve the performance of security agencies.