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## **Executive summary**

This study addressed the issue of discrimination in the public service as one of the main factors responsible for the poor performance of the Palestinian public sector. It stressed the fact that the principle of equality and non-discrimination in public employment is an essential practical component of the general principle of equality, to which the Palestinian legal system is committed in general, although there are some legal gaps that contravene this principle. While acceptable forms of positive discrimination were documented, the study demonstrated that at the practical level, there is clear discrimination in the public sector in Palestine due to the weakness of monitoring bodies, the content of some articles of the regulations for the civil service law, the weakness of the Palestinian administrative judiciary and the lack of abidance of ministries and public institutions with relevant legislation. In general, Palestinian legislation is committed to guarantying equality and non-discrimination at all levels (in the basic law and other laws issued by the PLC). In particular, the civil service law stipulates in article 26 that all Palestinian citizens have the right to occupy public positions and jobs based on the principle of equal opportunities. Moreover, this law provides for positive discrimination such as discrimination for humanitarian reasons, in favor of the families of martyrs, injured and prisoners.

The results of the study highlighted career-based discrimination, as well as discrimination on the basis of ethnic, regional, family and tribal appartenance, personal relationships and private interests, gender and disability. According to our questionnaire, surveyed employees from the general employees' bureau, the ministries of labor, health, finance, social affairs, general works and housing, the Palestinian Legislative Council and the Council of Ministers responded that there is discrimination in general in the public service of Palestine at a level of 4.39 out of 5. In particular, the study confirmed that there is discrimination in the appointment of public sector employees, promotions, disciplinary sanctions, external missions, and the enjoyment of other employees' rights. Discrimination takes place on the basis of political affiliation, regional and family relationship, gender and

disability. There is no discrimination in the public service of Palestine based on religion, as Palestinian legislators and the administration provided for the protection of the rights of non-Moslems with regards to employment in the public sector. In general, there is no discrimination based on age. On the contrary, there is positive discrimination in the Palestinian civil service law in favor of aged employees, with regards to appointment, yearly vacations, sick leave and the termination of the legal relationship. The only exception to this rule is the announcement published by the Ministry of Education which states that some vacant positions are only open to applicants aged less than 45 years.

### **Causes of discrimination:**

According to the study, the main reasons for the types of discrimination observed are:

- The weakness of monitoring institutions responsible for supervising the public sector and its employees, in particular the General Personnel Council, whose duty is to monitor the proper implementation of the legislation regulating public service, to prohibit the State's administrations from contravening these legislations, as well as the administrative and financial control bureau, which is also responsible of some issues related to discrimination.
- Contravention in some regulations of the civil service law issued by the Council of Ministers, which consecrate the situation of discrimination in the public sector for various groups, in particular the regulation regarding the professional and job nature allowance. Other regulations also consecrated discrimination based on political affiliation such as the regulation regarding the inclusion of former years of service for the employees of the Palestinian Liberation Organization and its various factions
- The weakness of the Palestinian administrative judiciary, which made it easier for the administration of ministries and public institutions to discriminate against public servants without fear of judicial monitoring, allowing them to disregard the final decisions issued by the High

Court of Justice in some cases. On the other hand, the weakness of the judicial system and the complexity of legal procedures led to a lack of confidence of public sector employees in the judiciary; consequently, they do not appeal to courts against arbitrary administrative decisions, which entail discrimination and equality issues.

- Ministries and public institutions do not respect the legislations which guarantee equality in public service, with particular regards to appointment and promotion issues. Moreover, there are no legal dispositions to sanction the parties responsible for discriminatory practices
- Clear discrimination on the basis of political affiliation is characterized by:
  - Security approval of the appointment: this was the main reason for refusing applicants affiliated to political parties or movements which are not the ruling party
  - High percentage of public sector employees from one political faction at the expense of other parties and movements to high level positions occupied mostly by affiliates of this faction
  - Taking into account the number of years spent an the employee in serving the national struggle for promotion through obtaining these numbers from the political faction to which the employee is affiliated
- There is also discrimination on a regional or ethnic basis, which is characterized by:
  - Discrimination in favor of the family members or tribesmen of the persons in positions of authority in the PNA
  - Discrimination in favor of persons from the same area as those occupying positions of authority in the PNA
  - Discrimination in favor of the “returnees” to the Palestinian territories (Palestinians who have lived in exile before the establishment of the Palestinian authority)

- Discrimination due to personal relationships and private interests
- There is gender-based discrimination characterized by:
  - The literal implementation of the civil service law and its executive regulations regarding the social allowance for children (the only case in which the law is wrongly interpreted as female public sector employees are deprived of this allowance even if their spouse is unemployed)
  - The appointment of women is concentrated in the middle and lower positions of the employees' cadre, and they have little opportunities to reach the highest executive positions
- Discrimination against the disabled takes place because the Ministry of Health continues to apply the directives of the governmental medical committee issued in 1951 (during the Jordanian administration of the West Bank) when conducting the preliminary medical examination for applicants to public service jobs; these directives include conditions which do not allow people with special needs to access public sector jobs.
- There is discrimination based on the job situation characterized by:
  - Discrimination between various institutions: there is clear discrimination between employees performing the same type of work and with the same experience and qualifications due to their job title or the ministry or institution employing them
  - Discrimination based on specialization: there are professional specializations which suffer from worse employment conditions than others
  - Discrimination in favor of civil servants occupying high level positions: they enjoy privileges not justified by their position such as the fact that academic qualifications are not required for them

The **recommendations** of the study are manifold and require intensive work from the PLC, the executive authority, and the judicial authority in order to address these various forms of discrimination.

On one hand, Palestinian legislators should criminalize discrimination and sanction the perpetrators, amend some laws related to civil service, accelerate the issuance of a law related to the establishment of administrative courts; the PLC should also strive harder to assume its monitoring role on the government's work related to the public function. On the other hand, the executive authority needs to amend certain regulations issued by the Council of Ministers and support the parties responsible for applying the provisions for equality. Ministries and public institutions should comply with the recommendations of the General Personnel Council. The Council of Ministers was also requested to issue a special regulation organizing the right of the families of martyrs, prisoners and wounded to accede to public jobs, which should include a separation between job grade and financial grade, activate the role of the General Personnel Council in collecting data, conducting studies and gathering statistics, abide by the government's tenth decision to cancel security approval before the appointment of public service employees, and coordinate with all ministries for their full commitment to legal dispositions related to the rights of people with special needs. Finally, the study recommended that the judicial authority activates control mechanisms over the management of the public function, collaborates and coordinates with the PLC for the establishment of administrative courts, and gives the cases filed in court a character of urgency.

## **Summary of workshop proceedings**

On April 24, 2007, the Democracy and Workers Rights Center in Palestine organized a workshop in the headquarters of In'ash Al-Usrah Society, to disclose and discuss the findings of a study conducted by the Center on discrimination in the public service. The workshop was attended by dozens of representatives of Palestinian ministries, trade unions and other interested parties. In general, the participants confirmed the study's findings and agreed upon the fact that there is a discrimination problem in the Palestinian public service, especially with regards to discrimination on the basis of political affiliation. Many participants also considered that the primary reason why discrimination is not fought and addressed is due to the lack of political will at the highest level, and the absence of a will to undertake the necessary reforms.

### **Comments on the study were as follows:**

**Dr. Mahmoud Abu Al-Rob**, the President of the Financial and Administrative Control Bureau of the Palestinian National Authority, declared that the study findings are objective and true. He made some comments on the methodology of the study and its topic. He also stressed that the origins of the discrimination problem in the public sector are:

- Non-recognition of the existence of a discrimination problem, especially political discrimination, which allows perpetrators to cover-up their illegal actions
- Failure to take responsibility, i.e. the official parties and in particular the executive and legislative authorities do not fulfill their role to control discrimination and fight it

Moreover, he considered that there is no clear initiative to end discrimination; one indicator of this is the lack of interest shown by decision-makers in reinforcing the role of monitoring bodies and in particular the Financial and Administrative Control Bureau. He also highlighted the obstacles faced by this Bureau in assuming its monitoring role, such as the absence of an organizational structure that should be adopted by the PLC, and

the lack of financial support despite the repeated requests, suggestions and plans submitted by the Bureau.

**Dr. Mahmoud Shaheen**, general director of Control and Inspection in the General Personnel Council, agreed on the importance of the study and its findings. He also commented that it would have been better if the study had been based on more than 500 questionnaires and had been conducted in two stages, the first stage during the rule of the Fatah movement and the second under the rule of Hamas. He also stressed the importance of researching discrimination based on the place of graduation and dividing the findings based on employment groups. He attributed the weakness of monitoring bodies (the General Personnel Council and the Financial and Administrative Control Bureau) to the weak support they receive and the lack of abidance by ministries and public institutions with the Council's recommendations. He stressed the importance of ending the pervading non-abidance of administrative, economic and employment rules, which are serious problems, and warned of a total collapse of public institutions nationwide in the event of continued discrimination.

For his part, **Dr. Azmi Al-Shu'aibi**, former Palestinian Legislative Council (PLC) member and head of AMAN - the Coalition for Accountability and Integrity, said that the problem is not the lack of laws, but the lack of respect for these laws. He proposed the establishment of a national commission to address and end discrimination, as well as reinforcing sanctions against those found guilty of discriminatory practices.

He also considered the establishment of a special committee to appoint senior public servants, according to a law issued for the purpose of setting objective and impartial criteria, which would contribute to the fight against discrimination in the public sector.

In her intervention, **PLC member Khalida Jarrar**, member of the monitoring and public freedoms committee, said that complaints submitted to her committee confirm the existence of discrimination in the public service.

She mentioned that contraventions in this matter are committed by the highest levels of the Authority, including the Presidency of

the Palestinian Authority, the Council of Ministers and the PLC, which due to its weak monitoring role, allows for the persistence of discrimination in Palestine.

Ms. Jarrar also highlighted the fact that the National Unity Government and the agreement between Fatah and Hamas contributed to the reinforcement of discrimination, since it was based on employment quotas between these two factions and contributed to a weakening in the monitoring role of the PLC on the government.

**Main recommendations made during the workshop:**

- Reconstruction of public employment through the establishment of a higher committee based on a national plan agreed upon by all political factions and social movement in the PNA. This plan will seek to resolve employment problems by adopting certain measures against those contravening the regulations, and dismissing those who do not comply, as they are many.
- Following-up on the corruption cases which were transferred to the General Attorney and were closed; this will deter many from using their influence to corrupt public institutions, as well as diffusing discrimination in the public service
- Raising awareness and focusing on ethic and religious education to fight this dangerous trend for the unity of the Palestinian society and its homogeneity.
- Maintaining an apolitical public sector employment
- Activating complaints' departments in the Financial and Administrative Control Bureau and the General Personnel Council
- Fighting nepotism as one of the factors of discrimination
- Encouraging and protecting employees who denounce contraventions by the authorities related to this issue
- Supporting civil society organizations in fighting discrimination
- Terminating the marginalization of monitoring bodies (the Financial and Administrative Control Bureau, the General Personnel Council and the PLC) and preventing

administrative and political interference with and control of these bodies

- Reviving administrative reform committees such as the administrative reform committee, whose work was stopped
- Introducing harsher sanctions against all those proven guilty of discriminatory practices
- A crucial need for the adoption of the penal law, which has been pending for a long-time
- Establishing a special committee for the appointment of senior public servants, according to a law issued for this purpose that establishes objectives and impartial criteria for these positions
- Connecting corruption with discrimination, as the latter forms an integral part of the former
- Public mobilization and calling upon public opinion to fight discrimination through public awareness about the importance of transparency in the recruitment of public sector employees, or through public monitoring and pressure to improve the performance of the PNA with regards to public sector employment
- Preparing additional and more detailed studies regarding the separation of various administrative positions in the public sector employees' classification

## Summary of the questionnaire's results:

Question	Degree out of 5 (male and female respondents)
<b>Do you think that in general there is discrimination in the public service in Palestine</b>	<b>4.34</b>
<b>Do you think that discrimination in the public sector is due to political affiliation?</b>	<b>4.15</b>
Do you think that this form of discrimination affects appointment	4.12
Do you think that this form of discrimination affects financial rights and vacations	3.89
Do you think that this form of discrimination affects promotion	4.09
Do you think that this form of discrimination affects work duties and the work load	3.94
Do you think that this form of discrimination affects disciplinary sanctions	3.87
<b>Do you think that discrimination in the public sector is due to religion?</b>	<b>2.57</b>
Do you think that this form of discrimination affects appointment	2.94
Do you think that this form of discrimination affects financial rights and vacations	2.86
Do you think that this form of discrimination affects promotion	2.87
Do you think that this form of discrimination affects work duties and the work load	2.84
Do you think that this form of discrimination affects disciplinary sanctions	2.86
<b>Do you think that discrimination in the public sector is due to the degree of family relationship?</b>	<b>4.00</b>
Do you think that this form of discrimination affects appointment	3.98
Do you think that this form of discrimination	3.74

affects financial rights and vacations	
Do you think that this form of discrimination affects promotion	4.00
Do you think that this form of discrimination affects work duties and the work load	3.63
Do you think that this form of discrimination affects disciplinary sanctions	4.02
<b>Do you think that discrimination in the public sector is due to preferential treatment given based on regional origin?</b>	<b>3.38</b>
Do you think that this form of discrimination affects appointment	3.42
Do you think that this form of discrimination affects financial rights and vacations	3.27
Do you think that this form of discrimination affects promotion	3.39
Do you think that this form of discrimination affects work duties and the work load	3.03
Do you think that this form of discrimination affects disciplinary sanctions	3.39
<b>Do you think that discrimination in the public sector is due to personal relationships?</b>	<b>4.21</b>
Do you think that this form of discrimination affects appointment	4.07
Do you think that this form of discrimination affects financial rights and vacations	3.97
Do you think that this form of discrimination affects promotion	4.02
Do you think that this form of discrimination affects work duties and the work load	3.97
Do you think that this form of discrimination affects disciplinary sanctions	3.91
<b>Do you think that discrimination in the public sector is due to the health situation?</b>	<b>2.84</b>
Do you think that this form of discrimination affects appointment	3.02
Do you think that this form of discrimination affects financial rights and vacations	3.00
Do you think that this form of discrimination	2.84

Question	Degree out of 5		
	Female	Male	Total

affects promotion	
Do you think that this form of discrimination affects work duties and the work load	2.94
Do you think that this form of discrimination affects disciplinary sanctions	2.83
Do you think that this form of discrimination affects pension rights	2.80
<b>Do you think that discrimination in the public sector is due to age?</b>	<b>2.84</b>
Do you think that this form of discrimination affects appointment	3.03
Do you think that this form of discrimination affects financial rights and vacations	2.91
Do you think that this form of discrimination affects promotion	2.95
Do you think that this form of discrimination affects work duties and the work load	2.92
Do you think that this form of discrimination affects disciplinary sanctions	2.86
Do you think that this form of discrimination affects pension rights	3.01
<b>Do you think that discrimination in the public sector is due to the job position?</b>	<b>3.53</b>
Do you think that this form of discrimination affects appointment	3.62
Do you think that this form of discrimination affects financial rights and vacations	3.49
Do you think that this form of discrimination affects promotion	3.67
Do you think that this form of discrimination affects work duties and the work load	3.22
Do you think that this form of discrimination affects disciplinary sanctions	3.13
Do you think that this form of discrimination affects pension rights	3.45

	respondents	respondents	respondents
<b>Do you think that discrimination in the public sector is due to the job position?</b>	<b>3.2</b>	<b>3.3</b>	<b>3.2</b>
Do you think that this form of discrimination affects appointment	3.3	3.3	3.3
Do you think that this form of discrimination affects financial rights and vacations	2.9	3.2	3.0
Do you think that this form of discrimination affects promotion	3.1	3.3	3.2
Do you think that this form of discrimination affects work duties and the work load	3.2	3.2	3.2
Do you think that this form of discrimination affects disciplinary sanctions	3.1	3.2	3.1