

# EFFECTIVE MEASURES TO DETECT CORRUPTION CASES FROM VARIOUS SOURCES IN THE STATE OF PALESTINE

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## I. INTRODUCTION

Corruption is a transnational scourge, the impact of which extends beyond national borders, undermines democracy and moral values, and jeopardizes sustainable development and the rule of law. The State of Palestine became aware of the extent of the danger posed by corruption, which led to the adoption of the Anti-Corruption Law in 2010,<sup>1</sup> which criminalizes acts of corruption and establishes a specialized body<sup>2</sup> entrusted with the task of combating corruption by law enforcement through receiving, investigating complaints and reports on suspicions of corruption, and referring cases with evidence of corruption for the specialized corruption crimes prosecution. The law also entrusted the commission with tasks related to the prevention of corruption, raising awareness of its risks, and drawing up a general policy to combat it at the national level in partnership with all components of society.

Complaints and reports that the commission receives about suspicions of corruption are among the important sources of information that enable the prosecution of those suspected of committing corruption crimes. Although the law gives the commission the ability to initiate investigations and investigate suspected corruption on its own, the largest percentage of information sources that enable the prosecution of suspected corruption belong to whistle-blowers, whether they are individuals, institutions or regulatory bodies. Accordingly, encouraging reporting of suspected corruption is one of the things that the commission has worked to achieve since its establishment. And one of the means of encouraging reporting is the obligation to provide protection for whistle-blowers and witnesses, in addition to the possibility of exempting the perpetrator of a corruption crime, or his/her accomplices, from criminal penalty if the perpetrator takes the initiative to report the crime to the public authorities before its detection. The penalty is reduced by half if they cooperated during the investigation and after the crime was discovered. The perpetrators of the crime or their accomplices will be exempted from a pecuniary punishment, provided that they refund the money obtained from the crime.

In addition to the reports as the main source of information about corruption, cooperation between law enforcement agencies, the access to data held by some official departments and asset declarations are considered to be another source of information that may lead to more detection of corruption.

This paper will deal with the protection of witnesses and whistle-blowers according to Palestinian legislation in its first axis, and in its second axis it will deal with the possibility of exemption from punishment according to Palestinian legislation, and in the third and final axis, the paper will deal with the importance of cooperation between the commission and law enforcement authorities and other authorities in detecting corruption crimes and their perpetrators.

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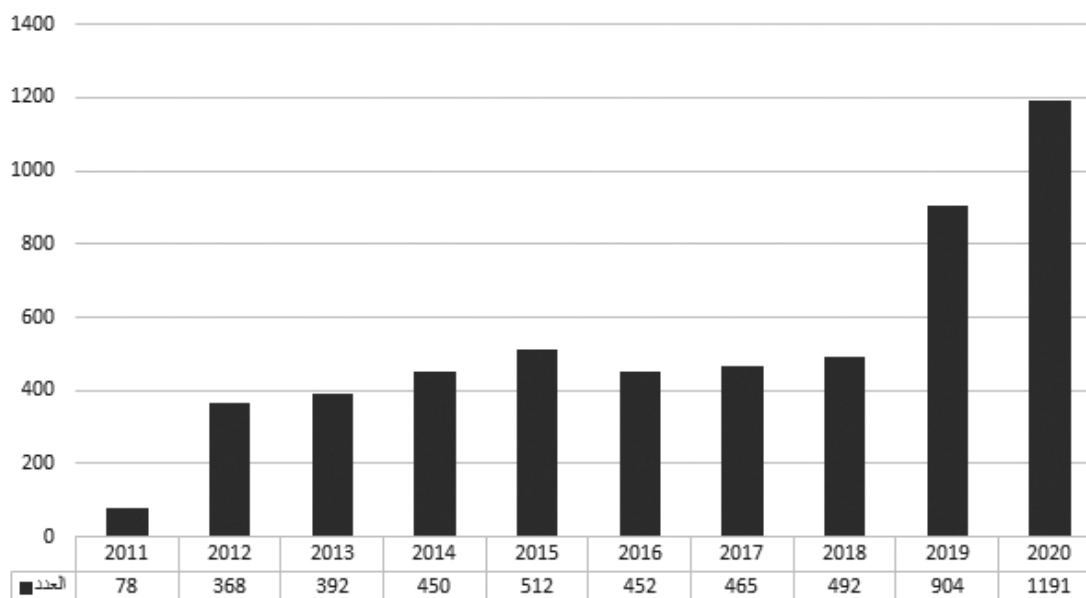
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<sup>1</sup> Anti-Corruption Law No (1) 2005 as Amended, The original law, Law on Illicit Gain No (1) 2005, Amendment (1): Law-by-Decree No (7) 2010 on amending the Illicit Gains Law No (1) 2005, Amendment (2): Law-by-Decree No (13) 2014 on amending the Anti-Corruption Law No (1) 2005, Amendment (3): Law-by-Decree No (4) 2017 on amending the Anti-Corruption Law 2005 as amended, Amendment No (4): Law-by-Decree No (37) 2018.

<sup>2</sup> Palestinian Anti-Corruption Commission (PACC).

## II. PROTECTION OF WHISTLE-BLOWERS AND WITNESSES OF SUSPECTED CORRUPTION

The Anti-Corruption Commission receives complaints, reports and communications of corruption allegations from individuals, institutions and oversight bodies, and it also receives anonymous reports. Reports and complaints are received through: fax, email, PACC's website, hotline (free phone number), PACC's mobile application and through personal attendance.<sup>3</sup>



**Numbers of complaints and reports received during the year 2020 compared to previous years.<sup>4</sup>**

According to the Law by Decree No. (7) of 2010 Amending the Law on Illicit Gain No. (1) for the year 2005, in particular Article 18, the Commission must provide job and personal and legal protection for witnesses, experts and whistle-blowers in corruption cases. Further, the law referred to a regulation (bylaw) prepared by the Commission and issued by the Council of Ministers determining the mechanisms and procedures for granting this protection. From 2010 to 2019, the Commission has faced many obstacles to the implementation of its commitment to provide protection to various forms of whistle-blowers, witnesses and experts, which are as follows:

1. The lack of provision for protection mechanisms in the law and the referral of protection mechanisms to regulations issued by the Council of Ministers made it difficult to stipulate some mechanisms, especially those related to concealing the identity of the witness or the reporter and the possibility of holding court sessions via videoconferencing, because these provisions conflict with the Code of Criminal Procedure.<sup>5</sup>
2. The law did not contain any of the provisions that entail penalties in the event of non-compliance with the implementation of the protection decisions issued by PACC.
3. Protection did not include relatives of whistle-blowers, witnesses, experts, and persons closely related to them in accordance with the requirements of Articles 32 and 33 of the United Nations Convention against Corruption.

<sup>3</sup> The increase of the number of complaints and reports since 2019 may return to the use of technologies that enabled the reporting of corruption through PACC's mobile application in the beginning of 2019, in addition to the adoption of whistle-blowers protection regulations and the establishment of whistle-blowers and witness protection unit also in 2019.

<sup>4</sup> The annual report of PACC for the year 2020, cited: <https://www.pacc.ps/library/viewbook/30408>.

<sup>5</sup> Articles 84 and 235 of the criminal procedures law No(3) for the year 2001. <http://muqtafi.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=2001&MID=13854>

## PARTICIPANTS' PAPERS

4. PACC faced difficulties related to providing job protection for workers in sectors covered by the law other than the public sector, such as the private sector and local authorities, taking into consideration that labour law does not include articles related to this kind of protection, and the employer has the right to dismiss workers in some cases.

To address these gaps and problems faced by the system of whistle-blower and witness protection, the Commission proposed an amendment to Article 18 of the law consistent with the requirements of articles 32 and 33 of the United Nations Convention against Corruption. This amendment was issued under Law by Decree No. 37 of 2018, and the most important features of this amendment are as follows:

- a- Expansion of protection to include relatives of the whistle-blower, witnesses, experts and persons closely related to them.
- b- Prescribing the mechanisms of protection represented in:
  - Providing them with protection in their places of residence;
  - Not disclosing information about their identity and whereabouts;
  - Giving their statements and testimonies through the use of modern communication techniques to ensure their safety;
  - Protecting them in their places of work, and immunizing them from any discrimination, mistreatment, any arbitrary action, or an administrative decision that changes their legal or administrative status or detracts from their rights because of their testimonies, notification, or actions they have undertaken to uncover corruption crimes;
  - Providing places to shelter them when necessary;
  - Taking any action or any necessary action to ensure their safety.
- c- Imposing sanctions on any person who assaults or abuses a whistle-blower, witness or expert, because of what they have done to detect corruption or prevents them from giving testimony or from reporting on corruption, etc.<sup>6</sup>
- d- The commission was allowed to disburse financial aid to whistle-blowers, witnesses and experts determined in accordance with a regulation issued by the Council of Ministers.

This regulation to protect whistle-blowers, witnesses, informants and experts in corruption cases, their relatives and the persons close to them, No. (7) for the year 2019, has identified the scope of protected persons to reach the relatives to the fourth degree, as well as persons close to them. It also stipulated the establishment of a unit in the Commission for the protection of whistle-blowers and witnesses, specifying the procedures for submitting applications for protection and appeal, and cases of tightening or mitigating protection measures, and their removal. The regulation also identifies the forms of protection, including functional, legal and personal.

Accordingly, it can be said that the amendments introduced in the legislation regulating the protection of whistle-blowers, witnesses and experts in corruption crimes in Palestine worked to strengthen this system, but what is required in this regard can be summarized as follows:

- Launching awareness campaigns on the protection system for whistle-blowers, witnesses and experts, using all available means, to encourage people to report corruption with no fear of being threatened;
- Allocating sufficient budget to the Whistle-blowers and Witness Protection Unit;

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<sup>6</sup> Articles 25/5, 25/6. "5. A person who divulges information on the identity or whereabouts of witnesses, whistle-blowers, or experts shall be punished with imprisonment for not less than six months and with a fine of not less than JOD (500) and not more than JOD (10000)." "6. Without prejudice to any more severe punishment outlined in any other legislation, a person who assaults whistle-blowers, witnesses or experts due to their work in revealing corruption, ill-treats them, discriminates against them in work or prevents them from testifying or report corruption, shall be punished with imprisonment for not less than one year and with a fine of not less than JOD (500). In case force is used, or there is a threat with firearms or any other means of intimidation, imprisonment shall be for not less than two years and a fine of not less than JOD (500) and not more than JOD (10000)."

- Activating some of the mechanisms mentioned in the law, especially those related to the possibility of using technology to hear the testimonies of witnesses in corruption crimes, and the possibility of concealing their identities, especially during the trial, as these texts are not activated yet;
- Launching of an official annual prize for whistle-blowers on corruption crimes;
- Raising the capabilities of workers in the Whistle-blower and Witness Protection Unit.

### **III. EXEMPTION OR COMMUTATION OF PUNISHMENT FOR COLLABORATORS ACCUSED OF CORRUPTION CRIME AND THEIR ACCOMPLICES**

The United Nations Convention against Corruption calls on States parties, in Article 37, to take appropriate measures to encourage persons who participate or have participated in the commission of an act of corruption established under the Convention to provide useful information to the competent authorities for investigation and evidentiary purposes, and to provide assistance that may contribute to depriving offenders of the proceeds of crime and recovering those proceeds, and also calls for consideration of the possibility of mitigating the penalty for the accused who provides substantial assistance in the investigation or prosecution of an act criminalized under the Convention.

The amended Anti-Corruption Law in Palestine, in paragraph (3) of Article 25 thereof, dealt with provisions that are consistent with the requirements of the United Nations Convention against Corruption, referred to above, for the crime before its detection, and for the money obtained from it, provided that he returns the money obtained. This case assumes that none of the public authorities have prior knowledge of the crime, and that they have not undertaken any of the investigation, criminal or even administrative procedures, as the author believes that the existence of an administrative investigation with any of the institutions denies the possibility of benefiting from the exemption from punishment.

The same paragraph of Article (25) of the amended Anti-Corruption Law also deals with the possibility of reducing the penalty by half and exempting the perpetrator or his/her accomplice from the fine if he/she helps the investigation authorities to discover the crime and its perpetrators.

In this regard, it should be noted that the Palestinian legal system does not allow reconciliation in corruption crimes, as every crime results in the state's right to punish its perpetrator, and the state's means for enforcing this right is the criminal case, and the Public Prosecution, as an investigative authority, is the body entrusted with practicing those procedures. However, this does not mean that the public lawsuit belongs to the Public Prosecution, but rather it is the right of the social body. As for the Public Prosecution, it is only its agent in using it. And it has no right to waive it, leave it, disrupt its functioning, or reconcile it, unless permitted by law. This principle was referred to in the Palestinian Code of Criminal Procedures in its first article, which states that the Public Prosecution shall have the exclusive jurisdiction to initiate and conduct criminal cases, and it shall not be instituted by others except in the cases specified in the law and that the case may not be suspended, waived, abandoned, or obstructed, nor reconciled except in the cases mentioned in the law".

In Article (16), the Palestinian legislature permitted reconciliation in violations and misdemeanours punishable by a fine only.<sup>7</sup> The legislature differentiates the parties that are entitled to offer reconciliation according to the type of crime. In violations, the competent judicial officer, when drafting the report, presents the reconciliation to the accused or his representative, and this is evidenced in his report. As for the offer of reconciliation in misdemeanours, it is for the Public Prosecution. Reconciliation shall be in accordance with Palestinian legislation by paying an amount equal to a quarter of the maximum fine prescribed for the crime, or its minimum value, if any, whichever is less, provided that the payment shall be within fifteen days from

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<sup>7</sup> Article 16 of the Code of Criminal Procedure No. (3) for the year 2001 that "may be reconciled in offenses materials and misdemeanours punishable by a fine only, and the warden control the judicial competent when editing the record that the reconciliation presented to the accused or his agent in the offenses and prove it in His presence, and be introduced to reconcile misdemeanours from the public prosecution.

the day following the acceptance of the reconciliation.<sup>8</sup> The payment of the settlement amount entails the expiration of the penal lawsuit without having any effect on the civil lawsuit.

Based on the foregoing, and since the crime of corruption is one for which it is not permissible to reconcile, as it imposes penalties other than a fine, and since the Palestinian Anti-Corruption Law is devoid of any provision that permits reconciliation, there is no room for the system of reconciliation in the crime of corruption in Palestine. The implementation of this system in Palestine is either by amending the text of Article (16) of the Code of Criminal Procedure so that it is one of the crimes in which reconciliation is permissible, or by finding a special text in the anti-corruption law that allows reconciliation for the crime of illicit enrichment, or corruption crimes in general, so the text specific to these crimes is restricted to the general text contained in the Code of Criminal Procedure.

In this regard, there is a debate in Palestine whether to have legal provisions to establish a reconciliation system in corruption cases or to stick with the possibility of the exemption or reduction of punishment. Most Palestinians are against any measures that are considered as tolerant of corrupt persons, even if it resulted in the recovery of stolen assets.

#### **IV. COOPERATION BETWEEN THE AUTHORITIES AND LAW ENFORCEMENT INSTITUTIONS AND THE EXCHANGE OF INFORMATION TO ENHANCE THE DETECTION OF CORRUPTION**

##### **A. Cooperation with Security Agencies**

The exchange of information between law enforcement agencies, and in particular between each of the Anti-Corruption Authorities as a special judicial control body empowered to investigate and infer suspicions of corruption and the security services authorized as a public judicial control body to investigate crimes in general, is of great importance for crime detection and cooperation in the investigation process. Cooperation between the two sides enables the concerted efforts available to both of them and the optimal use of human, material and technical resources in a way that enhances investigations. In this regard, the State of Palestine has a particularly good experience, as the commission worked on concluding memorandums of understanding with the Palestinian Police, the Preventive Security Service, the Military Intelligence and the Intelligence, according to which information related to suspected corruption, including corruption committed by members of these organizations, is exchanged. The devices, as well as the memorandums of understanding, allow them to benefit from the capabilities of the criminal investigation laboratory in the police in investigations related to suspicions of corruption. This cooperation has resulted in several positive outcomes:

- The commission can now use the agencies as part of its investigations into suspicions of corruption (joint investigations);
- The authority was allowed to benefit from the technical expertise available in the criminal investigation laboratory at the police, especially in the work of matching and detecting forgery;
- The agencies committed themselves to referring the files available to them regarding corruption crimes to the Commission as a special judicial control body, including those committed by members of these agencies, and not only disciplinary accountability.

Enhancing cooperation with law enforcement agencies, arrangements were made for the secondment of a member of each law enforcement agency to work with the PACC.<sup>9</sup> These officials became the focal point between PACC and their agencies.

##### **B. Cooperation with the Financial Follow-up Unit**

The Financial Follow-up Unit was established by virtue of a decision of the Anti-Money Laundering and Terrorist Financing Law No. (20) for the year 2015 and its amendments, as an independent unit, and the unit aims to combat the crime of money-laundering and terrorist financing, protect the national economy from

<sup>8</sup> Article 17 of the Code of Criminal Procedure of the Palestinian No. (3) for the year 2002.

<sup>9</sup> They work as an operation team helping investigators and are located in PACC.

the negative effects of these two crimes, raise the level of systems and procedures for combating money-laundering and terrorist financing in Palestine, and activate local cooperation frameworks with all the competent authorities, and the unit works on implementation. The objectives are approved by the National Committee for Combating Money Laundering and Terrorism Financing, which in turn draws up policies aimed at combating these two crimes at the local and international levels.

In this regard, the cooperation between the Anti-Corruption Commission and the Financial Follow-up Unit is of a high degree of importance, as the Palestinian law considers laundering the proceeds from corruption crimes a form of corruption crime, and tracking money and financial information that can be used in the expertise of the Follow-up Unit Finance would help in revealing the original crime represented by one of the corruption crimes, as it would reveal all the participants in the crime, including natural and legal persons.

A memorandum of understanding was signed between the Corruption Crimes Prosecution and the Financial Follow-up Unit, according to which the relationship between the two parties was organized, enabling the Commission, through the Corruption Crimes Prosecution, to use the expertise of the Financial Follow-up Unit to prepare and analyse suspicion reports in a way that enhances financial investigations into suspicions of corruption.

### **C. The Importance of Accessing Some Public Records to Enhance the Investigation of Suspicions of Corruption, Especially the Crime of Illicit Gain**

The data kept in some public records, such as the civil registry with the Ministry of Interior, the vehicle registry with the Ministry of Transport and Communications, the property registry with the Land Authority and the Property Tax Department, in addition to the companies registry with the Ministry of Economy and National and other records are of very great importance when investigating corruption crimes, especially of gain, as the investigation and investigation procedures in this crime are based on comparing the wealth and property of the suspect in the crime of illicit gain with his legal income declared in the financial disclosure statements submitted by him/her and kept with the Commission Combating corruption. If investigations prove an unjustified increase in the suspect's wealth, or the wealth of his/her spouse and minor children, that is not commensurate with their legal and authorized income, and he/she is unable to justify this increase with a legitimate source, he/she is presumed to have committed the crime of illicit gain.<sup>10</sup>

During the past two years, the commission has succeeded in obtaining the mentioned records through the ability to access all the required data directly and electronically.

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<sup>10</sup> Article 1 of the anti-corruption law defines "Illicit gain: Anything acquired by a person who is subject to the provisions of this law for himself or for others due to the exploitation of office or status. Any increase in wealth after assuming office or the existence of status of a person who is subject to the provisions of this law, his spouse or minor children when it is not proportional to their incomes and fails to prove the legitimate source."