

Position Paper of Transparency International – Lebanon – No Corruption

# on activating the Whistleblower Protection Law



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LEBANON - NO CORRUPTION

*This Paper is published under the “Ensuring Accountability in Reconstruction and Reform Efforts in Lebanon” (EARREL) project funded by the German Federal Foreign Office.*

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## **The Context of Adopting the Whistleblower Protection Law**

Law No. 83, "Whistleblower Protection Law", was adopted on October 10, 2018, in line with the international obligations of the Lebanese government, namely the United Nations Convention Against Corruption, which was ratified in 2008. This law entrusted the power of its implementation and providing protection for whistleblowers to the "National Anti-Corruption Commission" (NACC) which had not yet been established, and even its law had not been adopted till the year 2020 under No. 175. Due to the absence of the Commission, Law No. 83 was amended to confirm the authority of public prosecutions to receive corruption disclosures and to protect whistleblowers, as does the NACC. Subsequently, the "Whistleblowers Reception Office" was established at the "Ministry of Justice" to assist the Cassation Public Prosecution in receiving corruption disclosures.

## **Problems facing Implementing the Whistleblower Protection Law**

As mentioned above, the NACC and the Public Prosecution play a role in implementing the Whistleblower Protection Law. The NACC is responsible for receiving disclosures and raising the awareness of the public about the provisions of the law and how to benefit from protection and incentives, while Public Prosecution is only responsible for receiving disclosures and providing protection for whistleblowers.

Till now, nearly four years after the adoption of the law and two years after its amendment, not a single case of corruption received by both bodies was announced and addressed, nor any whistleblower protection or due incentive was provided for a whistleblower.

Law No. 83/2018 did not include a detailed definition of physical protection measures; Article 9 only referred to "taking appropriate security measures", provided that the Public Prosecution and the security forces shall respond to the physical protection request "by the available means" if it was issued by the NACC.

This lack of defining the aforementioned measures can create several problems in implementing the law, especially since it linked them to "available means." This expression opens a wide scope for interpretation by the authority that should provide this protection. The foregoing authority may consider that its priorities should focus on tasks other than whistleblowers protection measures, therefore, it allocates its capabilities in a way that there is no longer room to implement any protection measures for whistleblowers. Furthermore, the herein authority can invoke the lack of the "available means" for this purpose, based on Article 9/2 of law No. 83/2018. Hence, it becomes difficult to assess the case, legally and de facto, especially in the absence of any legal mechanism for this body. This, therefore, drives the public to lack confidence that they will be protected in the event that an individual or a member of their family reveals a corruption case in the public sector, and thus the corruption detection system is undermined since relying on whistleblowers is essential to combating corruption, who will refrain from submitting disclosures.

As for rewards provided for whistleblowers, they should be included in a special allocation at the "Ministry of Finance" and the NACC issues a binding decision to the ministry to disburse them. However, the problem is that until now, this allocation has not been included in the ministry's budget, which also undermines the process of enhancing trust in the whistleblower protection system.

As for the role of the NACC and the Public Prosecution in encouraging citizens to submit their corruption disclosures, it is so far non-existent and does not contribute in any way to encouraging the public to participate in anti-corruption efforts, which is the main reason for having a system to protect whistleblowers in the first place.

## Future steps

The NACC and the Public Prosecution should operationalize the whistleblower protection system to protect whistleblowers and enhance public confidence in this system, which will positively reflect on the effectiveness of combating corruption in the public sector. This requires:

1. Providing the necessary financial resources for both entities to fully carry out their role, especially in terms of enhancing confidence, encouraging the public, and allocating the necessary rewards for whistleblowers.
2. Building the capacities of the members and employees of the NACC, the Public Prosecution, and the Whistleblowers Reception Office to be able to deal with corruption disclosures and whistleblowers.
3. The Cassation Public Prosecution to draw up a list of the most prominent "security measures" that can be taken in order to ensure physical protection, and disseminate it to the public prosecutors and the security agencies responsible for their implementation. To ensure the execution of the aforementioned measures, the competent bodies shall agree on determining the "appropriate means" for this purpose.