

Developing Civil-Democratic Legislation for the Palestinian National Security Forces

Working Paper
November, 2015

الفصل الأول

تعريف وأحكام عامة

مادة (١)

التعريف

لغايات تطبيق أحكام هذا القانون يكون للكلمات والعبارات التالية المعاني المخصصة لها أدناه ما لم تدل القرينة على خلاف ذلك:

الدولة: دولة فلسطين.

الرئيس: رئيس دولة فلسطين.

مجلس الوزراء: مجلس وزراء دولة فلسطين.

قانون الخدمة: قانون الخدمة في قوى الأمن الفلسطينية رقم (٨) لسنة ٢٠٠٥

القوات: قوات الأمن الوطني



DCAF

a centre for security,
development and
the rule of law



DCAF

a centre for security,
development and
the rule of law

Working Paper on Developing Civil-Democratic Legislation for the Palestinian National Security Forces

**Submitted to
the Office of the President
and the Commander of the National Security Forces
Ramallah & Geneva, November 2015**

The Geneva Centre for the Democratic Control of Armed Forces (DCAF)

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) promotes good governance and reform of the security sector. The Centre conducts research on good practices, encourages the development of appropriate norms at the national and international levels, makes policy recommendations and provides in-country advice and assistance programmes. DCAF's partners include governments, parliaments, civil society, international organisations and the core security and justice providers such as police, judiciary, intelligence agencies, border security services and the military.

Note

This paper has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and can no way be taken to reflect the opinion of the European Union.



Editorial Board

Eman Redwan
Mohammad al-Masri
Professor Ian Leigh
Arnold Luethold
Zoltan Venczel
Regula Kaufman
German Reyes-Suarez
Felix Tusa
Nadim Amer

Legal Experts

Feras Milhem
Ali Sertawi
Jihad al-Kawani
Maamoon Abu Farha

Design and Layout

Wael Dwaik

Editing and proofreading

Felix Tusa

Cover picture: © Zoltan Venczel

ISBN: 978-92-9222-393-9

Publisher

© Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2015. All rights reserved.

Table of Contents

Introduction	4
Problem Statement	4
Chapter 1: Background	5
1.1. Response by DCAF and PCSSR	5
1.2. International Best Practice in Reforming Security Sector Legislation	6
1.3. What Are the Roles of Modern State Armed Forces?	6
1.4. Recommendations and Next Steps	6
Chapter 2: Draft Law by Decree of 2013 Concerning the National Security Forces	8
Chapter 3: Comments from Peer-review of Draft Law for the Palestinian National Security Forces	14
3.1. General Observations	14
3.2. Comments on Specific Principles	15
3.3. Conclusion	28
References	28
Annex 1: Amended Legislative Policy Statement for Developing a Draft Law for the National Security Forces	29
Annex 2: Development of the Legislative Policy Statement: Options and Alternatives	32
Annex 3: Recommendations of the NSF on the Draft Law and on the Peer-review Comments	35

Introduction

This Working Paper aims to contribute to the discussion about the importance of developing the legal framework governing the Palestinian National Security Forces (NSF) in line with international best practice. It aims to do so by:

- Analysing the existing legislation regulating the work of the Palestinian security forces and police in the Problem Statement;
- Presenting the process facilitated – at the request of the Commander of the NSF – by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Palestinian Centre for Strategic Studies and Research (PCSSR) to gather input for the development of a new draft law for the NSF (Chapter 1);
- Presenting a draft law¹ that legal experts from the Office of the President, the National Security Forces as well as independent lawyers developed (Chapter 2);
- Presenting a peer review of the draft law undertaken by an international legal expert on armed forces legislation. The peer-review aims to assess the draft law's consistency with international best practice (Chapter 3); and
- Reproducing the Legislative Police Statement (Annex 1), the recommendations and alternatives expressed during the consultative process with regards to the mandate of the NSF (Annex 2) and summarizing the recommendations the NSF put forward following the submission of the above mentioned (Annex 3).

Problem Statement

Gaps in the Existing Legal Framework of the National Security Forces (NSF)

According to the Palestinian Amended Basic Law of 2003, the security forces of the Palestinian National Authority (PNA) report to the President of the PNA in his function as Commander-in-Chief. The Council of Ministers is exclusively responsible for preserving public order and internal security (Articles 84, 39, and 69 of the Amended Basic Law of 2003), but does not directly oversee the security forces.

The PNA has not yet put in place a comprehensive legal framework governing the work of the Palestinian police, armed and security forces. Among other omissions there is no legal text regulating the work of the National Security Forces, which would prescribe their powers, missions, capacities and organisational structure. Furthermore, the current PNA legal framework for the security sector also allows significant overlap in the work of its different security forces.

According to the Law of Service in the Palestinian Security Forces No. 8 of 2005, the security forces shall be comprised of three main forces: the National Security Forces and the Palestine National Liberation Army, the Internal Security Forces, and the General Intelligence. Article 7 of this same law stipulates the following: "the National Security is a regular military body, which performs its functions and commences its jurisdictions under the presidency of the Minister of National Security and under the command of the Commander-In-Chief, who shall issue forth the decisions necessary for the administration of its work and regulation of all of its affairs, in accordance with the provisions of the Law and regulations issued therewith."

However, so far no law has been enacted to regulate the powers, missions or organisational structure of the National Security Forces (NSF) and its additional military agencies, including the Military Intelligence and the Presidential Guard. The NSF operate according to ad hoc regulations, decisions and administrative orders.

¹ The Draft Law presented in this Working Paper is the latest version after integrating the NSF Legal Department's recommendations.

Chapter 1: Background

1.1. Response by DCAF and PCSSR

Against this background and given the desire of the NSF Command to develop a legal framework that governs the National Security Forces' (NSF) operations and missions, on 18 April 2012, the NSF Commander submitted an official request to the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Palestinian Centre for Strategic Studies and Research (PCSSR) to provide assistance in developing draft legislation for the NSF. The President of the PNA Mahmoud Abbas endorsed this request.

Process

The current political context does not allow for the adoption of a new law for the NSF through the normal legislative process nor for a comprehensive review of the legal framework governing all the PNA security forces. Therefore, DCAF and PCSSR opted for the following process:

- The two centres conducted an assessment of expectations from legislation regulating the NSF through several needs assessment workshops with following stakeholder groups:
 - four workshops held with representatives of the President's Office, the NSF Command and the Military Judiciary;
 - five workshops held with representatives from political parties and PLC members (four in the West Bank and one in the Gaza Strip);
 - two workshops with representatives from relevant PNA ministries, legal experts, military experts and human rights organisations, one workshop in the West Bank and one in the Gaza Strip;
- Based on the findings and conclusions of the needs assessment workshops, DCAF and PCSSR developed options and alternatives regarding the mandate of the NSF and

possible forms of legislation. The two centres mandated three Palestinian legal experts to develop a legislative policy statement for a draft law for the NSF based on the NSF needs assessment (see Annex 2: Legislative Policy Statement: Options and Alternatives below).

- In order to discuss the legislative policy statement with a wide range of stakeholders (academia, legal experts, law students, interested public, Military Intelligence, NSF, security institutions, human rights institutions, women's organisations, trade unions and media), DCAF and PCSSR organised three public consultation meetings in the West Bank and one public consultation meeting in the Gaza Strip. The two organisations collected the public's feedback on the policy statement and their general interest in the topic, to better understand and clearly define the role of the NSF.
- The findings from the consultation process on the legislative policy statement allowed the three Palestinian legal experts to develop a first Draft Law for the NSF.
- DCAF and PCSSR submitted the Draft Law to an independent international expert for a peer review.
- DCAF and PCSSR presented the first version of the Draft Law and the independent expert's comments to the NSF leadership.
- Based on the presented documents, the NSF drafted its own recommendations and comments and conducted consultations with Palestinian legal experts, DCAF and PCSSR.
- The findings from these consultations allowed the Palestinian legal experts to revisit the Draft law and develop the final version.
- In this working paper the Draft Law Concerning the National Security Forces and all contributions are presented for further

consideration of the Palestinian National Authority and as a contribution to the public debate over the legislation governing the Palestinian security forces.

1.2. International Best Practice in Reforming Security Sector Legislation

In democratic societies, developing and enacting legislation is a highly political process, in particular for legislation regulating sensitive areas such as the security sector. A reform of security sector legislation is generally initiated by the executive authorities and/or specialised parliamentary committees who develop draft legislation on a specific matter. It is good practice for the executive and/or legislative authorities engaged in this process to consult the concerned security forces as well as civil society in an early stage of the legislative process. Once the executive authorities and/or parliamentary committees have included the recommendations from security forces and civil society, they pass the draft legislation on to parliament for discussion, amendment and final democratic approval.

It is also good international practice to take a broad approach to security sector reform. Thus, reforming the legal framework regulating the mandate, structure and oversight of one specific security and justice provider, for example the armed forces, is rarely done in isolation. It usually involves the review of the legal framework for the country's other intelligence and security forces, too. This ensures that the delivery of security to the citizens is not compromised through gaps or overlaps in the security forces' mandates, or through missing coordination or oversight mechanisms.

1.3. What Are the Roles of Modern State Armed Forces?

In the aftermath of the Cold War, changes and developments to security exerted a significant impact on the structure and organisation of armed forces throughout the world. For the main part, the priorities in the mandates of armed forces have shifted, and they have been assigned to implement their previous main missions in a different way. Nowadays, the mandates of armed

forces around the world commonly include the following five missions:

1. Protect independence, sovereignty, territorial integrity, and subjects of the State.
2. Participate in international peace-keeping missions or assignments set to promote and consolidate peace.
3. Provide relief in times of disasters.
4. Implement internal security missions, including provision of assistance to civil authorities tasked with law enforcement functions to preserve public order in extraordinary circumstances.
5. Take part in the institution building process.

Depending on the domestic legal framework and current security situation, the level of armed forces participation in delivering these assignments differs from one state to another.

1.4. Recommendations and Next Steps

The draft law for the Palestinian National Security Forces (NSF) constitutes an input to the debate on the legal framework of the Palestinian security forces. The independent peer-review of the draft law, which forms part of this Working Paper (see Chapter 4), illustrates some areas that could be further improved.

DCAF and PCSSR recommend that the adoption of legislation for the NSF be done through an institutional and legal process that is in line with civil-democratic standards. Thus, DCAF and PCSSR recommend that:

1. The PNA/State of Palestine restores the normal legal and institutional process as swiftly as possible in accordance with the requirement of the Amended Basic Law of 2003, in particular concerning the separation of powers. This would allow the Palestinian Legislative Council to fully exercise its constitutional responsibility in the legislative process.
2. The Palestinian authorities and concerned stakeholders analyse the development of the legal framework of the Palestinian National

Security Forces in the wider context of security sector reform.

3. The Palestinian authorities initiate a process of stakeholder consultations on the role and function of the National Security Forces, the distribution of responsibilities between the different armed and security services, and the delineation of mandates between armed forces, intelligence services and the police. Such a consultation process should include the executive authorities, parliament, the judiciary, the security forces, political parties, civil society, human rights organisations and the media.
4. The Palestinian authorities ensure that new legislation for the National Security Forces conforms to international standards of the rule of law and best practice in the field of statutory laws for armed forces and security sector oversight.
5. The Palestinian authorities clarify the mandate of the National Security Forces. This would also entail the review and possible

amendment of existing legislation governing other PNA security forces, including the Law of the General Intelligence No. 17 of 2005, the Decree Law of 2007 concerning the Preventive Security, and the Law of Service in the Palestinian Security Forces No. 8 of 2005. The completion of the legal framework would also require the enactment of police legislation, legislation for the Military Intelligence, and military justice legislation.

As far as the content of the Draft Law for the National Security Forces is concerned, DCAF would like to express a strong word of caution: the present Draft Law should be further expanded to be more in line with international standards. It might also need to be further reviewed and adapted to fit the needs as well as the existing institutional and legal framework of the State of Palestine.

DCAF and PCSSR remain available to assist the Palestinian authorities in their efforts to develop civil-democratic legislation for the armed forces.

Box. The Existing Legal Framework Regulating the National Security Forces

According to Article 3 of the Law of Service in the Palestinian Security Forces No. 8 of 2005, "[t]he **security forces** shall be comprised of three main forces:

1. The National Security Forces and the Palestine National Liberation Army;
2. The Internal Security Forces;
3. The General Intelligence;

And any other force or forces that are existent or to be established and which shall be within one of the three forces."

Pursuant to Article 7 of the Law of Service in the Palestinian Security Forces,

"[t]he **National Security** is a regular military body, which performs its functions and commences its jurisdictions under the presidency of the Minister of National Security and under the command of the Commander-In-Chief, who shall issue forth the decisions necessary for the administration of its work and regulation of all of its affairs, in accordance with the provisions of the Law and regulations issued therewith."

Chapter 2: Draft Law by Decree of 2016 Concerning the National Security Forces

The President of the State of Palestine,

The Chairman of the Executive Committee of the Palestine Liberation Organisation

Based upon the Amended Basic Law and its Amendments, particularly Article 43 and 84 there under;

Having reviewed the Law of Service in the Palestinian Security Forces No. 8 of 2005 A.D.;

Based upon the powers bestowed upon me and the exigencies of the public interest; and

In the name of the Arab Palestinian People,

I hereby promulgate the following Law by Decree:

Chapter I

Definitions and General Provisions

Article 1

Definitions and General Provisions

For the purposes of the enforcement of the provisions of this Law, the following terms and expressions shall have the meanings specified thereto hereunder, unless the context determines otherwise:

The State: The State of Palestine.

The President: The President of the State of Palestine.

The Council of Ministers: The Council of Ministers of the State of Palestine.

The Law of Service: The Law of Service in the Palestinian Security Forces No. 8 of 2005.

The Forces: The National Security Forces.

The Minister: The Minister of National Security, or Minister of Interior according to the state of affairs.

The Ministry: The Ministry of National Security, or Ministry of Interior according to the state of affairs.

The Commander-in-Chief: The President of the State of Palestine, who is the Commander-in-Chief of the Palestinian forces.

The Commander: The Commander of forces for the National Security.

The Inspector of Forces: The general Internal Inspector and Controller of the National Security Forces.

Officer: Each person who possesses one of the ranks of an officer, as provided by the Law of Service in the Security Forces.

Non-commissioned Officer and Soldiers: Each person who possesses one of the ranks of non-commissioned officers, as provided by the Law of Service in the Security Forces.

Personnel: Each person who possesses one of the ranks of personnel as provided by the Law of Service in the Security Forces.

Article 2

Regional Scope of the Law

The Law on National Security Forces shall be applicable to whole of the Palestinian national territory and/or the locations where their personnel and materiel exist.

Article 3

Objectives of the Law

Regulation of the Law shall aim at the following:

1. Establishing a military force that is capable of protecting borders of the homeland against various types of threats. It shall work towards supporting the Internal Security Forces when necessary and contribute regionally and

internationally to materialising world peace as prescribed by the Charter of the United Nations and relevant agencies and the Charter of the League of Arab States.

2. Organising the National Security Forces by a law that ensures transparency, accountability and legal certainty.
3. Identifying powers of the Forces in a manner that does not contradict functions of other security agencies.
4. Confirming that the National Security Forces are owned by the Arab Palestinian people. They shall be the only official military force. Military or paramilitary militias may not be established beyond the framework of this Law.

Article 4

Commitment to Public Freedoms and International Law

1. The National Security Forces shall be committed, in the operations and missions they carry out, to respect of public rights and freedoms. They shall also be committed to International Law and relevant international conventions.
2. The Forces shall be consulted regarding the joining of international agreements relevant to the nature of their work.

Chapter II

Formation and Capacities of the Forces

Article 5

Formation of the Forces

1. The National Security Forces shall be established in Palestine. Their headquarters shall be in the city of Jerusalem. However, they shall be managed temporarily from the cities of Ramallah and Gaza.
2. The Forces shall be deemed to be a national, professional regular military service. It shall not intervene in political issues, shall be a legal entity and shall report to the Minister.

3. The Forces shall perform their functions and exercise their capacities under the leadership of the Commander and under supervision of the Minister. The latter shall have the right to issue forth instructions, which regulate all aspects of their operation.
4. The Commander shall be immediately responsible for managing the Forces, relevant formations and departments, and personnel affairs, including military and civilian staff. He shall also supervise all of the legions and formations throughout the governorates.

Article 6

Divisions and Formations of the Forces

1. The Forces shall consist of three major branches:
 - a) Armed military force;
 - b) Air force; and
 - c) Marine force.
2. The formations, units and distribution of the Forces shall be regulated by internal bylaws and instructions, which shall be approved by the competent Minister.

Article 7

Administrative Structure

1. The general structure of the Forces shall be regulated by the Commander of Forces.
2. The structure shall be endorsed by the Minister and approved by the Council of Ministers.

Article 8

The Commander of Forces

The Commander shall be the officer of the highest rank. He shall be assisted by one deputy as well as by one or more assistant. He shall be entitled to authorise some of his powers, which are prescribed under this Law, to an officer or a number of officers.

Article 9

Appointment of the Commander of Forces and his Deputy

1. A Commander shall preside over the Forces for a period of three years that are renewable for one year only.
2. The Commander of Forces shall be appointed by a decision from the Commander-in-Chief based upon a recommendation from the Minister.
3. The Deputy Commander of Forces shall be appointed by a decision from the Minister based upon a recommendation from the Commander.

Article 10

Officer Ranks

Ranks of officers, non-commissioned officers, and personnel shall be in accordance with the Law of Service in the Security Forces, its amendments and regulations issued in its accordance.

Article 11

Administration of the Oath

1. Before they commence the duties of their functions and upon their appointment, officers and personnel of the National Security Forces shall make the Oath: "I swear by the Almighty God to be loyal to the homeland and the people, to defend them and sacrifice my life for them, and to preserve my weapon and military honour, uphold laws and regulations and comply with them, and to obey all orders issued to me. God shall hereby be witness upon what I say".
2. Administration of the oath shall take place before the Commander-in-Chief or the person he delegates with respect to officers, and before the Minister with respect to officers or the person whom he delegates with respect to the non-commissioned officers and personnel.

Article 12

Capacities of the Forces

1. Capacities of the Forces shall include the following:
 - a) Protect national sovereignty against any threats of any source and defend the homeland.
 - b) Guard the borders.
 - c) Carry out relief functions in the event of natural disasters and contribute to controlling public security when they occur.
 - d) Support the Internal Security Forces in controlling public security while they implement their duties when necessary, and provide protection to them.
 - e) Contribute to international peacekeeping missions under the umbrella of the United Nations or the League of Arab States.
 - f) Any other missions assigned or delegated thereto by a decision from the Commander-in-Chief.
2. The Forces shall implement their duties through their various formations and units based upon the nature of duty and nature of formation or unit.

Article 13

The Authority Approving Intervention

1. The Forces shall respond to the request to support the Internal Security Forces based upon approval of the Commander of the Forces upon the request of the Minister of Interior, or Governor.
2. The intervention shall be limited to a particular geographical area and with the purpose of accomplishing certain goals. By its nature, it shall be temporary and shall culminate with the accomplishment of the goals intended thereby.
3. The Forces shall be committed to the respect of procedures and provisions imposed by the Palestinian Basic Law and legislation on law enforcement bodies.

Chapter III

Appointment and Recruitment

Article 14

Recruitment

1. Enrolment in the National Security Forces shall essentially be through recruitment for individuals.
2. The Commander shall set forth internal bylaws and instructions that define the recruitment policy, rules and requirements, provided that these are issued forth by the competent Minister.

Article 15

Appointment

1. Enrolment in the Forces shall be through an open, transparent and impartial competition.
2. The competent Minister shall put forward the criteria and conditions to be met in the process of appointing officers and personnel.
3. The Law of Service in the Security Forces shall be applicable in relation to appointment in a manner that does not contradict the provisions of this Law.

Article 16

Promotion

1. Promotion and advancement in the Forces shall be based upon the reports of performance, competence and courage in the execution of duties.
2. When promotion is approved, completion of practical and academic training courses shall be taken into consideration.
3. The Law of Service in the Security Forces as well as the bylaws issued forth in accordance with it shall be applicable in relation to promotion and advancement in a manner that is not inconsistent with the provisions of this Law.

Chapter IV

Rules of Accountability

Article 17

Accountability

1. The Commander shall be answerable to the Minister.
2. The Minister shall be immediately answerable to the Head of the Council of Ministers.
3. The Legislative Council or any of its committees shall be entitled to make the Minister accountable about operations of the Forces with respect to the duties assigned to him in accordance to this law or effective legislations.
4. The Legislative Council or any of its committees shall be entitled to question the Commander with respect to the duties assigned to him.

Article 18

Legal Liability

1. The immediate officer in charge shall be immediately liable for any matter that contravenes the Law in relation to his orders or consent to implement [orders].
2. Personnel and officers of the Forces shall not bear the legal or tribal responsibility for the damage caused to others during or by reason of the performance of their duties, on condition that they do not infringe on the Law or instructions issued forth by their superiors.

Chapter V

General Provisions

Article 19

Discipline

1. Disciplinary penalties shall be imposed on the personnel and officers of the Forces in accordance with a bylaw to be developed by the Commander, provided that it is approved by the competent Minister.

2. Not more than one disciplinary penalty may be imposed on a single act.
3. A penalty may not be imposed on an officer except after he is interrogated in writing, his statements are heard, and his defence is ensured. The decision made regarding imposition of the penalty shall be reasoned.
4. Disciplinary penalties shall be imposed by a disciplinary council to be established for this purpose.
5. The disciplinary penalty shall be imposed by the immediate superior.
6. Disciplinary decisions may be appealed before the administrative judicial branch.

Article 20

Inspector of the Forces

1. The Minister shall appoint an Inspector General to audit the Forces, provided that his rank is not less than a Colonel.
2. The Inspector shall have the oversight power over departments and employees thereof.
3. The Inspector shall submit quarterly reports to the Commander and the competent Minister on the results of inspection, together with clear recommendations with a view to enhance performance.
4. A bylaw shall be issued forth, clarifying the powers of the Inspector General and clarifying the operational mechanisms.

Article 21

Complaint Department

1. A department of complaints and grievances shall be established. It shall be accessible to the public and personnel of the Forces to file complaints.
2. The Complaint Department shall inform the complainant about the results of investigation within a maximum period of thirty days.
3. The Commander shall put forward the Complaints Procedure Manual.

Article 22

Codes of Conduct

1. Codes of conduct addressing personnel and officers of the Forces shall be adopted, provided that these are approved by the competent Minister.
2. Such codes of conduct shall include clear mechanisms to ensure their enforcement.
3. Addressing personnel and officers, codes of conduct shall include clear procedures and instructions on respect of the Law during military and security operations.

Article 23

Budget of the Forces

1. The National Security Forces shall have their special budget within the security budget.
2. The Commander shall prepare the draft annual budget, which shall be referred to the Minister in pursuance of the provisions of the Law on the Organisation of the General Budget and Public Finances No. 7 of 1998 and its relevant amendments.
3. The Commander shall be responsible for implementing the budget in accordance with the Law on the Regulation of the Budget and Financial Affairs and under supervision of the Financial Controller.

Article 24

Financial Controller

1. A Financial Controller shall be appointed for the Forces upon a decision of the Minister based on the recommendation of the Commander of the Forces.
2. The Financial Controller shall review expenditure items and shall undertake financial supervision and audit of the accounts to ensure their soundness.

Article 25

Issuance of Supplies and Procurement regulations

The Commander of the Forces shall set forth by-laws for supplies and procurement provided they

are approved by the Minister and endorsed by the Council of Ministers.

Article 26

Military Colleges and Training

1. A military college shall be established by a decision from the Council of Ministers. Conditions of enrolment, regulation, programmes, and the qualifications it grants shall be identified [by the decision].
2. The Commander shall issue forth instructions on compulsory, continuing and specialised training.

Article 27

Establishment of Clubs

1. Clubs for members of the Forces shall be established by a decision to be issued forth by the Commander of the Forces and with the approval of the Minister.
2. The purposes and objectives of the clubs shall be social- and sports-oriented.

Article 28

Promulgation of Bylaws

The bylaws needed to enforce this Law shall be promulgated by the Council of Ministers upon a submission from the Minister and recommendation of the Commander of the Forces.

Article 29

Enforcement of the Law of Service in the Security Forces

Subject to the provisions of this Law, provisions of the Law of Service in the Security Forces shall be applicable to the personnel and officers of the Forces in terms of appointment, seniority, promotion, delegation, assignment, transference, secondment, scholarships, salaries, vacations, decorations, badges, medals, retirement on pension, termination of service and any other issue, regarding which a special provision is not stated under this Law.

Article 30

Repealing

All that contradicts the provisions of this Law shall be repealed.

Article 31

Enforcement of the Law

All competent authorities, each one within the sphere of its jurisdiction, shall implement the provisions of this Law, which shall enter into force by thirty days after its publication in the Official Gazette.

Promulgated in the city of Ramallah on

/ /2016 Anno Domini,

Corresponding to / /1437 Anno Hegira.

Mahmoud Abbas

President of the State of Palestine

Chairman of the Executive Committee of the Palestine Liberation Organisation

Chapter 3: Comments from Peer-review of Draft Law for the Palestinian National Security Forces

3.1 General observations

The existence of a sound legal framework that complies with international standards is a prerequisite for establishing effective civilian control of the military. Therefore, the development of a legal text regulating the work of the National Security Forces (NSF) represents a crucial step towards further strengthening of accountability and the rule of law in the Palestinian security sector.

The draft law provides a legal basis for the NSF and defines parts of its mission (Articles 3 and 13) and structure (Articles 5-7). It enshrines the NSF's commitment to respect for human rights, public freedoms and international law (Article 4) and establishes the principle of civilian control (Articles 5, 7-9, 14 and 18). It provides for a clear command structure, as well as accountability (Article 18), budgetary control and audit (Articles 21 and 24), legal liability (Article 19) and military discipline (Article 20). Furthermore, the law has adopted a number of concerns raised in the Legislative Policy Statement, in particular, the Oath of Allegiance (Article 12) and the enumeration of ranks of the NSF (Articles 10 and 11).

Nevertheless, this draft law attempts to regulate the NSF in a way which is not fully in line with international standards of civil-military relations.² Before presenting comments on specific principles, it is important to examine the following general observations:

- *Absence of a clear mission statement of the force:* the draft law defines the objectives of the law and the capacities that the

NSF should have. However, it lacks a well-developed mission statement. This is unfortunate, as the inclusive process that led to the development of the draft law could have been an opportunity to include this important element in stronger terms.

- *Lack of a clearly defined political process for setting the size of the force:* the draft law fails to set out guidelines and a decision-making process for deciding on the size of the NSF.
- *Lack of a clear distinction between the mandates of the command level and those of the political level:* the command level is in charge of running the force. It should not have legislative or policy-making power, this is the role of the political level. Thus, the command level should not be given the authority to issue bylaws, policies, budgets, etc.
- *Absence of introduction of the individual legal liability of all members of the force to respect international humanitarian law:* individual legal responsibility has become an international standard. Given the context of occupation and armed conflict that the Palestinian people have witnessed, adherence to this standard should generally be welcomed. It would be an important reaffirmation of the Palestinian institutions' adherence to international standards.
- *Absence of a non-discrimination clause promoting an equal participation of men and women in the armed forces:* This draft law lacks a specific provision stating the goal to eliminate discrimination and to strive for the equal participation of men and women at all levels of the institution. In line with international practice (e.g. see the statutory armed forces laws of Germany and Spain), such a provision should be included to make it illegal for the National Security Forces to discriminate against members or future recruits on the basis of ethnic, religious, sexual, regional or tribal identity or affiliation.

² International good practice related to the structure and legal framework of military forces and their relations to civilian management and oversight bodies can be found summarised in a number of documents. See full bibliography at the end of this chapter, particularly the OSCE *Code of Conduct on Politico-Military Aspects of Security* (1994), the OSCE, ODIHR, DCAF *Handbook on Human Rights of Armed Forces Personnel and Fundamental Freedoms of Armed Forces Personnel* (2008) and the DCAF publications *Making Intelligence Accountable* chapter 23 (2005) and *Overseeing Intelligence Services: A Toolkit* chapter 8 (2012).

The provision should also explicitly state that the National Security Forces are committed to providing equal rights to servicemen and servicewomen, in terms of pay and benefits, and to provide for their different needs through the issuance of specific policies.

3.2 Comments on specific principles

The specific comments in the following table address omissions, inconsistencies and lack of specificities and clarity in individual Articles of the draft decree. These Articles should be amended in order to bring the draft decree more in line with international standards, ensure agreement with previous laws and avoid gaps and oversights.

Article from NSF law	Comment/Observation	Recommendation
Definitions in the law		
<p>Article 1 Definitions and General Provisions</p> <p>For the purposes of the enforcement of the provisions of this Law, the following terms and expressions shall have the meanings specified thereto hereunder, unless the context determines otherwise:</p> <p>The State: The State of Palestine.</p> <p>The President: The President of the State of Palestine.</p> <p>The Council of Ministers: The Council of Ministers of the State of Palestine.</p> <p>The Law of Service: The Law of Service in the Palestinian Security Forces No. (8) of 2005.</p> <p>The Forces: The National Security Forces.</p> <p>The Minister: The Minister of National Security, or Minister of Interior so long as he [Minister of National Security] is absent.</p> <p>The Ministry: The Ministry of National Security, or Ministry of Interior so long as it [Ministry of National Security] is not established.</p>	<p>a) Article 1 defines ‘officers’, ‘NCOs’ and ‘personnel’ with cross reference to the equivalent definitions in the Law of Service in the Palestinian Security Forces No. 8 of 2005. Article 6 of the 2005 Law defines the ranks of officers and Article 138 of the 2005 Law defines the ranks of ‘NCOs’ and ‘personnel’ (there appears to be no other separate definition of ‘personnel’). The definition of ‘personnel’ in Article 138 does not include ‘officers’, however.</p> <p>From this it is clear that where the NSF Law uses ‘officer(s)’ it means officers as defined by rank, excluding NCOs. By contrast if it were intended that a provision should apply to both it would read ‘officers and NCOs’ – thus covering all ranks within those definitions.</p> <p>Similarly ‘personnel’ is not meant as a loose general description of officers and NCOs but is intended as a narrower defined class, certainly excluding officer ranks and perhaps distinct from NCOs. This second point is less clear because the 2005 Law does not seem to clearly separate NCO and personnel ranks.</p> <p>b) Some titles used in the law are missing from this list.</p>	<ol style="list-style-type: none"> 1. This Article and subsequent Articles which apply to the members of the NSF (Articles 12, 16, 19, 20, 22, 23 and 28) should be rewritten to apply to officers, NCOs and personnel. 2. The list of definitions in this Article should include all terms, ranks and institutions used in the law. The definitions should also include ‘Governor’ (referred to in Article 14) ‘Prime Minister’ (referred to in Article 18) and ‘Controller General’ (referred to in Article 21).

Article from NSF law	Comment/Observation	Recommendation
<p>The Commander-in-Chief: The President of the State of Palestine, who is the Commander-in-Chief of the Palestinian forces.</p> <p>The Commander: The Commander of the National Security Forces.</p> <p>Officer: Each person who possesses the rank of an officer as provided by the Law of Service in the Security Forces.</p> <p>Non-commissioned Officer: Each person who possesses the rank of a non-commissioned officer as provided by the Law of Service in the Security Forces.</p> <p>Personnel: Each person who possesses the rank of personnel as provided by the Law of Service in the Security Forces.</p> <p>Article 5-4 Formation of the Forces The Commander shall be immediately responsible for managing the Forces, relevant formations and departments, and personnel affairs, including military and civilian staff. He shall also supervise all of the legions and formations throughout the governorates.</p>		
	<p>a) All members in an armed force are considered military personnel, therefore the Commander of this force should not have authority over civilian staff. Special provisions could include auxiliary services but these would have to be clearly specified.</p>	<p>3. Remove the reference to civilian staff in this Article.</p>

Article from NSF law	Comment/Observation	Recommendation
Independence from Political Interference		
<p>Article 5.3</p> <p>The Forces shall perform their functions and exercise their capacities under the leadership of the Commander and under supervision of the Minister. The latter shall have the right to issue forth instructions, which regulate all aspects of their operation.</p>	<p>a) The ability of the minister to issue instructions which regulate all aspects of the operation of the NSF blurs the distinction between the leadership of the chief military officer of the NSF and the supervision of the minister. This level of detailed control at the political level is inconsistent with best practice on civil-military relations.</p> <p>The political role of ministers is to set policy and approve major operations. On the other hand, close day-to-day involvement in the affairs of the force (as the ability to issue instructions suggests) is undesirable and can have the effect of undermining the normal chain of command.</p> <p>The Organisation for Security and Cooperation in Europe (OSCE) has promulgated a Code of Conduct on Politico-Military Aspects of Security (1994)³ which deals in detail with civil-military relations and sets out norms for good practice in this field. The Code asserts the duty of states to maintain security forces under substantive democratic control via authorities with democratic legitimacy but it also stresses the need for political neutrality.⁴</p>	<ol style="list-style-type: none"> 4. Clearly distinguish between the responsibilities of the Ministry and the Minister on the one hand and those of the NSF and the commander of the force on the other hand. 5. The function of the Minister should be limited to his policy-making and oversight functions. He should be given the authority to approve major operations, but not to make day-to-day operational decisions. 6. Ensure full integration of the norms of the OSCE Code of Conduct on Politico-Military aspects of security.

³ DOC.FSC/195/, adopted at the 91st Plenary Meeting of the Special Committee of the CSCE Forum for Security Co-operation in Budapest on 3 December 1994. <http://www.osce.org/fsc/41355>

⁴ The relevant parts of the Code are:

“Each of the participating States:

‘consider the democratic political control of military, paramilitary and internal security forces as well as of intelligence services and the police to be an indispensable element of stability and security. They will further the integration of their armed forces with civil society as an important expression of democracy’ (para. 20).

‘will at all times provide for and maintain effective guidance to and control of its military, paramilitary and security forces by constitutionally established authorities vested with democratic legitimacy. Each participating State will provide controls to ensure that such authorities fulfil their constitutional and legal responsibilities. They will clearly define the roles and missions of such forces and their obligation to act solely within the constitutional framework’ (para. 21).

Article from NSF law	Comment/Observation	Recommendation
<p>Compliance with Existing Legislation</p> <p>Two main laws regulating the security sector are the Amended Basic Law of 2003 and the Law of Service in the Palestinian Security Forces of 2005. Some provisions of the draft decree for the NSF, though, are in contradiction of these two laws. This raises questions about the constitutionality of the decree and can lead to inconsistencies in the legal framework. It is therefore highly recommended to bring the concerned provisions in line with prior legislation.</p>		
<p>Article 10 Officer Ranks</p> <p>Ranks of officers of the Forces shall be as follows:</p> <ol style="list-style-type: none"> 1. Lieutenant 2. First Lieutenant 3. Captain 4. Major 5. Lieutenant Colonel 6. Colonel 7. Brigadier General 8. Major General 	<p>a) The list of officer ranks does not correspond exactly to the ranks listed in the 2005 Law. In particular, the rank of Lieutenant-General has been omitted.</p>	<p>7. All officer ranks of the NSF should be included in this article and should match the ranks included in the list of the 2005 Law as both laws will be applied to all members of the NSF.</p>

'will provide for its legislative approval of defence expenditures. Each participating State will, with due regard to national security requirements, exercise restraint in its military expenditures and provide for transparency and public access to information related to the armed forces' (para. 22).

'while providing for the individual service member's exercise of his or her civil rights, will ensure that its armed forces as such are politically neutral' (para. 23).

'will not tolerate or support forces that are not accountable to or controlled by their constitutionally established authorities. ... (para. 25).

'ensure that any decision to assign its armed forces to internal security missions is arrived at in conformity with constitutional procedures. Such decisions will prescribe the armed forces' missions, ensuring that they will be performed under the effective control of constitutionally established authorities and subject to the rule of law ... (para. 36)'. OSCE Code of Conduct on Politico-Military Aspects of Security.

Article from NSF law	Comment/Observation	Recommendation
<p>Article 12 Administration of the Oath</p> <p>1. Before they commence the duties of their functions and upon their appointment, officers and personnel of the National Security Forces shall make the Oath: "I swear by the Almighty God to be loyal to the homeland, to respect the Constitution and laws, to work honestly and trustworthily, to obey all orders issued to me by superiors, and to preserve my honour and weapon. God shall hereby be witness upon what I say".</p> <p>2. Administration of the oath shall take place before the Minister with respect to officers or the person whom he delegates with respect to the personnel.</p>	<p>a) The wording of the oath appears to be different to those contained in Articles 88 and 167 of the 2005 Law.</p>	<p>8. In order to avoid inconsistencies, the same wording as the 2005 Law should be used here, or the 2005 Law would need to be modified first.</p>
<p>Article 13 Capacities of the Forces</p> <p>1. Capacities of the Forces shall include the following:</p> <p>a) Protect national sovereignty against any threats of any source and defend the homeland.</p> <p>b) Guard the borders.</p> <p>c) Carry out relief functions in the event of natural disasters and contribute to controlling public security when they occur.</p> <p>d) Support the Internal Security Forces in controlling public security while they</p>	<p>a) The capacities of the NSF need to correspond to the scope of Article 84 of the Amended Basic Law of 2003, which is its legal basis according to the preamble to the draft decree. Article 84 of the Basic Law does not give any authority to participate in international peacekeeping operations. Therefore, Article 13.1.e of the draft decree is liable to be found to be unconstitutional.</p> <p>b) The same is true a fortiori of the reference in Article 13.1.f to 'any other missions assigned or delegated thereto by a decision from the Commander-in-Chief'. This wording would allow the President to assign non-defence or security roles to the NSF. A power of this kind for the President to be able to</p>	<p>9. If it is desired that the NSF be given the authority to participate in international peacekeeping missions, a constitutional amendment to Article 84 of the Amended Basic Law of 2003 is required.</p> <p>10. It is strongly recommended that paragraph 13.f be deleted. If it is retained, however, it should be qualified by inserting reference to the expression quoted above from Article 84 of the Basic Law.</p>

Article from NSF law	Comment/Observation	Recommendation
<p>implement their duties when necessary, and provide protection to them.</p> <p>e) Contribute to international peacekeeping missions under the umbrella of the United Nations or the League of Arab States.</p> <p>f) Any other missions assigned or delegated thereto by a decision from the Commander-in-Chief.</p> <p>2. The Forces shall implement their duties through their various formations and units based upon the nature of duty and nature of formation or unit.</p>	<p>unilaterally expand the role of the NSF is wrong in principle and is constitutionally dangerous. Bearing in mind the already very broad list of domestic tasks in Article 84 of the Basic Law (which include 'serving the country, maintaining public order, security and public morals'), it is hard to see what legitimate purpose the extended power under Article 13.1.f could serve.</p>	
<p>Article 14 The Authority Approving Intervention</p> <p>1. The Forces shall respond to the request to support the Internal Security Forces based upon approval of the Commander-in-Chief, Minister of Interior, or Governor.</p> <p>2. The intervention shall be limited to a particular geographical area and with the purpose of accomplishing certain goals. By its nature, it shall be temporary and shall culminate with the accomplishment of the goals intended thereby.</p> <p>3. The Forces shall be committed to the respect of procedures and provisions imposed by the Palestinian Basic Law and legislation on law enforcement bodies.</p>	<p>a) This article does not state what the relationship is between the powers of intervention stated here and the emergency powers under Articles 110-114 of the Amended Basic Law of 2003.</p>	<p>11. This relationship should be clarified. At a minimum there should be provision for a mechanism for notifying the Palestinian Legislative Council that deployment has taken place.</p> <p>12. International practice varies widely on this issue, with some governments requiring the permission of parliament for any military action to others where parliament only has to be informed of such a decision. At a minimum, however, in most countries as a matter of practice, there is usually some mechanism for informing parliament.</p> <p>See the review of international practices in the note of evidence prepared by Professor Colin Warbrick for the House of Lords</p>

Article from NSF law	Comment/Observation	Recommendation
<p>Article 20 Discipline</p> <ol style="list-style-type: none"> 1. Disciplinary penalties shall be imposed on the personnel and officers of the Forces in accordance with a bylaw to be developed by the Commander, provided that it is approved by the competent Minister. 2. Not more than one disciplinary penalty may be imposed on a single act. 3. A penalty may not be imposed on an officer except after he is interrogated in writing, his statements are heard, and his defence is ensured. The decision made regarding imposition of the penalty shall be reasoned. 4. Disciplinary penalties shall be imposed by a disciplinary council to be established for this purpose. 5. The disciplinary penalty shall be imposed by the immediate superior. 6. Disciplinary decisions may be appealed before the administrative judicial branch. 	<ol style="list-style-type: none"> a) It is not clear what the relationship is between the disciplinary penalties in this Article and the fuller process described in Articles 95-98 relating to officers, and Articles 174-177 relating to NCOs of the 2005 law, together with the 'Military Courts' and 'Military Penal Law' referred to there. If Article 20 is concerned with lesser offences, then the boundary should be made clearer, for example by specifying the maximum penalties that can be administered under Article 20. b) The current wording of paragraphs 1 and 3 of Article 20 does not apply to NCOs, probably by oversight (see related comment on Article 1). 	<p>Committee report on deployment of armed forces abroad⁵ and the DCAF Occasional Paper 'Parliamentary War Powers: A Survey of 25 European Parliaments' for examples.⁶</p> <ol style="list-style-type: none"> 13. The scope and members of the disciplinary council mentioned in Article 20.4 should be clarified in the text. 14. It would also be usual to specify the grounds on which an appeal can be made, the time limit for making an appeal, and the powers of the court to which an appeal is brought (these should be included in Article 20.6). Without these specifications, a person subject to military discipline cannot meaningfully exercise his or her right to appeal. Similarly, the court cannot determine the appeal's outcome if the court doesn't know when it is permitted to uphold the appeal. <p>See chapter 21 the <i>Handbook on Human Rights of Armed Forces Personnel and Fundamental Freedoms of Armed Forces Personnel</i>.⁷</p> <ol style="list-style-type: none"> 15. => See Recommendation on Article 1.

⁵ Appendix 4: Parliamentary Oversight of the Deployment Power: International Comparisons <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/23623611/.htm>

⁶ 'Parliamentary War Powers: A Survey of 25 European Parliaments' DCAF Occasional Papers (21) <http://www.dcaf.ch/Publications/Parliamentary-War-Powers>

⁷ OSCE, ODIHR, DCAF (2008) *Handbook on Human Rights of Armed Forces Personnel and Fundamental Freedoms of Armed Forces Personnel* Warsaw, Poland pg 238 <http://www.osce.org/odihr/31393?download=true>

Article from NSF law	Comment/Observation	Recommendation
<p>Article 23 Codes of Conduct</p> <ol style="list-style-type: none"> 1. Codes of conduct addressing personnel and officers of the Forces shall be adopted, provided that these are approved by the competent Minister. 2. Such codes of conduct shall include clear mechanisms to penalise those who abuse power or commit any act that contravenes professional ethics and obligations. 3. Addressing personnel and officers, codes of conduct shall include clear procedures and instructions on respect of the Law during military and security operations. 	<ol style="list-style-type: none"> a) The draft law confers on the force the authority of issuing codes of conducts that include provisions on penalties. However, according to international best practice, this should not be dealt with as an internal matter of the force. 	<ol style="list-style-type: none"> 16. Penalties for members of the force, who commit an unlawful act while performing their service or duties, must be defined in military penal law.
Lack of Internal Coherence		
<p>Article 16 Appointment</p> <ol style="list-style-type: none"> 1. Enrolment in the Forces shall be through an open, transparent and impartial competition. 2. The competent Minister shall put forward the criteria and conditions to be met in the process of appointing officers and personnel. 3. The Law of Service in the Security Forces shall be applicable in relation to appointment in a manner that does not contradict the provisions of this Law. 	<ol style="list-style-type: none"> a) The reference in Article 16.2 to the 'competent' Minister is confusing. 	<ol style="list-style-type: none"> 17. With reference to the definitions in Article 1 this should just be 'the Minister', the word 'competent' should be deleted.

Article from NSF law	Comment/Observation	Recommendation
<p>Article 18 Accountability</p> <ol style="list-style-type: none"> 1. The Minister shall be immediately answerable to the Prime Minister. 2. The Commander shall be answerable to the Minister. 3. The Legislative Council or any of its committees shall be entitled to impeach the Minister about operations of the Forces. 4. The Legislative Council or any of its committees shall be entitled to impeach the Commander. 	<ol style="list-style-type: none"> a) The order of paragraphs in this article are confusing and do not show the chain of command. b) The article is not specific about when a minister's accountability applies. c) There is no reference to the impeachment process (paragraphs 3 and 4) defined in other laws or decrees. 	<p>18. In order to clearly show the chain of command, Article 18.2 should come first and Article 18.1, second. The article should read as follows:</p> <ol style="list-style-type: none"> 1. The Commander shall be answerable to the Minister. 2. The Minister shall be immediately answerable to the Prime Minister. <p>19. In the case of all these provisions it would be helpful to specify that a minister's accountability applies only to the duties that minister has under this law. A sentence before the numbered sub-articles such as 'in respect of his or her duties under this Decree' would make this clear.</p> <p>20. If the impeachment process (paragraphs 3 and 4) is defined elsewhere, a cross-reference to the relevant provisions would be useful here.</p>
<p>Article 19 Legal Liability</p> <ol style="list-style-type: none"> 1. The immediate officer in charge shall be immediately liable for any matter that contravenes the Law in relation to his orders or consent to implement [orders]. 2. Personnel and officers of the Forces shall not bear the legal or tribal responsibility for the damage caused to others during or by reason of the performance of their duties, on condition that they do not infringe on the Law or instructions issued forth by their superiors. 	<ol style="list-style-type: none"> a) As currently worded, Article 19.2 does not apply to NCOs (see comment on Article 1). This exclusion is probably an oversight. 	<p>⇒ See <i>Recommendation on Article 1</i>.</p>

Article from NSF law	Comment/Observation	Recommendation
<p>Article 23 Codes of Conduct</p> <ol style="list-style-type: none"> 1. Codes of conduct addressing personnel and officers of the Forces shall be adopted, provided that these are approved by the competent Minister. 2. Such codes of conduct shall include clear mechanisms to penalise those who abuse power or commit any act that contravenes professional ethics and obligations. 3. Addressing personnel and officers, codes of conduct shall include clear procedures and instructions on respect of the Law during military and security operations. 	<p>a) As currently worded, Article 23.1 does not allow for Codes of Conduct to apply to NCOs, since the definitions in Article 1 apply. This exclusion is probably an oversight (see comment on Article 1).</p>	<p>⇒ See Recommendation on Article 1</p>
<p>Article 28 Enforcement of the Law of Service in the Security Forces</p> <p>Subject to the provisions of this Law, provisions of the Law of Service in the Security Forces shall be applicable to the personnel and officers of the Forces in terms of appointment, seniority, promotion, delegation, assignment, transference, secondment, scholarships, salaries, vacations, decorations, badges, medals, retirement on pension, termination of service and any other issue, regarding which a special provision is not stated under this Law.</p>	<p>a) As currently worded Article 28 does not apply to NCOs, since the definitions in Article 1 apply. This exclusion is probably an oversight (see comment on Article 1).</p>	<p>⇒ See Recommendation on Article 1</p>

Article from NSF law	Comment/Observation	Recommendation
Deviation from International Standards		
<p>Article 21 Controller General of the Forces</p> <ol style="list-style-type: none"> 1. The Minister shall appoint a Controller General to audit the National Security Forces, provided that his rank is not less than a Colonel. 2. The Controller General shall have the power to inspect over departments and employees thereat. 3. The Controller General shall submit quarterly reports to the Commander and the competent Minister on the results of inspection, together with clear recommendations with a view to enhance performance. 4. A bylaw shall be issued forth, making clear powers of the Controller General and spelling out operational mechanisms. 	<p>a) Paragraph 2 does not explicitly grant permission to the Controller General to inspect all materials and documents necessary for conducting an audit of the NSF.</p>	<p>21. Paragraph 2 should give the Controller General unrestricted access to all information, including the power to inspect documents, necessary for a thorough audit. The Controller General's role is to ensure that all expenditures are in compliance with the law and made in an effective and efficient manner. Document inspection is a key part of this. See the DCAF publications Making Intelligence Accountable chapter 13⁸ and Overseeing Intelligence Services: A Toolkit chapter 8 for examples.⁹</p>
<p>Article 22 Complaint Department</p> <ol style="list-style-type: none"> 1. A department of complaints and grievances shall be established. It shall be accessible to the public and personnel of the Forces to file complaints. 2. The Complaint Department shall inform the complainant about the results of investigation within a maximum period of thirty days. 	<p>a) The article does not state who can bring complaints to the NSF's complaints department.</p> <p>b) As currently worded, Article 22.1 does not allow officers or NCOs to use the department of complaints (see comment on Article 1).</p>	<p>22. In order to bring it in line with international standards, this article should clearly state who can access the department of complaints. Best international practice on this states that all "members of the armed forces, former members, reserve members, applicants, or their partners/ families who allege that they have been subjected to</p>

⁸ <http://www.dcaf.ch/Publications/Making-Intelligence-Accountable>

⁹ <http://www.dcaf.ch/Publications/Overseeing-Intelligence-Services-A-Toolkit>

Article from NSF law	Comment/Observation	Recommendation
<p>3. The Commander shall put forward the Complaints Procedure Manual.</p>		<p>wrong or unfair treatment can ask the ombudsman [...] to start an inquiry.”¹⁰</p> <p>The establishment of a complaints handling department is in line with international standards. However, for the complaints mechanism to be effective, this Article should define the type of issues one can complain about, the status and composition of the complaints department and the level of independence it has from the NSF leadership. In addition, the article should state what powers the complaints department possesses to investigate, what options are open to it following investigation and if the department has the power to override security concerns on classified information.</p> <p>A number of possible models for dealing complaints covering these points are explored in Chapter 22 of the Handbook on Human Rights of Armed Forces Personnel (see the references section at the end of this chapter).</p> <p>23. => See recommendation on Article 1</p>
Need to Clarify Effect of this Decree on Existing Legislation and Regulations		
<p>Article 29 Repealing</p> <p>All that contradicts the provisions of this Law shall be repealed.</p>	<p>a) This article does not list the existing decrees and laws which are repealed on the enactment of this law.</p>	<p>24. For clarity and to avoid later possible confusion, list all laws and decrees that are intended to be repealed.</p>

¹⁰ OSCE, ODIHR, DCAF (2008) *Handbook on Human Rights of Armed Forces Personnel and Fundamental Freedoms of Armed Forces Personnel* Warsaw, Poland pg 238 <http://www.osce.org/odihr/31393?download=true>

3.3. Conclusion

The draft law contains many features and provisions which are in line with international standards. These include a complaints mechanism, chains of accountability, commitment to public freedoms, an oath of allegiance, and the enumeration of ranks.

However, there are a number of points in some articles, as outlined above, which require clarification and rewording. The main problems with the law relate to lack of consistency within the law especially in terms and definitions, contradictions with existing legislation, and articles which do not fully meet international standards.

In order to ensure a coherent law governing the NSF which avoids misinterpretation, safeguards

against abuses and can be fully implemented, the articles outlined above should be reviewed and in some cases rewritten. In particular, the draft law should ensure that terms and titles are defined and used consistently throughout and that articles precisely state to whom they apply. Also, the scope of authority of specific actors should be defined more clearly. It is crucial to emphasise that expanding the role of the NSF can only be done by the Palestinian Legislative Council and not unilaterally by the President. The law should also clarify the provisions for making complaints including who can make a complaint and what kind of complaints can be made. The level of independence and powers of the complaints department also need to be clarified.

References

DCAF (2008) *Making Intelligence Accountable: Legal standards and best practice for oversight of intelligence agencies* Geneva: DCAF available at: <http://www.dcaf.ch/Publications/Making-Intelligence-Accountable>

DCAF (2012) *Overseeing Intelligence Services: A Toolkit* Geneva: DCAF available at: <http://www.dcaf.ch/Publications/Overseeing-Intelligence-Services-A-Toolkit>

Dieterich, S. Hummel, H. and Marschall, S. (2010) 'Parliamentary War Powers: A Survey of 25 European Parliaments' DCAF Occasional Papers (21) Geneva: DCAF available at: <http://www.dcaf.ch/Publications/Parliamentary-War-Powers>

OSCE (1994) *Code of Conduct on Politico-Military Aspects of Security* available at: <http://www.osce.org/fsc/41355>

OSCE, ODIHR, DCAF (2008) *Handbook on Human Rights of Armed Forces Personnel and Fundamental Freedoms of Armed Forces Personnel* Warsaw, Poland available at: <http://www.osce.org/odihr/31393?download=true>

House of Lords Constitution Committees (2006) *Fifteenth Report – Waging war: Parliament's role and responsibility Appendix 4: Parliamentary Oversight of the Deployment Power: International Comparisons* available at: <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/236/23611.htm#note172>

Annex 1: Amended Legislative Policy Statement for Developing a Draft Law for the National Security Forces

This statement addresses legislative policies proposed for enactment of a law that regulates functions of the National Security Forces (NSF) in Palestine. The statement is an outcome of a series of meetings and consultations with the NSF Command. In the presence and with active participation of Major General Nidhal Abu Dukhan, meetings and consultations also included significant active and retired Palestinian security commanders, national and Islamic political parties, legal advisors from security agencies, and representatives of civil society actors. The proposed law will be designed to regulate this military force. Accordingly, regulation of military forces will not be approved beyond the framework of the law. It will also identify capacities of the NSF in line with the Palestinian Basic Law and Law of Service in the Palestinian Security Forces of 2005. Below is a general background of the NSF.

1. General Background

As an extension of the Palestine Liberation Army established in 1964, the NSF are the military arm of the Palestine Liberation Organisation (PLO). Following establishment of the Palestinian National Authority (PNA), a limited number of the Palestine Liberation Army personnel and commanders returned to the Palestinian territory. These contributed to establishing the NSF. The designation “National Security Forces” was used as a result of restrictions posed by the Oslo Agreements, which defined the nature, duties and armament of forces to be created. The NSF are assigned to perform tasks of a statutory army in a sovereign state.

Signed on 4 May 1994, the Gaza-Jericho Agreement provides rules of the Israeli army redeployment in areas transferred to the Palestinian side. Annex I to the Agreement regulates the nature of security arrangements between the Israeli and Palestinian sides. Most importantly, Article 3 of the Annex provides that the Palestinian Police shall consist of one integral unit under the control of the Palestinian Authority. It shall be composed of four branches: Civil Police (Al Shurta); Public Security; Intelligence; and Emergency Services and Rescue (Al Difa’a Al Madani). In each district, all members of the four Police branches shall be subordinate to one central command. The Palestinian Police will also establish a Palestinian Coastal Police unit (the “Palestinian Coastal Police”).

Later, the Gaza-Jericho Agreement was replaced by the Interim Agreement on the West Bank and the Gaza Strip, signed in Cairo on 28 September 1995. To be subordinate to one central command, the Interim Agreement reiterated that the Palestinian Police will be the only security authority. According to Article 4 of Annex I to the Agreement, the Palestinian Police shall carry out its duties and functions in accordance with this Agreement as follows: maintaining internal security and public order; protecting the public and all other persons present in the areas, as well as protecting their property, and acting to provide a feeling of security, safety and stability; adopting all measures necessary for preventing crime in accordance with the law; protecting public installations, infrastructure and places of special importance; and combating terrorism and violence, and preventing incitement to violence. The Agreement also allows the PNA to establish new security branches under a central command. These include the Civil Police (Al Shurta); Public Security; Preventive Security; Presidential Guard (Amn Al Ri’asah); General Intelligence; Emergency Services and Rescue (Al Difa’a Al Madani); and Coastal Police.

By inference, the Interim Agreement does not explicitly provide for establishment of the NSF. However, regardless of provisions of this Agreement, the NSF are a main security agency in Palestine. The NSF play a significant role, supporting other Palestinian security services. The NSF have been operating throughout the Palestinian territory since the PNA was established.

2. Legislative and Regulatory Framework of the NSF

The NSF was created in line with a decision made by the PNA President on 5 May 1995. So far, however, not a piece of legislation has been enacted to regulate this force. Discussion has been launched on whether a law to regulate the NSF is needed or not. To this avail, public debate addressed the nature of the proposed law: will it cover the interim period or the future state?

- a) Need to regulate the NSF: In spite of different opinions, the majority of discussants coincided that a law should be in place to govern the NSF.
- b) Nature of the proposed law: This aspect has been widely debated: will the prospective law cover the interim period or the future state? Though the debate was not resolved, most participants agreed that a law should be drafted, taking into account requirements of the current stage. At the same time, the law should be applicable in an independent state.

Conclusion: The legislative policy-makers are of the opinion that a law should be in place to govern the NSF. The law should be applicable during the interim period as well as in a future independent Palestinian state.

3. Title of the Law

The law will be entitled the Law on the National Security Forces. The Legislative Policy Statement proposes this designation for legal and political considerations. From a legal perspective, the Law of Service in the Palestinian Security Forces of 2005 designates the NSF as such. We suggest that the title excludes the designation "Palestine Liberation Army". From a political perspective, Israeli-Palestinian agreements do not allow establishment of defence forces (i.e. army). Therefore, we need to avoid a political debate which may affect the enactment process.

4. Objectives of the Law

- a) To create a military force that is capable of protecting borders of the homeland against external threats, supporting internal security forces when necessary, and contributing regionally and internationally to maintaining international peace.
- b) To regulate the NSF by a law that ensures transparency, accountability, and legal certainty.

5. NSF Components and Divisions

The NSF will comprise three major divisions: armed Military Force, Marine Force, and Air Force. NSF structures and formations will be regulated by relevant bylaws and instructions.

6. Appointment of the NSF Commander

The NSF Commander will be appointed for a period of three years, which is renewable for one year only.

A decision on the appointment of the NSF Commander will be made by the Commander-in-Chief based on a nomination of the Commander General and on a recommendation from the Committee of Officers in line with Article 9 of the Law of Service in the Palestinian Security Forces No. 8 of 2005.

7. NSF Tasks

NSF tasks were of particular importance in discussions with military officials and representatives of political parties. Based on this debate, NSF tasks can be summed up as follows:

1. To defend national sovereignty and protect the homeland.
2. To guard borders.
3. To provide relief in natural disasters and contribute to maintaining public order.

4. To support and provide protection to internal security forces in maintaining public order and in implementing respective tasks when necessary.
5. To contribute to international peacekeeping missions that seek to maintain world peace.
6. To perform any other tasks assigned or delegated thereto by a decision from the Commander-in-Chief of the Palestinian Security Forces.

8. Political Subordination of the NSF

The Law of Service in the Palestinian Security Forces No. 8 of 2005 identifies political subordination of the NSF.

9. Immunity of NSF Personnel

The proposed law ensures judicial protection and immunity for the NSF personnel in the context of implementing legitimate orders issued by relevant superior officers. However, such judicial immunity does not preclude an aggrieved person's right to sue the PNA, nor does it annul political accountability of the NSF functions.

10. Administration and Organisation (Human Resources)

In relation to appointment, promotion and disciplinary measures, the NSF will in principle be subject to the Law of Service in the Palestinian Security Forces No. 8 of 2005. In line with the special nature of the NSF, further general rules will govern appointment (recruitment) and promotion. Accordingly, the Directorate of Security Officers' Affairs will be responsible for management of officers' affairs. The Central Directorate of Administration and Organisation will be in charge of the NSF personnel administration.

11. Public Budget

The NSF will have a special and independent budget within the Palestinian security forces budget. This special budget will be prepared by the NSF Commander, who is authorised of signature and expenditure.

12. Financial Control

In accordance with the respective regulation, financial control will be exercised by the Financial Control Department at the Central Military Financial Directorate.

13. Inspector General

An Inspector General will be appointed for the NSF for a certain period of time (3 years) by the relevant Minister on a recommendation from the Commander General. The Inspector General will be assigned to carry out administrative inspection over the NSF directorates, including compliance with the Law, regulations and instructions. The Inspector General will report to the NSF Commander, Commander General, and the relevant Minister.

14. Political Accountability

The NSF will be subject to two types of control: (1) political control through the Government, and (2) parliamentary control for respective tasks.

15. Disciplinary Accountability

As a general principle, disciplinary accountability will be in line with provisions of the Law of Service in the Palestinian Security Forces No. 8 of 2005. General rules will be developed to regulate disciplinary accountability measures within the NSF.

16. Code of Professional Conduct

The proposed law will provide for compiling a Code of Professional Conduct.

Annex 2: Development of the Legislative Policy Statement: Options and Alternatives

To gauge the expectations of the stakeholders and the informed public regarding the development of legislation regulating the National Security Forces (NSF), DCAF and PCSSR developed a set of questions that were presented to the participants of the needs assessment process. The questions focused on the following factors: 1) threat analysis - which threats should the NSF address?, and 2) the scope of the NSF's mandate.

Threats

A. What threats affect Palestinian security in the current situation?

The participants of the needs assessment working group sessions distinguished between the following primary and secondary threats:

- Primary threats:
 - o The Israeli occupation, including settlement activity, forced population transfer, etc.
- Secondary threats:
 - o Military or security threats from neighbouring countries.
 - o Internal threats and political divisions, including security instability and absence of the rule of law and public disorder. Some respondents also included activity of non-state armed groups.

B. Which security threats should the NSF address in the current situation?

The participants' answers on the threats the NSF should deal with can be grouped into the following four categories: a) internal threats only; b) external threats only; c) both internal and external threats; or d) there are no threats in the current situation for which the NSF is needed.

Four policy options can be derived from their answers (threats/policy option):

- a) Internal threats only: NSF is transformed into a gendarmerie force to support the police.
- b) External threats only: NSF is transformed into a popular liberation army.
- c) Internal and external threats: NSF is transformed into a national liberation army with the mandate to preserve public order (as it was for example the case of the PLO forces in Lebanon in 1970s and 1980s).
- d) None of the threats stated above: NSF does not have any mandate to intervene to counter threats and is therefore dismantled.

C. Which security threats should the NSF address after the establishment of the State?

When being asked about the future role of the NSF after the establishment of the state, the participants saw again four sets of threats that the NSF would have to counter: a) external threats; b) internal threats; c) both internal and external threats; or d) the NSF should not play any role and should be dismantled.

This can be translated into the following policy options for defining the role of the NSF after the establishment of the Palestinian state:

- a) External threats only: NSF is transformed into regular armed forces.
- b) Internal threats only: NSF is transformed into a gendarmerie force to support the police.
- c) Internal and external threats: NSF is transformed into a national army with the mandate to preserve public order.
- d) None of the threats stated above: NSF does not intervene to counter any of these threats and should be dismantled.

D. Which Option for the Legislative Development for the NSF should be pursued?

Against this background, the respondents of the needs assessment expressed different opinions regarding the development of new legislation for the NSF. While some respondents were in favour of developing a decree law or a bylaw for the NSF, others said it is currently not the right moment to develop a law. Their answers can be summarised as follows:

- I. Develop legislation to regulate the NSF in its current form:
 - a. A law, together with relevant bylaws;
 - b. A bylaw only.
- II. Develop a law for regulating the NSF after the establishment of the State.
- III. Develop legislation to regulate the current and future NSF.
- IV. Refrain from developing any piece of legislation at this stage.

Scope of the NSF’s Mandate

From the responses of the participants in the needs assessment, it is clear that developing legislation for the NSF at this stage is only one of several possible policy options. Others include dismantling the NSF due to lack of a legitimate mandate, or developing legislation for a future armed forces agency that would be set up after the establishment of the state.

Given that the NSF is currently carrying out its mandate with no legal basis, it can be helpful to think about developing legislation to regulate its work in the current situation.

The following factors have been further analysed to understand the needs and expectations that should be reflected in such legislation.

A. Which forces should this legislation cover?

Responses:

- a) The legislation should only cover the NSF in its current structure.
- b) The legislation should cover all military forces (NSF, Presidential Guard, Military Intelligence, and PLO military units abroad).

B. What missions shall be assigned to the NSF in the new legislation?

Responses:

- a) External missions:
 - Protect the homeland (borders, citizens, and the political system).
 - Participate in international peace-keeping missions.

- b) Internal missions
 - Provide relief in times of disasters.
 - Protect the political system.
 - Contribute to socioeconomic development.
 - Internal missions should not be set.

C. Which structure of military discipline and reporting line shall the new legislation establish for the NSF?

Responses:

- a) The NSF should report to the President.
- b) The NSF should report to the Minister of Defence / Minister for National Security.
- c) The NSF should report to the Leadership of the General Staff.

D. What oversight mechanisms should the new legislation put in place?

Responses:

- a) Internal accountability (a disciplinary system).
- b) Ministerial control (including the Inspector General).
- c) Parliamentary oversight (to oversee defence budgets).

E. On which legal framework shall the NSF legislation be built upon?

Responses:

- Declaration of Independence.
- Amended Basic Law of 2003.
- Law of Service in the Palestinian Security Forces of 2005.
- Draft Basic Security Law of 2005.
- Cairo Agreement, concluded between Fatah and Hamas.
- Draft White Book of 2005.
- PLO legislation of 1979.

Annex 3: Recommendations of the NSF on the Draft Law and on the Peer-review Comments

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
<p>Article 1 Definitions and General Provisions</p> <p><i>For the purposes of the enforcement of the provisions of this Law, the following terms and expressions shall have the meanings specified thereto hereunder, unless the context determines otherwise:</i></p> <p>The State: <i>The State of Palestine.</i></p> <p>The President: <i>The President of the State of Palestine.</i></p> <p>The Council of Ministers: <i>The Council of Ministers of the State of Palestine.</i></p> <p>The Law of Service: <i>The Law of Service in the Palestinian Security Forces No. (8) of 2005.</i></p> <p>The Forces: <i>The National Security Forces.</i></p> <p>The Minister: <i>The Minister of National Security, or Minister of Interior so long as he [Minister of National Security] is absent.</i></p> <p>The Ministry: <i>The Ministry of National Security, or Ministry of Interior so long as it [Ministry of National Security] is not established.</i></p> <p>The Commander-in-Chief: <i>The President of the State of Palestine, who is the Commander-in-Chief of the Palestinian forces.</i></p> <p>The General Commander: <i>The General Commander of the National Security Forces.</i></p> <p>The Commander: <i>The Commander of the Palestinian National Security Forces.</i></p>	<p>The definition of the Minister as the Minister of National Security or the Minister of Interior in his absence is in violation of the definitions in article 1 of the Law of Service in the Palestinian Security Forces No. (8) of 2005 which defined the competent minister as the Minister of National Security or the Minister of Interior or the Head of Intelligence Services. Similarly, the definition of the Ministry is the Ministry of National Security or the Ministry of Interior in violation of the same article.</p> <p>The definitions are missing the definition of the Commander of Forces who is the Commander of the Palestinian National Security Forces.</p> <p>There is a need to add the definition of the Inspector of Forces.</p>	<p>Article 1 should be amended so that the definition of the Minister is : Minister of National Security only.</p> <p>The Ministry: Ministry of National Security.</p> <p>The addition of a new definition, namely The Commander of Forces: The Commander of National Security Forces.</p> <p>Inspector of Forces: the inspector and the internal general controller of the National Security Forces.</p>

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
<p>Officer: Each person who possesses the rank of an officer as provided by the Law of Service in the Security Forces.</p> <p>Non-commissioned Officer: Each person who possesses the rank of a non-commissioned officer as provided by the Law of Service in the Security Forces.</p> <p>Personnel: Each person who possesses the rank of personnel as provided by the Law of Service in the Security Forces.</p>		
<p>Article 4 Commitment to Public Freedoms and International Law <i>The National Security Forces shall be committed, in the operations and missions they carry out, to respect of public rights and freedoms. They shall also be committed to International Law and relevant international conventions, and shall be committed to all international agreements and treaties that the State of Palestine ratifies and abides by.</i></p>	<p>After reviewing laws in Arab countries, it is not possible to promulgate a law relating to the forces without their knowledge or consultation with them regarding the draft law, since the National Security Forces are the competent party that has the knowledge and expertise in their affairs and laws administratively and financially.</p>	<p>Another paragraph should be added to this article, as follows : (National Security Forces shall be consulted in the drafting and preparation of any law or executive regulations or military regulations that concern and apply to National Security Forces)</p>
<p>Article 5 Formation of the Forces</p> <ol style="list-style-type: none"> <i>The National Security Forces shall be established in Palestine. Their headquarters shall be in the city of Jerusalem. However, they shall be managed temporarily from the cities of Ramallah and Gaza.</i> <i>The Forces shall be deemed to be a national, professional regular military service. It shall not intervene in political issues, shall be a legal entity and shall report to the Minister.</i> <i>The Forces shall perform their functions and exercise their capacities under the leadership of the General Commander and under</i> 	<p>Since the General Commander leads the national security forces fully with all its directorates and agencies and since the draft law relates to National Security Forces without these directorates and agencies, therefore, the supervisory role of the Commander of the National Security Forces shall be added in terms of managing these forces otherwise why would that person be appointed without having powers.</p>	<p>The third paragraph should be amended as follows: the Forces shall perform their functions and exercise their capacities headed by the Minister of National Security, under the leadership of the General Commander and the supervision of the Commander of the Forces.</p> <p>The fourth paragraph should be amended as follows: the General Commander shall be responsible for the Forces and the Commander shall be</p>

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
<p>supervision of the Minister. The latter shall have the right to issue forth instructions, which regulate all aspects of their operation.</p> <p>4. The General Commander shall be immediately responsible for managing the Forces, relevant formations and departments, and personnel affairs, including military and civilian staff. He shall also supervise all of the legions and formations throughout the governorates.</p>		<p>immediately responsible for managing the Forces, relevant formations and departments, and personnel affairs, including military and civilian staff. He shall also supervise all of the legions and formations throughout the governorates.</p>
<p>Article 6 Divisions and Formations of the Forces</p> <p>1. The Forces shall consist of three major branches:</p> <ol style="list-style-type: none"> a) Armed military force; b) Air force; and c) Marine force. <p>2. The formations, units and distribution of the Forces shall be regulated by internal bylaws and instructions, which shall be approved by the competent Minister.</p>	<p>After reviewing the other laws, the air defense should be added to the Forces.</p>	<p>The first paragraph should be amended as follows:</p> <p>The Forces shall consist of four major branches:</p> <ol style="list-style-type: none"> a) Land force b) Air force c) Marine force d) Air defense
<p>Article 7 Administrative Structure</p> <ol style="list-style-type: none"> 1. The general administrative structure of the Forces shall be regulated by the General Commander. 2. The structure shall be endorsed by the Minister and approved by the Council of Ministers. 	<p>Since the draft law regulates the work of the National Security Forces without the directorates or the agencies, the Commander of Forces shall be responsible for regulating the administrative structure while its approval shall be by the Council of Ministers.</p>	<p>Paragraph one should be amended as follows (the general administrative structure of the Forces shall be regulated by the Commander of the Forces.)</p>

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
<p>Article 9 Appointment of the General Commander and his Deputy</p> <ol style="list-style-type: none"> 1. <i>A General Commander shall preside over the Forces for a period of three years that are renewable for one year only.</i> 2. <i>The General Commander shall be appointed by a decision from the Commander-in-Chief based upon a recommendation from the Minister.</i> 3. <i>The Deputy General Commander shall be appointed by a decision from the Minister based upon a recommendation from the General Commander.</i> 	<p>The process for the appointment of the General Commander is stipulated by the Law of Service in the Palestinian Security Forces and should not be repeated. However, the process for the appointment of the Commander of Forces should be stated as well as the process for appointing his deputy as well.</p>	<p>Amendment of the article as follows: Appointment of the Commander of the Forces and his Deputy</p> <ol style="list-style-type: none"> 1. A director general shall preside over the Forces and shall be called the Commander of the Forces for a period of three years that are renewable for one year only. 2. The Commander of the Forces shall be appointed by a decision from the Commander-in-Chief based upon a recommendation from the Minister. 3. The Deputy Commander of the Forces shall be appointed by a decision from the Commander-in-Chief upon a recommendation from the Minister.
<p>Article 10 Officer Ranks</p> <p>Ranks of officers of the Forces shall be as follows:</p> <ol style="list-style-type: none"> 1. <i>Lieutenant</i> 2. <i>First Lieutenant</i> 3. <i>Captain</i> 4. <i>Major</i> 5. <i>Lieutenant Colonel</i> 6. <i>Colonel</i> 7. <i>Brigadier General</i> 8. <i>Major General</i> 	<p>After reviewing the Law of Service in the Security Forces number (8) of 2005, this article exists already in the law, therefore, this becomes a repetition of the same legal provision in more than one Law which would lead to redundant laws. It also lacks the rank of Lieutenant General while in the Law of Service in Security Forces, the article is complete.</p>	<p>This article should be deleted for redundancy.</p>

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
<p>Article 11 Ranks of Non-commissioned Officers and Personnel <i>Ranks of non-commissioned officers and personnel of the Forces shall be as follows:</i></p> <ol style="list-style-type: none"> 1. <i>Soldier.</i> 2. <i>Corporal.</i> 3. <i>Sergeant.</i> 4. <i>First sergeant.</i> 5. <i>Adjutant.</i> 6. <i>First Adjutant.</i> 	<p>After reviewing the Law of Service in Security Forces number (8) of 2005, this article exists in it already, namely article (138), and this is considered a repetition of the legal provisions.</p>	<p>This article should be deleted for redundancy.</p>
<p>Article 12 Administration of the Oath</p> <ol style="list-style-type: none"> 1. <i>Before they commence the duties of their functions and upon their appointment, officers and personnel of the National Security Forces shall make the Oath: "I swear by the Almighty God to be loyal to the homeland, to respect the Constitution and laws, to work honestly and trustworthily, to obey all orders issued to me by superiors, and to preserve my honour and weapon. God shall hereby be witness upon what I say".</i> 2. <i>Administration of the oath shall take place before the Minister, or the person whom he delegates, with respect to officers, and before the General Commander, or his deputy, with respect to the personnel.</i> 	<p>This oath is different from the one in the Law of Service in the Security Forces number (8) of 2005. To wording of the oath need to be amended to be consistent to the wording stated in the Law of Service.</p> <p>This article does not include the taking of the oath by the Commander of the National Security Forces nor his deputy. According to effective law and the Law of Service, officers make the oath before the Commander-in-Chief of the Forces and as such this article contradicts the provisions of the Law of Service in the Security Forces, namely article (88) with respect to the officers and article (167) with respect to the non-commissioned officers.</p>	<p>The first paragraph should be amended as follows:</p> <ol style="list-style-type: none"> 1. Before they commence the duties of their functions and upon their appointment, officers, non-commissioned officers, and personnel of the National Security Forces, shall make the oath: "I swear by the Almighty God to be loyal to the homeland and to the people, and to defend them and sacrifice my life for them, to preserve my weapon and my military honour, and respect all laws and regulations and abide them and to execute all orders issued to me. God shall hereby be witness upon what I say."

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
	<p>The law omitted the mentioning of non-commissioned officers when listing members of the National Security Forces.</p>	<ol style="list-style-type: none"> 2. This paragraph should be added to this article: Administration of the oath shall take place before the Commander-in-Chief of the Palestinian Security Forces, with respect to the Commander of the National Security Forces and his Deputy. 3. The second paragraph should be amended as follows: Administration of the oath shall take place before the Commander-in-Chief, or the person whom he delegates, with respect to officers, and before the Minister, or the person whom he delegates, with respect to non-commissioned officers and personnel. 4. The rank of non-commissioned officers shall be added when listing members of the National Security Forces.
<p><i>Adding a paragraph regarding prohibited types of work for staff of National Security Forces.</i></p>	<p>This law does not state some of the duties of the workers and prohibited types of work that are not stipulated by the Law of Service in National Security Forces which ignored some of the duties of the workers and prohibited types of work. In order to prevent any evasion of the law and to make up for this lack in the Law of Service under this title, some issues need to be added that are not included in this law.</p>	<p>A new article should be added titled 'Duties of workers and prohibited types of work.'</p> <p>In addition to what is stipulated by the Law of Service in Palestinian National Security Forces, workers in the National Security Forces shall be prohibited from the following:</p> <ol style="list-style-type: none"> 1. Combining between their work in the National Security Forces and any other types of work unless

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
		<p>determined otherwise with respect to the interest of the work upon the decision of the Commander of Forces.</p> <ol style="list-style-type: none"> 2. Negligence or default that would entail loss of one of the state's rights. 3. Making any statements regarding work-related issues to the media whether during their service or after it except through the person who is mandated to do that. 4. Undertaking any political or media activity. 5. Violating the security procedures issued by the competent authority. 6. Covering up for mistakes and violations of colleagues. 7. Contacting or engaging in private relations with foreigners or members of embassies or diplomatic missions in the state unless determined necessary for the interest of the work upon a decision of the Commander of the National Security Forces.
<p>Article 14 The Authority Approving Intervention 1. <i>The Forces shall respond to the request to support the Internal Security Forces based upon approval of the Commander-in-Chief, Minister of Interior, or Governor.</i></p>	<p>National Security Forces act and perform their tasks upon the approval and decision of the Commander of the Forces and not the Minister of Interior, or the Governor, or the Commander-in-</p>	<p>The first paragraph should be amended to 'The Forces shall respond to the request to support the Internal Security Forces based upon the approval of the Commander of the Forces and the request of the Minister of Interior or the Governor.'</p>

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
<p>2. <i>The intervention shall be limited to a particular geographical area and with the purpose of accomplishing certain goals. By its nature, it shall be temporary and shall culminate with the accomplishment of the goals intended thereby.</i></p> <p>3. <i>The Forces shall be committed to the respect of procedures and provisions imposed by the Palestinian Basic Law and legislation on law enforcement bodies.</i></p>	<p>Chief who cannot be approached for approval for every mission of the National Security Forces.</p>	
<p>Article 16 Appointment</p> <p>1. <i>Enrolment in the Forces shall be through an open, transparent and impartial competition.</i></p> <p>2. <i>The competent Minister shall put forward the criteria and conditions to be met in the process of appointing officers and personnel.</i></p> <p>3. <i>The Law of Service in the Security Forces shall be applicable in relation to appointment in a manner that does not contradict the provisions of this Law.</i></p>	<p>(The appointment policy and the internal regulations shall be put forward and determined by the Commander of the Forces and therefore, the second paragraph should be amended)</p> <p>(The Law of Service is the main law and the Law of National Security is the secondary law and shall not be in contradiction with the Law of Service in Security Forces)</p> <p>In other words, this draft shall not contradict the Law of Service and not the other way round.</p>	<p>Therefore, the second paragraph should be amended as follows : (The Commander of Forces shall put forward the internal regulations and instructions that define the appointment policy, its rules and requirements to be issued by the Minister without prejudice to effective laws)</p> <p>Paragraph three should be amended as follows: (The provisions and regulations of appointment shall be applicable in the National Security Forces in no contradiction and without prejudice to the provisions of the Law of Service in the Palestinian Security Forces number (8) of 2005.</p> <p>A new paragraph should be added (4. The Commander of the Forces shall put forward the criteria and conditions to be met in the process of appointing officers.)</p>

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
<p>Article 17 Promotion</p> <ol style="list-style-type: none"> <i>Promotion and advancement in the Forces shall be based upon the reports of performance, competence and courage in the execution of duties.</i> <i>When promotion is approved, completion of practical and academic training courses shall be taken into consideration.</i> <i>The Law of Service in the Security Forces as well as the bylaws issued forth in accordance with it shall be applicable in relation to promotion and advancement in a manner that is not inconsistent with the provisions of this Law.</i> 	<p>(The training courses shall be provided according to a specific system put forward by the competent party)</p> <p>The Law of Service in the Security Forces is the main law and this law shall not be in contradiction with it.</p>	<p>The second paragraph should be amended as follows: (When promotion is approved, completion of required training courses in accordance with a system shall be taken into consideration)</p> <p>Deletion of paragraph three.</p>
<p>Article 18 Accountability</p> <ol style="list-style-type: none"> <i>The Minister shall be immediately answerable to the Prime Minister.</i> <i>The General Commander shall be answerable to the Minister.</i> <i>The Legislative Council or any of its committees shall be entitled to hold the Minister accountable about operations of the Forces.</i> <i>The Legislative Council or any of its committees shall be entitled to interrogate the General Commander.</i> 	<p>The General Commander shall be immediately answerable to the Minister</p>	<p>Paragraph four should be deleted.</p>
<p>Article 20 Discipline</p> <ol style="list-style-type: none"> <i>Disciplinary penalties shall be imposed on the personnel and officers of the Forces in accordance with a bylaw to be developed by the General Commander, provided that it is approved by the competent Minister.</i> <i>Not more than one disciplinary penalty may be imposed on a single act.</i> 	<p>The fourth paragraph does not elaborate on the process of establishing the disciplinary council and who has the power of establishing it.</p> <p>The second paragraph is in contradiction with the Military Penal Law because it is possible to impose more than one disciplinary penalty</p>	<p>Therefore paragraph four should be amended as follows (A disciplinary council shall be established by the Commander of the Forces with respect to the officers and shall consist of:</p> <ol style="list-style-type: none"> Commander of the Forces' assistant for oversight and inspection. One of the assistants of the Commander of the Forces

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
<p>3. A penalty may not be imposed on an officer except after he is interrogated in writing, his statements are heard, and his defence is ensured. The decision made regarding imposition of the penalty shall be reasoned.</p> <p>4. Disciplinary penalties shall be imposed by a disciplinary council to be established for this purpose.</p> <p>5. The disciplinary penalty shall be imposed by the immediate superior.</p> <p>6. Disciplinary decisions may be appealed before the administrative judicial branch.</p>	<p>on a single act such as one week of detention and the issuing of a warning or a forewarning, bearing in mind that these decisions are administrative in nature and can be appealed before the Supreme Court whereby the Supreme Court is not the subject matter but rather reviews the legality of the administrative decision. The law overlooked the mentioning of non-commissioned officers when listing the members of the National Security forces.</p>	<p>c) The legal advisor Deletion of paragraphs two and six Addition of a new paragraph (The Commander of the Forces shall establish a specialized committee to terminate the service of non-commissioned officers and personnel based on a decision that determines the process of establishing this committee provided it is approved by the Minister. The Commander of the Forces shall be the competent party to terminate the service.) The rank of non-commissioned officers should be added when listing the members of the National Security Forces.</p>
<p>Article 21 Internal Controller General of the Forces</p> <p>1. The Minister shall appoint an Internal Controller General to audit the National Security Forces, provided that his rank is not less than a Colonel.</p> <p>2. The Controller General shall have the power to inspect over departments and employees thereof.</p> <p>3. The Controller General shall submit quarterly reports to the General Commander and the competent Minister on the results of inspection, together with clear recommendations with a view to enhance performance.</p> <p>4. A bylaw shall be issued forth, making clear the powers of the Controller General and spelling out operational mechanisms.</p>	<p>Since the draft relates to National Security Forces without the directorates or the agencies, the inspector referred to here is the internal inspector and not the Ministry's inspector.</p>	<p>The title of this article should be the Inspector of the Forces. Paragraph one should be amended as follows : (the Commander of the Forces shall appoint an inspector general to inspect over National Security Forces.) The second paragraph should be amended as follows: (The inspector of the Forces shall enjoy the power of inspecting the departments and the employees thereof.) Paragraph three should be amended as follows : the inspector shall submit quarterly report to the Commander of the Forces, the General Commander, and the Minister on the results of the</p>

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
		<p>inspection with clear recommendations with a view to enhance performance.</p> <p>A paragraph should be added (Instructions shall be issued in the form of a by-law that clarifies the powers of the Inspector of the Forces and spells out the operational mechanisms.</p>
<p>Article 22 Complaint Department</p> <ol style="list-style-type: none"> 1. <i>A department of complaints and grievances shall be established. It shall be accessible to the public and personnel of the Forces to file complaints.</i> 2. <i>The Complaint Department shall inform the complainant about the results of investigation within a maximum period of thirty days.</i> 3. <i>The Commander shall put forward the Complaints Procedure Manual.</i> 	<p>Since this draft relates to National Security Forces only and not the directorates or agencies, and since the Complaint Department of the National Security Forces is different from the Complaint Department of the Ministry, this article should be amended to be consistent with its intent. The law did not mention non-commissioned officers when listing National Security Forces members.</p>	<p>The first paragraph should be amended as follows (a department of complaints and grievances shall be established by the Commander of the Forces and shall be accessible to the public and the personnel of the Forces to file complaints.)</p> <p>Paragraph three should be amended as follows : (The Commander of the Forces shall put forward the Complaints Procedures' Manual)</p> <p>The rank of non-commissioned officer should be added when listing NSF members.</p>
<p>Article 23 Codes of Conduct</p> <ol style="list-style-type: none"> 1. <i>Codes of conduct addressing personnel and officers of the Forces shall be adopted, provided that these are approved by the competent Minister.</i> 2. <i>Such codes of conduct shall include clear mechanisms to penalise those who abuse power or commit any act that contravenes professional ethics and obligations.</i> 3. <i>Addressing personnel and officers, codes of conduct shall include clear procedures and instructions on respect of the Law during military and security operations.</i> 	<p>The Codes of Conduct are approved by the heads of the security agencies. This was the case for the Intelligence and Preventive Security agencies.</p>	<p>The first paragraph should be amended as follows (Codes of Conduct addressing officers, non-commissioned officers, and personnel of the Forces shall be adopted, provided that these are approved by the Commander of the Forces).</p>

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
<p>Article 24 Budget of the Forces</p> <ol style="list-style-type: none"> 1. <i>The National Security Forces shall have their special budget within the security budget.</i> 2. <i>The General Commander shall prepare the draft annual budget, which shall be referred to the Minister in pursuance of the provisions of the Law on the Regulation of the Budget and Financial Affairs of 1998 and its relevant amendments.</i> 3. <i>The General Commander shall be responsible for implementing the budget in accordance with the Law on the Regulation of the Budget and Financial Affairs and under supervision of the Financial Controller.</i> 	<p>The Commander of the Forces is the one who prepares the draft budget that shall be referred to the Minister for approval prior to its presentation to the Council of Ministers. The Commander of the Forces shall implement the budget and shall implement the budget items in accordance with their specific allocations.</p>	<p>The Commander of the Forces shall be included in the second paragraph replacing the General Commander as follows:</p> <p>(The Commander of the Forces shall prepare the draft annual budget for the National Security which shall be referred to the Minister for approval.)</p> <p>(The Commander of the Forces shall be responsible for implementing the budget in accordance with the Law on the Regulation of the Budget that includes the basis and procedures with respect to the implementation of budget items for their set purposes.)</p>
<p>Adding financial articles because the draft lacks reference to financial matters, their regulation, their implementation, or their monitoring.</p>		<p>The following articles should be added:</p> <p>Article 1: Titled Financial Controller (A financial controller shall be appointed in the national security forces upon the decision of the Minister and the recommendation of the Commander of the Forces. The financial controller shall be responsible for overseeing expenditure items, direct supervision over the auditing of the accounts and ensuring their financial soundness.)</p> <p>Article two titled "Financial and procurement systems"</p> <p>(The Commander of the Forces shall put forward a system for procurement and supplies as well as a financial system that corresponds with the nature of</p>

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
		<p>work of the National Security Forces. The Commander shall have full powers for enforcing the system.)</p> <p>Article three titled 'Financial matters':</p> <ol style="list-style-type: none"> 1. National Security Forces are considered a legal entity with financial and administrative independence that allows the Forces from carrying out their duties. For this end, the Forces have the right to ownership, management, and investment to enhance their capacity and shall be represented in all cases filed by or against it by the Attorney General. 2. In achieving the objectives referred to in paragraph one, an account and a fund for the National Security Forces shall be established within the Financial Management department. The fund shall be called (Fund for investment developmental projects of the National Security Forces) and shall have a legal entity status with financial and administrative independence. In this capacity, the Fund shall be entitled to own movable and immovable assets and engage in all legal actions needed for achieving its objectives including the conclusion of contracts, acceptance of grants, gifts, and donations. The Attorney General or any lawyer may represent the Fund in legal procedures.

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
		<p>3. Taking into consideration the provisions of the law, the Fund may borrow money for the purposes set specifically in this article using its own financial flows as collaterals for the Fund and its assets upon the approval of the Council of Ministers and the recommendation of the Minister.</p> <p>4. Matters related to the management of the Fund, its affairs, financial resources, activities, investment projects, or joint ventures, mechanisms of disbursement methods from the Fund, its governance, and authorized signatory, shall be regulated by a by-law that is issued by the Commander of the Forces.</p>
<p>Article 25 Military Colleges and Training</p> <p>1. <i>A military college shall be established by a decision from the Council of Ministers. Conditions of enrolment, regulation, programmes, and the qualifications it grants shall be identified [by the decision].</i></p> <p>2. <i>The Commander shall issue forth instructions on compulsory, continuing and specialised training.</i></p>	<p>The training department of the Forces is the party that determines the training curricula. The department has specialized staff dedicated for that and the training curricula shall be approved by a decision of the Commander of the Forces.</p>	<p>Paragraph one should be amended as follows (A military college shall be established by a decision from the Commander-in-Chief and the Commander of the Forces shall be responsible for determining conditions of enrolment, regulations, programmes, the qualifications it grants, the curricula and courses, the recruitment of teachers and professors to serve the best interest of the Forces and achieve the objectives.)</p>

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
		<p>The second paragraph should be amended as follows (The Commander of the Forces shall issue forth instructions on compulsory, continuing, and specialized training.)</p>
<p>Article 26 Establishment of Clubs</p> <ol style="list-style-type: none"> 1. <i>Clubs for members of the Forces shall be established by a decision to be issued forth by the General Commander and with the approval of the Minister.</i> 2. <i>The purposes and objectives of the clubs shall be social- and sports-oriented.</i> 	<p>The draft relates to the Forces without the directorates and agencies. Therefore, the decision to establish the clubs shall be issued by the Commander of the Forces.</p>	<p>The first paragraph should be amended as follows (Clubs for members of the Forces shall be established by a decision to be issued forth by the Commander of the Forces with the approval of the Minister.)</p> <p>The word 'and cultural' should be added to the second paragraph.</p>
<p>The Law of Service in the National Security Forces stipulated the establishment of a fund for deduction penalties and means for spending them</p>		<p>Addition of a new article: (In accordance with article 199 of the Law of Service number (8) of 2005, a special account for the amounts collected as pay deduction or work suspension penalties that are imposed on military personnel of the National Security Forces and the amounts of their pay that they are deprived throughout the duration of their suspension as well as deductions for absence without leave, or during serving a prison sentence. The disbursement of the amounts collected shall be for social, cultural, and sports related purposes in accordance with the conditions and circumstances set forth by the by-laws of this law.)</p>

Article	Comments/observations of the NSF Legal Department	Recommendations of the NSF Legal Department
<p>Article 27 Promulgation of Bylaws <i>The bylaws needed to enforce this Law shall be promulgated by the Council of Ministers upon a submission from the Minister and recommendation of the General Commander.</i></p>	<p>The party that prepares the bylaws should be clarified, but in the law it should be approved by the Council of Ministers.</p>	<p>The article should be amended as follows (the Commander of the Forces shall prepare the bylaws of this law to be promulgated by the Council of Ministers.)</p>
<p>Article 28 Enforcement of the Law of Service in the Security Forces <i>Subject to the provisions of this Law, provisions of the Law of Service in the Security Forces shall be applicable to the personnel and officers of the Forces in terms of appointment, seniority, promotion, delegation, assignment, transference, secondment, scholarships, salaries, vacations, decorations, badges, medals, retirement on pension, termination of service and any other issue, regarding which a special provision is not stated under this Law</i></p>	<p>It should be reiterated here that the main document is the law of Service in the Palestinian Security Forces and the secondary law is this draft. Therefore, the draft law should not contradict the Law of Service in the Security Forces. The rank of non-commissioned officers when listing members of the National Security Forces.</p>	<p>This article should be amended as follows (Provisions of the Law of Service in the Security Forces number (8) of 2005 shall be applicable to the personnel, non-commissioned officers, and officers of the Forces in terms of appointment, seniority, promotion, delegation, assignment, transference, secondment, scholarships, salaries, vacations, decorations, badges, medals, retirement on pension, termination of service and any other issue, regarding which a special provision is not stated under this Law.) The rank of non-commissioned officers should be added when listing the members of the National Security Officers.</p>