



PALESTINE WHISTLEBLOWING OVERVIEW

This overview on whistleblowing in Palestine gives a first insight into the situation of whistleblowing in the country and aims to start a discussion on improved protection of whistle-blowers.

Whistleblowing is now a primary component in combating corruption, codified in International Law in 2003 under the United Nations Covenant Against Corruption (UNCAC)¹. It is impossible to consider anti-corruption policies without addressing the need to have legal structures in place that facilitate the reporting, exposure and prosecution of corruption within workplaces. Such is the importance of whistleblowing in this context.

The right to report corruption, and to be protected from reprisals stemming from exposing crimes, is guaranteed by international conventions and subject to advocacy campaigns by international non-governmental organisations. The role of whistle-blowers is derived from the practices of good citizenship, whereby the person exposing crimes sees their testimony as a civic duty, protecting public interest and trust.

The causes of promoting and protecting whistle-blowers have been taken up by a range of international organisations, often described as one of the most important tenets of the rights to freedoms of expression and opinion.² In spite of the increased legal parameters and advocacy on behalf of whistle-blowers internationally, the situation in the Palestinian Territories still lags behind. While there are vague references to the concept of whistle-blowers in some Palestinian legal texts, the current framework requires significant strengthening before reaching the level of international norms.

¹ United Nations Office on Drugs and Crime, 'United Nations Convention Against Corruption', New York, 2004

² Article 19, 'The Public's Right to Know: Principles on Freedom of Information Legislation', London, 1999

THE RISKS WHISTLE-BLOWERS FACE

One of the most significant issues regarding whistle-blowers in Palestine is the lack of knowledge of what the term means and what it entails. The key areas where this knowledge deficit can be seen are as follows:

1. Reporting corruption is considered taboo. The role of 'informers' in the Palestinian/Israeli conflict is mired in controversy and is of a particularly sensitive issue to Palestinians. The heart of the sensitivity stems from the role of Palestinian informers who helped the Zionist movement during the 1948 war, which 'contributed significantly to the conquest of the Galilee and the surrender of many villages in that area.'³ As a result, there is an inbuilt stigma of a Palestinian citizen who 'informs', the act of which is deeply political and problematic.
2. Those who have been reporting corruption have not been doing it in the public interest. Based on the reports compiled by the Advocacy and Legal Advice Centre (ALAC), a unit within the AMAN – Coalition for Integrity and Accountability, 51.5% of the testimonies given were by victims of corruption, not whistle-blowers.⁴ The victims would report crimes in the hope that they could rectify the damage done to them. More worryingly, other reports were made to settle scores or even fabricated. What the reporting of corruption crimes demonstrates is that the concept of whistleblowing as an action of public service has not been understood.

Other areas that adversely affect the efficiency of anti-corruption policies in the Palestinian Territories are of the perceptions of Palestinian citizens:

1. The perception of corruption. According to a poll in 2014 of Palestinian citizens in the West Bank, 80% of Palestinians believed the governing authority, the Palestinian Authority (PA), is corrupt.⁵ What is interesting is that the World Bank has reported significant progress made in the Palestinian Territories regarding combating corruption.⁶ This points to a lack of awareness of the effectiveness of the anti-corruption policies being implemented, and policies if highlighted, could help reduce dissatisfaction and civil unrest in the Palestinian Territories.⁷
2. The perception of lack of accountability. AMAN conducted a poll in 2013 that showed Palestinians were reluctant to report corruption because they believed that it would not result in punitive action.⁸ Primarily, this stemmed from the lack of action and transparency of cases taken against high-ranking government officials.⁹

³ Ron Dudai & Hillel Cohen (2007) 'Triangle of Betrayal: Collaborators and Transitional Justice in the Israeli-Palestinian Conflict', *Journal of Human Rights*, 6:1, 37-58

⁴ ALAC Annual report 2013

⁵ Palestinian Center for Policy and Survey Research, Palestinian public poll no.51, 2014, found online at: www.pcpsr.org/en/node/188; assessed on 7/12/15

⁶ World Bank. 2011. West Bank and Gaza - Improving governance and reducing corruption. Washington DC : World Bank found online at: <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/GovernanceReportWBGEngMay18,2011.pdf>, accessed on: 7/12/15

⁷ Safadi, Najwa S., and Margaret Lombe. "Exploring Factors Associated with Citizens' Perception of Their Political Environment: Evidence from Palestine." *J. Soc. & Soc. Welfare* 41 (2014): 159.

⁸ Public opinion poll on corruption and methods of combating it in the Palestinian occupied territory, 2013, AMAN, P.7.

⁹ AMAN, Promoting "Blowing the Whistle" on Corruption in Palestine, 2014, p.7

CURRENT LEGAL CONTEXT

The Palestinian Territories have legislation in place to combat corruption, codified in 2010 by an updated Anti-Corruption Law (ACL). Within the ACL, there is an attempt to introduce protection for whistle-blowers through its articles, the summaries of which are below:

Article 18: States that legal, employment and personal protection will be provided for witnesses, experts and reporting on corruption.

Article 19: States that any public employee aware of a crime must report it to the Anti-Corruption Commission (ACC) and that reporting a corruption cannot be used a reason to take disciplinary measures against the whistle-blower.

Article 22: The article states that any investigations opened from testimony given by a whistle-blower will be considered secret and will not be disclosed except by court decision.¹⁰

Despite the existence of laws pertaining to the protection of whistle-blowers, several legal issues remain: UN has reviewed the current ACL to see where the law fails to match the standard set forth by the UNCAC (of which Palestine became a signatory in 2014).

- The UN review¹¹ stated the while the law provides protection for the whistle-blower themselves, it does not provide protection for relatives or any other person who is close to the whistle-blower. This potentially places whistle-blowers families at risk of retaliation.
- The ACL does not provide the possibility of giving testimony through the use of communications technology, nor has it entered into agreements of the relocation of whistle-blowers.¹² Both of these stipulations are designed to protect those giving testimony, which in turn would promote whistle-blowers to come forward.

Other legal gaps remain however can be summarised as:

- The duty and protection of whistle-blowers is in reference to the *public sector only*. As references in the law clearly reference public offices and funds.¹³
- Conflicting legal articles in Palestinian law that hinder the reporting of corruption: Laws such as article 67 of the Civil Law consider it a violation to disclose certain types information by employees. AMAN indicate that this law is misinterpreted to the point that it prevents an employee from disclosing information pertaining to corruption crimes.¹⁴
- UN review identified that a model law that focuses on the protection of witnesses and reporting persons needs to be implemented into Palestinian legislation.¹⁵

¹⁰ The summary of the articles protecting whistle-blowers can be found in: AMAN, Promoting "Blowing the Whistle" on Corruption in Palestine, 2014, p.13

¹¹ United Nations Implementation Review Group, St. Petersburg, October 2015, found online at:

<https://unispal.un.org/DPA/DPR/unispal.nsf/22f431edb91c6f548525678a0051be1d/3a51d2470c9926c385257ee000589cce?OpenDocument> accessed on 7/12/15

¹² United Nations Implementation Review Group

¹³ Law by Decree No.(7) 2010, Pertaining to the Amendment of the Law of Illegal Gain No.(1) 2005, found online at:

[www.google.co.uk/url?q=http://www.pacc.pna.ps/ar/cp/plugins/spaw/uploads/files/Anti-Corruption%2520Law%25202010%255B1%255D.pdf&sa=U&ved=0ahUKEWjAsrWYUmrJAhXEXRoKHbEuAZUQFggUMAA&sig2=nJJrxsJ7zuFVMVYpM8HUgQ&usg=AFQjCNHTYTOLU5yiv5jPj3y9RtlkOjD6nQ](http://www.pacc.pna.ps/ar/cp/plugins/spaw/uploads/files/Anti-Corruption%2520Law%25202010%255B1%255D.pdf) accessed on 7/12/15

¹⁴ AMAN, Promoting "Blowing the Whistle" on Corruption in Palestine, 2014, p.5

¹⁵ United Nations Implementation Review Group

DOES THE LAW PROVIDE FOR THE PHYSICAL SECURITY OF WHISTLE-BLOWERS?

The law provides protection for whistle-blowers. However, the law currently does not provide protection for the family of whistle-blowers.

DOES THE LAW ALLOW WHISTLE-BLOWERS TO REPORT ANONYMOUSLY?

The Anti corruption law allows to hide the identity of whistle-blowers, however, the criminal procedures law imposes that the identity of the whistle-blower should be known.

CONCLUSIONS AND RECOMMENDATIONS

- The measures that would make the biggest difference to the welfare of whistle-blowers and the ability to act on whistle-blower reports in your country are:
- Political accountability and commitment. Insuring that the political class has a commitment to cracking down on corruption crimes as well as ensuring transparent prosecution procedures to build public trust.
- Review most of the provisions that support the reporting of corruption and protection of whistle-blowers. It is concluded that this issue requires separate laws that expressly outline legal protections for whistle-blowers. Therefore, it is necessary to amend the Palestinian Anti-Corruption Law No.1 for 2005 with the aim of cancelling article 18, to be replaced by a full chapter protecting witnesses and whistle-blowers.
- Accelerate the issuance of a draft law that promotes the right of access to information on the grounds that the principles of this law should be based on the protection of the whistle-blower. This law should also allow the concerned parties to access violations and breaches of the law, where some might represent corruption crimes. As such, we suggest that pressure be put on the Council of Ministers to refer the draft law presented by AMAN and its partners to the President and relevant parties: (the Independent Commission for Human Rights, the Palestinian Centre for Development and Media Freedoms, Palestinian Journalists' Syndicate, Ministry of Justice, PLC, media institutions, the ACC).
- Compliance of legislations that conflict with reporting corruption, such as paragraph 5 of article 67 of the Civil Service Law, the Penal Code, legislations that criminalise disclosure of public information without an exception on information related to corruption crimes.
- Conduct and lead a broad awareness campaign on the importance of reporting corruption, and changing negative perceptions of whistleblowing. To implement this recommendation, we recommend that AMAN intensify its awareness campaigns in this regard, and to especially target educational, religious, and youth institutions. Civil society organisations are better placed to carry out a changing of the mind-set of the Palestinian population.

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ISBN: 978-3-96076-007-8

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