

In the past, the common view was that the office of the State Comptroller is a toothless institution, in the sense that it lacks the authority to enforce its recommendations by imposing sanctions. [...] Yet, this lack of authority is not a vulnerability but a source of strength. Indeed, the lack of authority to impose sanctions is the price the State Comptroller must pay for the enormous moral authority he enjoys.

[Justice Yoram Danziger in HCJ 3989/11, *The Temple Mount Trustees Movement v. State Audit Affairs Committee of the Knesset*, section 11 (Dec. 27, 2012)]

## **The Role of the State Comptroller of Israel in Combating Government Corruption and Promoting Moral Integrity**

Yoram Rabin\* & Alon Rodas\*\*

### **I. Introduction**

#### **1. Supreme Audit Institutions: General Review and Main Functions**

Most countries have established, either in their constitution or through legislation, an independent institution outside of the executive charged with the responsibility and the authority to oversee the accounts and operations of the executive branch. These institutions are collectively known as “supreme audit institutions” (SAIs). They come in different forms and under various names. Most of them are named “auditing institutions,”<sup>1</sup> others “judicial auditing tribunals,”<sup>2</sup> and yet others “state comptrollers.”<sup>3</sup> SAIs are important watchdogs promoting accountability, supervising and controlling the conduct of public officials, elected officials, and government authorities.

---

\* Yoram Rabin, Professor of Law, is President of the College of Management Academic Studies, Israel. Prof. Rabin served as the Legal Advisor of the Israeli State Comptroller between 2016 and 2019.

\*\* Alon Rodas holds a Master of Laws degree (LL.M.). He is adjunct lecturer at Haim Striks Faculty of Law, College of Management Academic Studies, Israel, and has served as advisor of the Director General of the Israeli State Comptroller between 2018 and 2020.

<sup>1</sup> For example: Office of Auditor General (Argentina); Auditor General (Cyprus); State Audit Office (Hungary); General Audit Office (Netherlands). The titles for constitutionally established SAIs are taken from Elkins and Ginsburg, *Characteristics of National Constitutions*.

<sup>2</sup> For example: Court of Audit (Austria); Court of Accounts (Portugal); Tribunal of Accounts (Uruguay).

<sup>3</sup> For example: Comptroller General of the Republic (Chile); Comptroller and Auditor General (India).

The first signs of modern state auditing appeared in the 18th and 19th centuries, mostly as a result of two socio-political changes.<sup>4</sup> One was the collapse of totalitarian regimes and the slow emergence of democracies, alongside the increased recognition of the need for public accountability. In non-democratic regimes, the public administration was an instrument used by the rulers to carry out their wishes; in democratic countries, there was a growing perception that the public administration owed a duty of loyalty to the citizens. The second was the development of the welfare state and the expansion of state services provided to citizens, which increased bureaucratic burden and regulation, as the public administration became inseparable from the citizens' daily lives.<sup>5</sup> Although citizens in the welfare state benefit from services, the great power given to the executive authority and its branches, and the possibility of abuse of power, increase the need for external supervision. This is what has led to the establishment of SAIs. The International Organization of Supreme Audit Institutions (INTOSAI), founded in 1953 following the lessons learned from World War II,<sup>6</sup> is the worldwide federation of SAIs, which operates as an umbrella organization for the external government audit community.<sup>7</sup> INTOSAI created, among others, the Framework of Professional Pronouncements (IFPP),<sup>8</sup> which contains three categories of professional pronouncements: Principles,<sup>9</sup> Standards,<sup>10</sup> and Guidance.<sup>11</sup>

The scope of the aspects examined by SAIs has expanded over the years, and the purpose of the state audit has changed accordingly. In the not-too-distant past, SAIs have conducted mainly financial regularity audits, which included document verification and examination of balance sheets and financial statements. In the modern era, especially after World War II, the scope of state audits expanded from checking financial regularity to the auditing of expenses and reviewing aspects of economy,

---

<sup>4</sup> For further discussion of the development of SAIs, see Rabin, Mersel and Rodas, *Auditing*, 1–12.

<sup>5</sup> Cassese, *The Administrative State in Europe* 57; Waldo, *THE ADMINISTRATIVE STATE*.

<sup>6</sup> After World War II, the representatives of several audit institutions met in Switzerland and decided to establish a forum of institutions engaged in government audit. In 1953, the forum held its first conference, in Havana, Cuba. See the International Organization of Supreme Audit Institutions, *INTOSAI: 50 Years (1953-2003)* 14 (2004).

<sup>7</sup> At the time of its foundation, INTOSAI had 34 members. At present, INTOSAI consists of 195 Full Member SAIs from countries that are Member States of the United Nations or any of its specialized agencies, 5 Associate Members, and 2 Affiliate Members.

<sup>8</sup> Formal and authoritative announcements or declarations of the INTOSAI Community.

<sup>9</sup> INTOSAI Principles (INTOSAI-P) consist of founding and core principles. The founding principles have historical significance and specify the role and functions that SAIs should aspire to.

<sup>10</sup> The International Standards of Supreme Audit Institutions (ISSAI) are the authoritative international standards on public sector auditing.

<sup>11</sup> The INTOSAI Guidance (GUID) was developed by INTOSAI to support the SAIs in the implementation of ISSAIs in practice.

efficiency, and effectiveness.<sup>12</sup> Modern state audit is not limited to financial audit and the production of accounting reports; it now examines the performance quality of the government agencies' work and the legality of government activities.<sup>13</sup>

Today, SAIs are important watchdog agencies trusted with the supervision and control of the conduct of public servants and government authorities. They promote good governance, which includes transparency and political accountability, fairness and equity, efficiency and effectiveness, respect for the rule of law, and high standards of ethical behavior.<sup>14</sup> One of the most important functions of the SAIs is to make certain that executive authority entities operate professionally and with integrity, and that public servants do not abuse their status and authority.

SAI reviews during a state audit are distinguished from other types of reviews (such as judicial reviews and internal audits) by their status, goals, and methods. As a process, they are characterized by collection of information about the activities of the audited bodies and their assessment according to standards pertaining to various fields. The audit entails an independent examination of the actions taken by state institutions and government corporations. As national agencies that oversee government acts, SAIs can act to curb corruption.

## **2. Supreme Audit Institutions: Role of curbing corruption**

There is no agreed-upon definition of the term "corruption." According to a straightforward definition, corruption is "the abuse of public power for personal gain or for the benefit of a group to which one owes allegiance."<sup>15</sup> Government corruption includes various actions such as embezzlement of public funds, extortion, favoritism, unlawfully accepting and giving gifts, bribery, money laundering, and nepotism. These actions may be carried out in a planned and systematic way or occasionally, on a large or small scale, passively or actively.<sup>16</sup> This phenomenon is "considered a special case

---

<sup>12</sup> Elmer B. Staats, who headed the US General Accounting Office between 1966 and 1981, coined the phrase "the three Es" (referring to economy, efficiency, and effectiveness) as a description of these new areas of audit. See Ben-Porat, *BASIC LAW: THE STATE COMPTROLLER*, 4.

<sup>13</sup> ISSAI 300: Fundamental Principles of Performance Auditing.

<sup>14</sup> Rabin, Mersel and Rodas, *Auditing*, 1–12.

<sup>15</sup> Dye and Stapenhurst, *PILLARS OF INTEGRITY*, 2; For other definitions of the term corruption see Everett, Neu and Rahaman, *Accounting and the global fight against corruption*, 514; Klitgaard, *Bolivia: Healing Sick Institutions in La Paz*, 118. It proposes the following definition: C (Corruption) = M (Monopoly Power) + D (Discretion) – A (Accountability).

<sup>16</sup> Kayrak, *Evolving Challenges For Supreme Audit Institutions In Struggling With Corruption*, 61.

of particularly damaging activity both to public resources and to public trust,"<sup>17</sup> and often seen as a "social disease" that has a negative effect on many domains. Government corruption can lead to irresponsible use of resources, damage economic growth and the quality of life of the citizens, harm the rule of law and democracy, and reduce public trust in government.<sup>18</sup> Civil injustice, poverty, and at times arbitrary action by the government against citizens can also be linked to government corruption.

Although no institution, acting alone, can defeat corruption or even reduce it significantly, SAIs can be a powerful force in the fight against it.<sup>19</sup> According to the accepted view, the primary responsibility for reducing corruption by prevention or detection of corrupt acts rests with the administrative authorities entrusted with law enforcement, such as the police and the public prosecutor. Therefore, it is not one of the main tasks of SAIs, nor should it be. However, SAIs are willing to contribute to the ongoing struggle against corruption.<sup>20</sup> For example, the 16th International Congress of Supreme Audit Institutions (INCOSAI), held in Montevideo, Uruguay, in 1998, was devoted partly to preventing and detecting fraud and corruption. The Uruguay INCOSAI adopted the following accords: "SAIs agree that fraud and corruption are significant problems affecting all countries in varying degrees and that the SAIs can and should endeavor to create an environment that is unfavorable to fraud and corruption".<sup>21</sup> This approach is explicitly reflected in the INTOSAI Professional Pronouncements.<sup>22</sup> INTOSAI Principle 12 added that SAIs should be responsive to

---

<sup>17</sup> Reichborn-Kjennerud, Carrington, et al, SUPREME AUDIT INSTITUTIONS' ROLE IN FIGHTING CORRUPTION, 2.

<sup>18</sup> Mauro, *Corruption and Growth*, 681.

<sup>19</sup> Cooperation between various institutions also can promote the fight against corruption. For the cooperation between SAIs and parliaments, see: Stapenhurst and Titsworth, *Parliament and Supreme Audit Institutions*, 106. Another way to enhance the effectiveness of the fight against government corruption and increase good governance is to mobilize the public. For example, public participation in the audit process, by allowing the public to contact the audit institution, even anonymously, and report improper behavior of government officials is an effective tool for identifying suspected acts of corruption. See: Armstrong, CITIZEN ENGAGEMENT PRACTICES BY SUPREME AUDIT INSTITUTIONS, 41–50.

<sup>20</sup> Borge, THE ROLE OF SUPREME AUDIT INSTITUTIONS (SAI'S) IN COMBATING CORRUPTION, 8.

<sup>21</sup> XVI INCOSAI UREGUAY 1998 (DRAFT OF ACCORDS), 4 (1998). Available at: [https://1997-2001.state.gov/global/narcotics\\_law/global\\_forum/F410k.pdf](https://1997-2001.state.gov/global/narcotics_law/global_forum/F410k.pdf).

<sup>22</sup> GUID 5270 - Guideline for the Audit of Corruption Prevention, Endorsed in 2016 as ISSAI 5700 - Guideline for the Audit of Corruption Prevention in Government Agencies. With the establishment of the IFPP, it was renamed GUID 5270. Available at: <https://www.issai.org/wp-content/uploads/2019/08/GUID-5270-Guideline-for-the-Audit-of-Corruption-Prevention.pdf>; ISSAI 4000 - Compliance Audit Standard, including the following Requirement: "In conducting compliance audits, if the auditor comes across instances of non-compliance which may be indicative of unlawful acts or fraud, s/he shall exercise due professional care and caution and communicate those instances to the responsible body. The auditor shall exercise due care not to interfere with potential future legal

changing environments and emerging risks. Subsection (3) of that principle states that “SAIs should evaluate changing and emerging risks in the audit environment and respond to these in a timely manner, for example by promoting mechanisms to address financial impropriety, *fraud and corruption*” (emphasis added).<sup>23</sup>

Although preventing corruption may not be an explicit responsibility of most SAIs, audits may detect acts of corruption such as fraud and abuse.<sup>24</sup> According to *Stapenhurst and Titsworth*, the main contribution of SAIs to preventing corruption is the psychological factor of deterrence, together with required reporting of criminal and corrupt activity in the public sector.<sup>25</sup> *Stapenhurst and Titsworth* noted that increasing number of SAIs are required to report criminal and corrupt behavior in the public sector,<sup>26</sup> and that INTOSAI showed increasing interest in corruption and fraud.<sup>27</sup> Another contribution of SAIs lies in improving overall transparency and accountability by supporting and creating an environment that limits the opportunity for acts of corruption and promoting a climate of good governance.<sup>28</sup>

### 3. The Israeli SAI

The State of Israel created a Supreme Audit Institution shortly after its establishment, in 1948. The new Israeli SAI was formed as a State Comptroller whose mandate and powers were enshrined in the State Comptroller Law (1949).<sup>29</sup> In 1958, the State Comptroller law of 1949 was integrated with several amendments to that law and became the State Comptroller's Law, 1958 [consolidated version].<sup>30</sup> In 1988, the Israeli Parliament (hereinafter, the Knesset) enacted Basic Law: The State Comptroller that granted constitutional status to the Comptroller's duties and powers.<sup>31</sup> The Basic Law

---

proceedings or investigations. Available at: <https://www.issai.org/wp-content/uploads/2019/08/ISSAI-4000-Compliance-Audit-Standard.pdf>.

<sup>23</sup> INTOSAI-P - 12 - The Value and Benefits of Supreme Audit Institutions – making a difference to the lives of citizens, Available at: [The Value and Benefits of Supreme Audit Institutions – making a difference to the lives of citizens | IFPP \(issai.org\)](https://www.issai.org/wp-content/uploads/2019/08/ISSAI-4000-Compliance-Audit-Standard.pdf).

<sup>24</sup> Stapenhurst and Titsworth, *Parliament and Supreme Audit Institutions*, 107.

<sup>25</sup> Stapenhurst and Titsworth, *Parliament and Supreme Audit Institutions*, 107.

<sup>26</sup> The following countries were mentioned in the study: Bhutan, China, the Czech Republic, Estonia, Germany, India, Indonesia, Lithuania, Malaysia, the Netherlands, the Philippines, Romania, the Slovak Republic, South Africa, Spain, Sweden, and the United States.

<sup>27</sup> Stapenhurst and Titsworth, *Parliament and Supreme Audit Institutions*, 108.

<sup>28</sup> Reichborn-Kjennerud, Carrington, et al, SUPREME AUDIT INSTITUTIONS' ROLE IN FIGHTING CORRUPTION, 4.

<sup>29</sup> The State Comptroller Law (1949), SH 8, 5 May 1949.

<sup>30</sup> Hereinafter, State Comptroller Law.

<sup>31</sup> Mersel, Guttman and Rodas, *From State Comptroller to National Human Rights Institution* 175: “From that point on the State Comptroller became a ‘constitutional institution’ that plays an important role in the protection of Israeli democratic values.”

and the State Comptroller Law, amended over the years, govern the operation of the State Comptroller and describe in detail the Comptroller's powers and duties.

The State Comptroller of Israel has several important functions, including the task of maintaining good governance and promoting public accountability. Below we focus on the Comptroller's role in combating government corruption and promoting moral integrity in the public sector.

## II. Moral Integrity Audit

The Comptroller's authority to conduct a "moral integrity" audit was granted by the Knesset in an amendment to the State Comptroller law from 1952. The new authority was not part of the original 1952 bill, which dealt with other issues, and was added to the bill at the suggestion of a member of the opposition, which gained wide support. In the debate held on the bill, several Knesset members argued that the law should entrust the State Comptroller with adequate powers to fight corruption.<sup>32</sup> In view of these arguments, the final amendment enacted by the Knesset, provided that the State Comptroller is authorized to examine whether the audited bodies have operated in a "morally irreproachable manner".<sup>33</sup> The first State Comptroller of Israel, *Siegfried Mozes*, was aware of the new tasks imposed on him with the addition of the "moral integrity" term to the law. In the first annual report following the amendment, he recognized the vagueness of the term and the wide margin of consideration that will be

---

<sup>32</sup> At this debate, MK Binyamin Avniel, from the Herut party, said: "According to section 8 of the existing law, the Comptroller is given the honorable task of checking whether the ministries have been managed economically and efficiently. This section remains unchanged. Incidentally, I see no reason why not add after the words 'if they have been managed economically and efficiently' the words 'in accordance with the ethical norms required of public employees.' I don't need to tell the members of the Knesset about the rumors of deficiencies and even corruption of a part, or as has been noted, even a small part of the system can cause damage. Why hand over this matter to the inspection and review of another mechanism? Why not hand it over to a high and independent authority? Why don't we also entrust him with the task of investigating and checking all instances where there is suspicion that something is wrong with respect to public morality?" MK Hanan Rubín from the Mapam party also referred to the role of the State Comptroller in the fight against corruption and stated: "In no organization and in no country, can corruption and dishonesty be absolutely prevented. But what can be promised? That no phenomenon of this type will be swept under the carpet, but that the public will know. [...] It must be reiterated: if the State Comptroller has a function based on this law, this is not merely an administrative role but rather to prove to the general public that there is an institution in the country, independent of the government, independent of the parties, that operates according to its own understanding, and this is the institution that safeguards ethical norms in the work of government offices, and he is the one who makes sure that issues come to the public's attention."

<sup>33</sup> See Section 1(c), State Comptroller Law (amendment), 1952, SH 104, 5 August 1952.

required of the Comptroller. He also made initial comments on the directions that auditing was likely to take. He stressed that auditing would not stop at civil servants' motives because improper deeds may be the result of proper intentions. He stressed that public employees should refrain from gaining benefits that they may have gained as ordinary citizens to avoid even the appearance of impropriety. He warned against an "end justifies the means" attitude that may compromise the moral integrity of the public agency.<sup>34</sup> This approach is far beyond what was considered to be the scope of SAI audits internationally in the early years of the second half of the 20th century.<sup>35</sup>

The authority to undertake a moral integrity audit was also enshrined in the 1988 Basic Law: The State Comptroller. Section 2(b) of the Basic Law lists the aspects of the activities that are to be audited:

The State Comptroller shall examine the legality, *moral integrity*, orderly management, efficiency and economy of the audited bodies, and any other matter he deems necessary. (emphasis added)

This section makes the moral integrity and legality of the actions of audited bodies part of the core of the Israeli SAI's work.

Although the majority of SAIs recognize the importance of fighting corruption and try to contribute to this struggle, only a small number of SAIs have been authorized by explicit legislation to examine whether the audited bodies have operated in a morally irreproachable manner. Most of the SAIs that conduct moral integrity-oriented audits examine this aspect within the framework of performance or compliance audits.<sup>36</sup> This course of action makes sense because government corruption threatens to lead to irresponsible use of resources and damage the economic growth of the country and the quality of life of the citizen.<sup>37</sup> However, the explicit stipulation in Israeli legislation that the State Comptroller should examine moral integrity is unique.<sup>38</sup>

---

<sup>34</sup> Navot, *State Comptroller Eliezer Goldberg and the Examination of the Moral Integrity of the Public Service*.

<sup>35</sup> Nebenzahl, *The Significance of Moral Integrity in the State Comptroller Law*, 133.

<sup>36</sup> Bostan, Firtescu and Nicula, *The Role of Supreme Audit Institutions in Promoting and Strengthening Ethics and Integrity in the Public Sector* 46–48; Borge, *THE ROLE OF SUPREME AUDIT INSTITUTIONS (SAI'S) IN COMBATING CORRUPTION*, 3.

<sup>37</sup> Mauro, *Corruption and Growth*, 681.

<sup>38</sup> To the best of our knowledge, Israel is the only country where statutory law, as interpreted, grants such wide and far-reaching authority to its SAI.

The term "moral integrity" is mentioned five times in the Basic Law and the State Comptroller Law, but no definition of that concept appears in either law. There are, however, some references to the meaning of the term in the Supreme Court rulings and the academic legal literature. In the *Sheves* case, Chief Justice *Aharon Barak* noted that "moral integrity" refers to "a public servant acting in a fair and honest manner."<sup>39</sup> According to the late Justice *Haim Cohn*, there are three types of infringements of "moral integrity:" criminal, disciplinary, and moral.<sup>40</sup> Justice *Miriam Ben-Porat*, a former State Comptroller, wrote that "the term 'moral integrity' expresses the moral and fair behavior befitting public servants and holders of public office."<sup>41</sup> As we elaborate below, when suspicions arise about possible criminal conduct, the State Comptroller is required to bring those suspicions to the attention of the Attorney General because the Comptroller has no authority to act in these areas. But any other activity that amounts to a deviation from the behavior expected from a public servant can be considered to infringe on moral integrity. As defined by a leading Israeli scholar on this matter, the State Comptroller's role is to investigate moral integrity "in the 'twilight zone,' those gray areas between criminal offenses and indications of faulty or inappropriate administration."<sup>42</sup> Based on the various approaches, violation of moral integrity can be defined as any criminal or disciplinary offense or action that does not conform to the rules of ethics and the basic principles of public law, such as actions carried out without authority, arbitrarily, discriminatingly, partiality, in bad faith, based on extraneous considerations, unreasonable, disproportionate, or unfair.

The above definitions suggest that behavior consistent with moral integrity is the opposite of corrupt behavior. Corruption can take many forms, and its definition depends, among others, on the social culture that defines what is allowed and what is forbidden in society, both legally and ethically. In government, corruption includes the use of power to obtain personal gain or benefit a group to which the holder of power owes allegiance,<sup>43</sup> whether it is planned and systematic or it takes place occasionally, on a large or small scale, passively or actively.<sup>44</sup>

---

<sup>39</sup> F.H (Crim.) 1397/03 *State of Israel v. Sheves*, IsrSC 59(4) 385, 410 (2004).

<sup>40</sup> Cohn, *Reflections on Moral Integrity*, 412.

<sup>41</sup> Ben-Porat, BASIC LAW: THE STATE COMPTROLLER, 230.

<sup>42</sup> Friedberg, *The Place of the State Audit in the examination of moral integrity in Israel's Public Sector* 274–279.

<sup>43</sup> Dye and Stapenhurst, PILLARS OF INTEGRITY, 2.

<sup>44</sup> Kayrak, *Evolving Challenges For Supreme Audit Institutions In Struggling With Corruption*, 61.



Since the early days of the State of Israel, State Comptrollers have examined moral integrity and published scathing audit reports regarding, for example, financial and political collusion, political appointments and other types of nepotism, abuse of public funds, and conflicts of interest. These moral integrity audits promote the fight against public corruption in two ways. First, the audit exposes the acts of corruption and brings them to the public's attention. Second, it promotes the formulation of appropriate norms of behavior for public officials and the creation of an adequate governance culture that denounces corruption. In this way, moral integrity state audits contribute to the eradication of corruption both by deterrence and by educating public servants.

### III. Real-time Auditing

Throughout their history, most SAIs have focused on two types of audits of the executive branch:<sup>45</sup> pre-audit (also called *a priori*, *ex ante*, or preventive audit) and the more common post-audit or after-the-fact audit (also known as *ex post* audit). The two types are described in the Lima Declaration of Guidelines on Auditing Precepts of 1977 issued by INTOSAI.<sup>46</sup> Real-time auditing is a departure from traditional SAI practice because it audits the work of government agencies not retrospectively but as it unfolds.<sup>47</sup>

Neither Basic Law: The State Comptroller nor the State Comptroller Law makes any reference to the Comptroller's authority to conduct an audit in the course of unfolding events. Nevertheless, given the Comptroller's wide-ranging authority, legal status, and independence, and in the absence of any limitation or prohibition to conduct a real-time audit, the general assumption is that the State Comptroller of Israel has the

---

<sup>45</sup> This concerns the timing of the execution of the audit, not the type of the audit (financial, compliance, controls, performance, forensic, computer, etc.).

<sup>46</sup> The declaration states that each country should choose whether or not its SAI can conduct pre-audits. By contrast, "post-audit is an indispensable task of every Supreme Audit Institution regardless of whether or not it also carries out pre-audits". See Lima Declaration, 1977, section 2(4).

<sup>47</sup> Explicit recognition was granted to real-time audits only in 2013, in ISSAI 100, which set out the fundamental principles of public sector auditing. Section 23 of ISSAI 100 provides that: "SAIs may carry out audits or other engagements on any subject of relevance to the responsibilities of management and those charged with governance and the appropriate use of public resources. *These engagements may include* reporting on the quantitative outputs and outcomes of the entity's service delivery activities, sustainability reports, future resource requirements, adherence to internal control standards, *real-time audits of projects or other matters*. SAIs may also conduct combined audits incorporating financial, performance and/or compliance aspects" (emphasis added).

authority to determine the schedule of an audit, including the authority to conduct real-time audits.<sup>48</sup>

The current view in Israel on this issue is that the decision to initiate an audit during or after an event is one of many considerations the Comptroller must take into account when deciding to initiate an audit. It follows that although Comptrollers can instruct their staff to conduct a real-time audit, they do so cautiously to refrain from interfering with the audited bodies exercising their authority and meeting their responsibilities.<sup>49</sup>

Addressing the connection between real-time audits and the prevention of corruption, Josef *Haim Shapira*, former State Comptroller of Israel, concluded as follows:

When the Audit Institution receives information from the public, or when the Audit Institution identifies “warning signs” as an observer on the sidelines, it has no other choice but to conduct a real-time audit [...] For many matters concerning the public sphere, there is not always a directly injured party who will bring his complaints to the court and [...] In the absence of an injured party who refers to the courts as stated, real-time intervention by the State Comptroller, based on information he received about serious deficiencies that require immediate intervention, is the most effective way to protect the public interest and prevent corruption or grave irreversible damage originating from an essential defect that was identified.<sup>50</sup>

A distinct advantage of real-time audits, which serves as a justification for them, is their contribution to promoting moral integrity and preventing corruption. An after-the-fact audit does not help prevent the prohibited behavior, and often the discovery of a defect after the prohibited act has been completed does not serve to correct it. Real-time audits have the advantage of early detection of the defect, whereas after the completion of the act it may not be possible to discover and prevent it.

---

<sup>48</sup> This assumption is consistent with international standards. The Mexico Declaration on SAI Independence from 2007 (formerly known as ISSAI 10) determined that “SAIs are free to decide on the timing of their audit reports except where specific reporting requirements are prescribed by law.”

<sup>49</sup> For a detailed discussion of real-time state audits in Israel, see Rabin and Peled, *Real-Time Audit of Government Operations*.

<sup>50</sup> Nahir, *Questions and answers with the State Comptroller and Ombudsman of Israel*, 36–37.

#### IV. Uncovering Suspected Criminal Acts

In the course of an audit, the SAI staff often uncovers facts suggesting the likelihood of criminal conduct. INTOSAI has taken the position that “the core mission of its members is government audit [...] SAIs are not a substitute for law enforcement or public prosecution agencies. If it is part of their statutory mandates, SAIs may assist those institutions in fighting crime as part of their audit activity; however, they must never be called upon to replace those institutions.”<sup>51</sup>

In a manner consistent with INTOSAI position, the Israeli State Comptroller does not have the legal authority to carry out any investigatory activity or criminal enforcement.<sup>52</sup> According to Section 14(c) of the State Comptroller Law:

If the audit work gives rise to a suspicion that a criminal act has been committed, the Comptroller shall notify the Attorney General of the matter and may do so if the audit work gives rise to a suspicion that a disciplinary infraction, as defined by law, has been committed; the Attorney General will inform the Comptroller and the Committee of the manner in which the matter was handled within six months of being notified.

Over the years and based upon Section 14(c) of the State Comptroller Law, when suspicion of criminal acts arose during an audit, these were brought before the Attorney General. In some past cases, the notification was followed by the Attorney General ordering an investigation, and some investigations have led to criminal trials<sup>53</sup> or disciplinary hearings.<sup>54</sup> By using this mechanism wisely, the State Comptroller can

---

<sup>51</sup> The International Organization of Supreme Audit Institutions, INTOSAI: 50 Years (1953-2003) 147 (2004); Borge, THE ROLE OF SUPREME AUDIT INSTITUTIONS (SAI'S) IN COMBATING CORRUPTION, 8.

<sup>52</sup> This lack of authority is not unique to Israel. Many countries have defined procedures for dealing with suspicions of criminal conduct that arise during the work of SAIs. See Reichborn-Kjennerud, Carrington, et al, SUPREME AUDIT INSTITUTIONS' ROLE IN FIGHTING CORRUPTION.

<sup>53</sup> See, e.g., the widely covered court decision in the criminal prosecution of the Director General of the Interior Ministry at the time, Aryeh Deri, CrimC 1872/99 (Jerusalem) *State of Israel v. Deri* (September 24, 2003); see also, CrimC (Tel Aviv) 66313-12-15 *Hevroni v. State of Israel* (December 15, 2016).

<sup>54</sup> For further discussion of section 14(c) of the State Comptroller Law, see Rabin and Winograd, *State Audit Work that Raises a Suspicion of Criminal Conduct – the Case of Israel*.

initiate processes that contribute significantly to the fight against corruption, making those who commit crimes face the appropriate legal consequences.

## V. The Authority to Issue an Order to Protect Whistleblowers

The Fifth Amendment to the State Comptroller Law, from 1971, added a seventh chapter to the law that assigned yet another function to the State Comptroller: investigation of complaints from the public.<sup>55</sup> This function was also incorporated into Basic Law: The State Comptroller. Section 4 of the Basic Law stating:

The State Comptroller shall investigate complaints from the public about bodies and persons, as provided by or under the law; in this capacity the State Comptroller shall bear the title of Ombudsman.

Similarly to judicial instances, an Ombudsman has the function to protect a person's rights by examining the issues arising between the individual and public authorities. Any person may submit a complaint to the Ombudsman<sup>56</sup> against an audited body or employee, official, or holder of any position in such a body.<sup>57</sup>

Another amendment to the State Comptroller Law, from 1981, expanded the Ombudsman's authority to protect whistleblowers, i.e., employees who, in good faith and according to proper procedure, have exposed an act of corruption, a serious breach of the law, or a serious violation of the rules of proper administration in the workplace, when such actions result in their victimization or dismissal by their superiors.<sup>58</sup> The same amendment also authorized the Ombudsman to protect internal auditors who have been victimized after dutifully meeting their professional responsibilities.<sup>59</sup>

According to section 45C of the law, Ombudsmen are authorized to issue any order they deem correct and just, including provisional orders, to protect employee rights. If the whistleblower is dismissed for disclosing the corruption, the Ombudsman is authorized to revoke the dismissal or to award special compensation to the employee, in money or rights. The Ombudsman is also authorized to “order the transfer of the

---

<sup>55</sup> Becker, *The Birth of the Modern Ombudsman Concept*.

<sup>56</sup> Section 33, State Comptroller Law.

<sup>57</sup> Section 36, State Comptroller Law.

<sup>58</sup> Section 45A(1), State Comptroller Law.

<sup>59</sup> Section 45A(2), State Comptroller Law.

employee to another post in the service of his employer.” Furthermore, as part of the authority to issue orders, the Ombudsman tends to issue provisional orders to compel the employer to pay compensation should the employees choose to resign because of the harm they suffered following the exposure of the corruption.<sup>60</sup>

The information provided by whistleblowers is one of the most useful sources for detecting fraud and corruption.<sup>61</sup> The fight against corruption is greatly assisted by the willingness of internal people, who are part of the governing system, to warn of acts of corruption.<sup>62</sup> The Israeli Ombudsman is the address for employees who seek protection against harassment because of the disclosure of an act of corruption, a violation of the law, or an injury to proper administration.

## VI. Audits of Political Parties and Candidate Financing

Section 5 of the Basic Law states that “the State Comptroller shall carry out other functions as provided by law.” Over time, and by virtue of this section, the Knesset has expanded the State Comptroller’s roles by assigning additional functions that deviate from the classic definition of state auditing. For example, various statutes grant the State Comptroller the authority to audit election campaigns and party financing.<sup>63</sup> Under these statutes, the State Comptroller can review the financial records of parties running in Knesset elections, factions and lists participating in local authority elections, candidates seeking to be elected to head regional councils, and candidates running in party primaries. The Comptroller can also audit the current accounts of parties already represented in the Knesset. The regulations and limitations applying to persons running for office are found in the relevant statutes and in the instructions that the State Comptroller publishes occasionally. As part of this audit, the Comptroller examines whether the parties and candidates have managed their finances in accordance with the

---

<sup>60</sup> For example, in 2019, 57 complaints were filed by employees who claimed that their superiors had infringed their rights as a result of their exposing acts of corruption. Three complaints received permanent protection orders from the Ombudsman and six received provisional protection orders. The provisional orders were designed to prevent harm to the complainants until the completion of the investigation (2019 Report of the Commissioner for Public Complaints, Annual Report no. 46, p. 30, 102, published 30 June 2020). See also Nahir, *Questions and answers with the State Comptroller and Ombudsman of Israel*, 13-17.

<sup>61</sup> Dye, *Corruption and Fraud Detection by Supreme Audit Institutions*, 313.

<sup>62</sup> Barak-Erez, *Administrative Law and the Struggle Against Government Corruption*, 690.

<sup>63</sup> Parties Financing Law, 1973; Local Authorities Law (Election Financing), 1993; Parties Law, 1992.

law, whether expenditures have not exceeded the maximum allowed, and whether contributions met the limitations set by law, determined based on the identity of the contributors and the sums contributed. The Comptroller's findings are published in a report showing whether each party and candidate acted in accordance with the law. The Comptroller can subsequently levy fines on candidates running in party primaries as well as on the parties and lists that did not abide by the directives of the law. The Comptroller may also revoke some of the state funding allocated to those parties or factions.

An example of the importance of auditing political parties to prevent government corruption in Israeli elections is the verdict in the *Pinhasi* case. MK *Pinhasi* was prosecuted for offenses committed during an election campaign, including, among others, charges of improper use and accounting for money received as party financing before the elections,<sup>64</sup> and false reporting to the State Comptroller to receive the financing funds provided to political parties.<sup>65</sup> Donations to political bodies and funding of parties and candidates, especially during elections, are fertile ground for corrupt actions at the intersection between capital and power (crony capitalism). Thus, the authority given to the State Comptroller to conduct an audit in the field of political parties and candidate financing effectively promotes the effort to curb corruption.

## VII. Prevention of Conflicts of Interest: Ministers and Deputy

### Ministers

The actions of public officials in a conflict of interest can compromise their moral integrity and even amount to an act of corruption that exceeds the criminal threshold. Israeli administrative law prohibits being in a situation where a conflict of interest may arise, to "prevent evil before it happens."<sup>66</sup> However, despite the great power vested in ministers and deputy ministers, for many years no comprehensive and detailed arrangement was established regarding the limitations and prohibitions that apply to these officials to prevent a possible conflict of interest.

---

<sup>64</sup> Shamgar, *Judicial Review of Knesset Decisions by the High Court of Justice* 46.

<sup>65</sup> HCJ 1843/93 *Pinhasi v. Knesset Israel*, IsrSC 49(1) 661 (1995).

<sup>66</sup> HCJ 531/79 *Likud Faction in Petach Tikvah Municipality v. Petach Tikvah Municipal Council*, IsrSC 34(2) 566, 571 (1980)

In 1977, the government adopted a set of standards known as the Rules of Ethics for the Prevention of Conflicts of Interest of Ministers and Deputy Ministers (hereinafter, “the Rules”).<sup>67</sup> Based on recommendations included in the Report of the Public Committee headed by late Judge Shlomo Asher, the Rules consist of provisions for the conduct of ministers and deputy ministers when discharging their duties, primarily the obligation of discharging their duties in fairness and without bias, the avoidance of conflicts of interest or even a semblance thereof, and the prohibition on engaging in additional occupations. The Rules also established restrictions on the management of the financial affairs by ministers and their deputies, as well as the control of assets, including those held by their families. Furthermore, the Rules prescribe that ministers and their deputies be subject to the supervision of the State Comptroller in complying with these provisions. The rules even require the State Comptroller to appoint a committee authorized to discuss a minister's or deputy minister's request to receive a permit to deviate from the Rules (the Permits Committee).<sup>68</sup> The State Comptroller's part in verifying compliance with the Rules is significant and an important public pillar in maintaining the moral integrity of ministers and deputy ministers whose conduct is purported to serve as an example to the public.

### **VIII. The State Comptroller of Israel: A Pillar of Good Governance and Moral Integrity**

SAIs are important gatekeepers whose roles have evolved over the years, and today they are no longer bound by the traditional role of financial regularity audit. The first trend of expansion of the functions of the State Comptroller was in the direction of the performance audit and assessment of the quality and the legality of government agency activities. A second trend concerns SAIs developing a growing awareness of their role in curbing corruption. Their public status, the powers granted to them by law, and the international Professional Pronouncements make it possible for them to contribute to this effort.

---

<sup>67</sup> The rules have since been revised on occasion. The version of the Rules currently effective is titled Rules of Ethics for the Prevention of Conflicts of Interest of Ministers and Deputy Ministers, 2003.

<sup>68</sup> Sec. 18-19 of the rules.

The Israeli experience provides instructive insights in this regard. First, the decision of the Knesset to explicitly authorize the State Comptroller to conduct moral integrity audits and the additional duties assigned to the Comptroller over the years reflect the idea that the Comptroller plays an essential role in the fight against corruption. These authorities also underscore the understanding that curbing corruption is a duty the Comptroller has toward the Knesset and the public. Thus, parliaments can act to enshrine in legislation the notion that SAIs are expected to take a significant part in the fight against corruption. Second, the duties assigned to the State Comptroller of Israel were spelled out before the fight against corruption by SAIs became a global trend. Therefore, the State Comptroller of Israel has developed unique experience in fighting corruption that can be of interest to other SAIs.

Our discussion of the State Comptroller of Israel has shown the appropriateness of the powers granted to this office for promoting lawful administration and the uprooting of improper government conduct. This review demonstrates how SAIs can become an important constitutional player in curbing corruption and a pillar of good governance and moral integrity.

### **List of literature**

Armstrong Elia Yi (ed.), *CITIZEN ENGAGEMENT PRACTICES BY SUPREME AUDIT INSTITUTIONS* 41–50 (NEW YORK, 2013).

Barak-Erez Daphne, *Administrative Law and the Struggle Against Government Corruption*, 37 *MISHPATIM* 667–700 (2007) (in Hebrew).

Becker Isaac, *The Birth of the Modern Ombudsman Concept*, 63 *ISRAEL JOURNAL OF STATE AUDIT* 115–123 (2018).

Ben-Porat Miriam, *BASIC LAW: THE STATE COMPTROLLER* (Jerusalem, 2005) (in Hebrew).

Borge Magnus, *THE ROLE OF SUPREME AUDIT INSTITUTIONS (SAI'S) IN COMBATING CORRUPTION* (9th International Anti-Corruption Conference, Durban, South Africa, 1999).

Bostan Ionel, Narcis Firtescu Bogdan and Cosmin Nicula Vasile, *The Role of Supreme Audit Institutions in Promoting and Strengthening Ethics and Integrity in the Public Sector: Possible Models and Tools to Follow*, 2 *JOURNAL FOR ETHICS IN SOCIAL STUDIES*, 43–52 (2018).

Cassese Sabino, *The Administrative State in Europe*, in *THE MAX PLANCK HANDBOOKS IN EUROPEAN PUBLIC LAW, VOLUME I: THE ADMINISTRATIVE STATE*, 57–97 (Oxford, 2017).



Cohn Haim H., *Reflections on Moral Integrity*, 2 MISHPAT UMIMSHAL - LAW AND GOVERNMENT IN ISRAEL, 403–442 (1995) (in Hebrew).

Dye Kenneth M., *Corruption and Fraud Detection by Supreme Audit Institutions*, in PERFORMANCE ACCOUNTABILITY AND COMBATING CORRUPTION, 303–321 (Anwar Shah ed., World Bank, Washington, DC 2007).

Dye, Kenneth M. and Stapenhurst Rick, PILLARS OF INTEGRITY: THE IMPORTANCE OF SUPREME AUDIT INSTITUTIONS IN CURBING CORRUPTION (The Economic Development Institute of the World Bank, Washington, DC 1998).

Elkins Zachary and Ginsburg Tom, *Characteristics of National Constitutions, Version 3.0., Comparative Constitutions Project* (2021). Last modified: May 20, 2021. Available at: [www.comparativeconstitutionsproject.org](http://www.comparativeconstitutionsproject.org).

Everett Jeff, Neu Dean and Rahaman Abu-Shiraz, *Accounting and the global fight against corruption*, 32 ACCOUNTING, ORGANIZATIONS & SOCIETY, 513–542 (2007).

Friedberg Asher, *The Place of the State Audit in the examination of moral integrity in Israel's Public Sector*, in THE STATE AUDIT IN ISRAEL – THEORY AND PRACTICE, 274–278 (Jerusalem, 3<sup>rd</sup> Edition, 1995) (in Hebrew).

Kayrak Musa, *Evolving Challenges For Supreme Audit Institutions In Struggling With Corruption*, 15 JOURNAL OF FINANCIAL CRIME, 60–70 (2008).

Klitgaard Robert E., *Bolivia: Healing Sick Institutions in La Paz*, in GOVERNANCE AND THE ECONOMY IN AFRICA: TOOLS FOR ANALYSIS AND REFORM OF CORRUPTION (Maryland, 1996).

Mauro Paolo, *Corruption and Growth*, 110 QUARTERLY JOURNAL OF ECONOMICS 681–712 (1995).

Mersel Elie P., Guttman Matan A. and Rodas Alon, *From State Comptroller to National Human Rights Institution – A Short but Necessary Path*, 48 ISRAEL YEARBOOK ON HUMAN RIGHTS 161–187 (2018).

Nahir David, *Questions and answers with the State Comptroller and Ombudsman of Israel, Judge (ret.) Joseph Haim Shapira*, 63 ISRAEL JOURNAL OF STATE AUDIT 5–44 (2018).

Navot Doron, *State Comptroller Eliezer Goldberg and the Examination of the Moral Integrity of the Public Service*, in OVERSEEING STATE AUTHORITIES (Jerusalem, forthcoming 2023) (in Hebrew).

Nebenzahl Yitzhak Ernst, *The Significance of Moral Integrity in the State Comptroller Law*, in AVRAHAM WEINSHALL – ANTHOLOGY OF ARTICLES IN HIS MEMORY 133–139 (Naftali Lifschitz, Yitzhak Ganon and Reuven Hecht, editors, Haifa, 1977) (in Hebrew).

Rabin Yoram, Mersel Elie P. and Rodas Alon, *Auditing*, MAX PLANCK ENCYCLOPEDIA OF COMPARATIVE CONSTITUTIONAL LAW, 1–12 (Rainer Grote, Frauke Lachenmann, Rüdiger Wolfrum eds., Oxford, 2020).

Rabin Yoram and Peled Roy, *Keeping it Real: Real-Time Audit of Government Operations and the Lessons to be Learned from Israel's Practice* (forthcoming 2023).

Rabin Yoram and Winograd Tehila, *State Audit Work that Raises a Suspicion of Criminal Conduct – the Case of Israel*, 63 ISRAEL JOURNAL OF STATE AUDIT 87–114 (2018).

Reichborn-Kjennerud Kristin, Carrington Thomas, et al, SUPREME AUDIT INSTITUTIONS' ROLE IN FIGHTING CORRUPTION (The 15th Biennial CIGAR Conference, 2015, Valletta, Malta, 2015).

Shamgar Meir, *Judicial Review of Knesset Decisions by the High Court of Justice*, 28 Israel Law Review, 43–56 (1994).

Stapenhurst Rick and Titsworth Jack, *Parliament and Supreme Audit Institutions*, in THE ROLE OF PARLIAMENT IN CURBING CORRUPTION 101–109 (Washington DC, 2006).

Waldo Dwight, THE ADMINISTRATIVE STATE: A STUDY OF THE POLITICAL THEORY OF AMERICAN PUBLIC ADMINISTRATION (NEW YORK, 1948).