

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY ISRAEL

ARTICLE 8, PARAGRAPH 4 UNCAC REPORTING ON ACTS OF CORRUPTION

ISRAEL (EIGHTH MEETING)

The State Comptroller and Ombudsman accepts anonymous complaints and also conducts awareness raising in the form of leaflets published in 6 languages in different communities on how to report and file complaints. In addition, the Encouragement of Ethical Conduct in the Public Service Law, 1992, and the regulations enacted pursuant to that law, also aim to protect a public employee who exposes acts of corruption from harm and abuse resulting from the exposure of acts or corruption or an improper act.

Section 43.523(a) of the Civil Service Regulations provides that a complaining public official may not be fired and his working conditions may not be adversely altered as a result of his complaint or his assistance to another official to make a complaint. Furthermore, the Ombudsman is authorized to award compensation and provide remedies to the complainant, such as providing alternative employment in the private sector.

In order for these protections and compensations to be granted, the complaint must have been filed in good faith and it must concern violations of integrity or proper administration. In addition, such protection is only extended to the employee if the harm he/she suffered from the measure taken by his/her superior was in retaliation to the complaint. A public official who reports that he/she or another official received an offer of a bribe is entitled to the protection set forth in the Civil Service Regulations, as long as the conditions for that protection are fulfilled.

In addition, in 2009, the Civil Service Commission published a circular instructing public officials to report offers of bribes to their supervisor or to enforcement authorities. This obligation also applies to acts of bribery to which they are exposed in the performance of their duties. The circular deals, among other issues, with the protection given to civil servants who expose corruption, and lists legislation and procedures covering this issue. It should be noted that the Convention is specifically referred to in the Civil Service Commission's circular.

Concerning the encouragement to expose corruption cases, the President grants prominent whistleblowers with certificates of appreciation underlining their substantial achievements and contribution to the morality of the public institutions in Israel, in accordance with the Encouragement of Ethical Conduct in the Public Service Law, 1992. The first ceremony was held in the President's official residence on 31 December 2015, and was attended by The Minister of Justice and the State Comptroller, who were also involved in the selection process. Three whistleblowers were provided with certificates of appreciation.

In order to protect public sector employees who report corruption offences within the public sector, the protection provided to employees may include injunctions against their dismissal and the Ombudsman is authorized to provide a protection order. The Ombudsman can also award compensation and provide remedies to the complainant, similar to those given by the labor court in regular labor relations cases and can also provide alternative employment in the private sector.

In addition, the Israeli government has established a witness protection program, which is not limited to a specific type of offence and thus also applies to anyone who reports corruption offences as well.

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY ISRAEL**

ARTICLE 8, PARAGRAPH 4 UNCAC

REPORTING ON ACTS OF CORRUPTION

ISRAEL (THIRD SESSION)

Reporting Acts of Corruption – Civil Service (Article 8(4)) – the following is a translation of the text of the Civil Service Commission Circular issued in October 2009 (issued by the Civil Service Commission Director of Discipline):

"OECD Convention on Combating Bribery of Foreign Public Officials

1. Acts of corruption and bribery constitute a threat to democratic institutions, impair the rule of law, and impede economic development. For years, the State of Israel has been committed to combating corruption and to advancing norms of honesty and integrity and creation of a mechanism to eradicate corruption in public administration and in the private sector.

2. The Discipline Department in the Civil Service Commission is committed to combating corruption and promoting norms among civil servants, and accordingly views the battle against corruption and bribery as a matter of supreme importance.

3. Some two years ago, the State of Israel began the process of joining the OECD, a process that is expected to be completed in 2010. Simultaneously, Israel recently joined the Convention on Combating Bribery of Foreign Public Officials. The conception underlying the commitment of the OECD and of the parties to the convention is a joint effort of the international community to effectively combat corruption, in general, and bribery, in particular, with the objective of enforcing the prohibition on bribery of foreign public officials.

4. In this circular, I want to bring to your attention and to the attention of all employees Amendment No. 99 to the Penal Law, and also to clarify the modes of operation required of an employee who, in the course of carrying out his functions, received an offer of a bribe or who has substantial information that another employee received a bribe or offered a bribe to a foreign public official and did not report it.

Prohibition on bribing a foreign public official – Article 291A of the Penal Law, 1977

5. The State of Israel, as a partner in the battle to create an international climate free of corruption, added to its Penal Law the offense of giving a bribe to a public official of a foreign country or to an official of a public international organization – Article 291A of the Penal Law.

6. On 14 July 2008, the Knesset enacted the Penal (Amendment No. 99) Law, 2008, which adds Article 291A to the Penal Law. Under this Article, it is an offence to give a bribe to a foreign official, where it is given for the purpose of promoting business activity, or to achieve an advantage in such activity.

7. The wording of the offence is as follows:

"291A. Bribing a Foreign Public Official

(a) A person who gives a bribe to a foreign public official for an act in relation with his functions, in order to obtain, to assure or to promote business activity or other advantage in relation to business activity, shall be treated in the same manner as a person who commits an offence under Article 291.

(b) No indictment shall be issued in respect to an offence under this article unless given written consent from the Attorney General.

(c) For the purpose of this article:

"foreign country" includes, but not limited to, any governmental unit in the foreign country, including national, district or local unit.

"foreign public official" includes any of these:

(1) An employee of a foreign country and any person holding a public office or exercising a public function on behalf of a foreign country; including in the legislative, executive or judiciary branch of the foreign country, whether by appointment, by election or by agreement;

(2) A person holding a public office or exercising a public function on behalf of a public body constituted by an enactment of a foreign country, or of a body over which the foreign country exercises, directly or indirectly, control;

(3) An employee of a public international organization, and any person holding a public office or exercising a public function for a public international organization; **"public international organization"** means an organization formed by two or more countries, or by organizations formed by two or more countries;"

8. The offense specified in Article 291A of the Penal Law prohibits the offer or giving of a bribe to a foreign public official with the objective of promoting business activity, or to achieve an advantage related to such activity. The objective of a prohibited bribe can be to promote a transaction or grant an advantage in promoting it directly, for example by a payment to the foreign public official who has such influence, or by promoting business indirectly, for example by a payment to a foreign public official for information that is transmitted unlawfully, for the purpose of granting the person who gives the bribe an advantage in attaining a transaction.

Reporting by civil servant of cases of bribes to foreign public officials

9. *In advance of the visit of the examining delegation from the OECD in Israel in July 2009 regarding implementation of the Convention on Combating Bribery of Foreign Public Officials, in which the undersigned also participated, the question arose as to the obligation of reporting by civil servants of suspicion of cases of payment of bribes to foreign public officials or acceptance of bribes from a foreign or local company.*

10. *I want to clarify the modes of operation required of a civil servant who, in the framework of his functions, received, directly or indirectly, an offer for payment of a bribe, or has substantial information that another employee received a bribe or was offered a bribe, or offered a bribe to a foreign public official (hereafter – suspicion of cases of payment of a bribe).*

11. *As is known, bribery is an offence containing the element of corruption and as such is liable to breach the trust of the individual in government and undermine social stability. The offence of bribery corrupts the system of public administration, and impairs the delicate structure of the system of relations between the individual and civil servants, which is based on honesty, substance, impartiality, equality, and the like.*

12. *A civil servant is a public trustee, and as such has special responsibility to act in the framework of his functions with fairness, honesty, and integrity. A civil servant in the framework of his functions does not represent himself for his private needs, but represents the citizens of the state in accord with the public interest. Therefore, a civil servant who, in carrying out his functions, obtains substantial information on suspicion of cases of payment of a bribe, it is expected that he will not treat this information as a private matter and refrain from exposing it, but will report the suspicion. The duty of civil servants to provide this information is a natural part of the obligations of a civil servant.*

13. *Article 4.02 of the Code of Ethics states:
A civil servant must report fully to his supervisors and to the relevant persons about actions and matters that must be reported under the applicable circumstances, and provide them with all the information that seems to him to be relevant.*

14. *This Article teaches that civil servants have the duty to report "matters that must be reported under the applicable circumstances," which includes reporting a substantial suspicion of cases of payment of a bribe.*

15. *Furthermore, in a long list of court judgments, it has been held that, regarding Article 17 of the Civil Service (Discipline) Law, 1963 (hereafter – the Discipline Law), that the Article has an "open structure," containing general criteria. For example, the norm as to "unbecoming conduct" is an extremely broad concept that refers to values, principles, and interests that shape public service and is filled with content from time to time.*

16. *Pursuant to sub articles of Article 17 of the Discipline Law, we try employees in disciplinary hearings for a wide variety of conduct that harms other persons, that taints the work environment, disrupts labour relations, undermines the public's trust in the civil service, or impairs harms in another way the proper functioning of the civil service, and in appropriate circumstances, the Discipline Department in the Civil Service Commission*

will consider taking disciplinary measures, among them disciplinary hearings against civil servants who obtain substantial information of suspicion of cases of payment of a bribe and refrain from reporting it to the person in charge in the ministry or to the law enforcement authorities, for conduct unbecoming a civil servant or for dishonest conduct, depending on the specific circumstances of the case presented before us.

Protection of persons who expose corruption

17. This issue automatically raises the question of the protection given to civil servants who expose acts of corruption where they work. For an extensive discussion of this matter, see, inter alia, Notice No. 62/4, "Protection of Persons Who Expose Corruption – Notice of the State Comptroller," and also Notice No. 68/11, "Opinion of the State Comptroller on Protection of Persons who Expose Acts of Corruption."

18. As is known, the Israeli legislator sought, by means of a number of statutes, to protect an employee who exposes acts of corruption from harm and abuse resulting from the exposure of acts or corruption or an improper act. Among these statutory enactments are:

A. Articles 45A-45F of the State Comptroller Law, 1958 [Consolidated Version];

B. The Protection of Employees (Exposure of Offences and Harm to Integrity or Proper Administration) Law, 1997;

C. The Encouragement of Integrity in the Civil Service Law, 1992, and the regulations enacted pursuant to the statute.

19. In addition to the aforesaid statutes, Article 43.523(a) of the Civil Service Regulations states that, "A person holding authority shall not harm the work conditions of the complaining employee and shall not dismiss him for filing a complaint, or for assisting another employee in filing a complaint." Such protection is provided upon meeting a number of conditions, among them that the complaint that the employee files is made in good faith, and that the complaint deals with "harm to integrity or proper administration." Furthermore, a condition for the protection given to an employee is that the harm to him by his supervisor is a reaction to exposure of acts of corruption.

20. As a result, a civil servant who reports a suspicion of cases of payment of a bribe as stated in this circular is given the protection set forth in the Civil Service Regulations, to the extent that he meets the aforesaid conditions.

Conclusion

21. "A public servant is a public trustee. He does not act for himself, but for the public interest" [HCJ 669/86, Ya'akov Rubin v. Haifa District Committee of the Bar Association et al.].

22. Public trust in the civil service requires that a civil servant be a public trustee, and as such must act to promote the public interest, and not his personal interest, certainly when matters relating to his work are involved. Therefore, a civil servant who, in the

framework of his functions, obtains substantial information of suspicion of cases of payment of a bribe, he must not treat the information as his private interest, and he is expected to report it to the supervisor in his office or to the law enforcement authorities.

23. The suspicions referred to in this circular relate to acts of corruption that endanger society and governmental procedures, acts that gnaw at the ties that link us together as members of one society, breach the trust that individuals have in government, and encourage contempt for public authorities and public servants. Conduct that conforms to the comments in this circular will assist in combating corruption and promoting norms of honesty and integrity.

*24. I would like to take this opportunity to update you about a relevant matter: in the spirit of this circular, we are presently examining, together with the Ministry of Justice, the possibility of imposing, in primary legislation, a **general** duty of public servants to report substantial information the public servant obtains in the course of performing his functions or relating to performing his functions which indicate that a serious criminal offense has been committed.*

25. Also, the Ministry of Justice has recently established a website intended to promote awareness of the criminal prohibition on bribing foreign public officials and of actions that have been taken by Israel relating to the OECD Convention on Combating Bribery of Foreign Public Officials and the UN Convention Against Corruption. The website includes regular and updated information on the measures taken domestically and internationally to advance the participation of Israel in the international battle against corruption in all its forms. The address of the website is www.corruption.justice.gov.il.

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Reporting Acts of Corruption (General) – Civil Service (Article 8(4)) - The duty of civil servants to report information regarding suspicions of corruption forms an integral part of a civil servant's duty of loyalty. This notion is further expressed in **Article 4.02 of the Code of Ethics (part of the Takshir) and Article 17 of the Civil Service Law (Discipline), 1963**, which also grants the Civil Service Commissioner the authority to penalize public officials for any violation of the Takshir (the Civil Service Regulations, as stated previously).

The **Encouragement of Public Morality in Public Service Law, 1992**, provides the framework for encouraging public officials to report acts of corruption within the public administration, by creating a process which allows the public servant who made a complaint to receive a report of the results of the investigation and a confirmation of the validity of his/her complaint, as well as a possibility of receiving a commendation from the President of the State of Israel.

According to this framework, the Director of Discipline of the Civil Service Commission issued a Circular in 2009, entitled "**OECD Convention on Combating Bribery of Foreign Public Officials**" setting out the requirements for the reporting of corruption offences by public officials (the Circular relates to both domestic and foreign bribery). The Circular focuses on the provision of the OECD Anti-Bribery Convention, but also

refers to UNCAC and the information provided by the website of the Ministry of Justice in that regard (para. 25 to the Circular, see translation of the text below).

The binding Circular provides instructions to employees of the civil service who, in the course of carrying out their functions, have either been personally offered a bribe or have obtained information of a bribe offered or accepted by a peer employee which has not been reported. Additionally, the Circular includes instructions for civil servants who have obtained information of a bribe offered by a peer civil servant to foreign public officials. Under the Circular, civil servants are obligated to promptly report any such information to their supervisors or to law enforcement authorities.

The Circular points out that a civil servant is a public trustee and as such has special responsibility to carry out his or her duties with fairness, honesty, and integrity. The Discipline Department of the Civil Service Commission will consider taking disciplinary measures, including disciplinary hearings, against a civil servant failing to report as required any such substantial information concerning the payment of a bribe to either the relevant superior within the civil service or the law enforcement authorities. Civil servants in such actions could be charged of engaging in conduct unbecoming a civil servant or dishonest conduct (see the translation of the text of the circular in the examples portion of the answer).

Reporting Acts of Corruption (Protection of Whistleblowers) – Civil Service (Article 8(4)) - The Protection of Employees Law - Exposure of Offences of Unethical Conduct and Improper Administration) Law, 1997 prohibits an employer from adversely modifying a person's conditions of employment for reasons that the person "complained" about their employer or a fellow employee. The law is applicable to both public and private sector employees. The Law provides the courts with authority to order compensation for unlawful termination due to whistleblowing and, in public bodies or employers with more than 25 employees, to order reinstatement of the employee under certain circumstances.

Public sector employees are additionally protected by **Regulation 43.523(a) of the Takshir**, providing that a public official may not be dismissed and his working conditions may not be prejudiced as a result of his complaint or assistance to another official to file a complaint, provided that the complaint concerns violations of integrity and proper administration, that it was filed in good faith, and that certain other conditions are met. An additional condition to this protection is that the harm he suffered from his superior is in reaction to the complaint. As noted, a public official who reports a bribery offer made either to him or to another official, will likewise be entitled to the protection set forth in the Civil Service Regulations, as long as the conditions for that protection are fulfilled.

The 2009 Circular of the Director of Discipline of the Civil Service Commission, mentioned above also addresses the issue of protecting persons who expose acts of corruption. Under the Circular, any civil servant reporting suspicions of bribery is afforded protection as set forth in the **Civil Service Regulations**, in addition to the

protections granted under the **Protection of Employees Law**. The text of the Circular is provided in the implementation section of this question (part 3).

The State Comptroller's Office includes the State Comptroller and the Ombudsman and plays a significant role in the protection of whistleblowers. The Office is empowered to protect public officials (and employees of state-owned companies) who report suspicions of corruption in the workplace by public officials working in the same office as the reporting person. The State Comptroller has wide powers of investigation and is authorized to issue protective orders where there is a connection between the reporting of the act of corruption and the action taken against the complainant.

It should be noted that, pursuant to the **State Comptroller Law, 1958**, the Ombudsman cannot investigate any matter which is pending in court or in which a court has rendered a decision. This means that, if an employee who had exposed suspected acts of corruption in the workplace submits a claim to a court under the **Protection of Employees Law**, or makes a complaint to law enforcement authorities which results in a prosecution, the Ombudsman's protection will no longer be available. The rationale for this approach is that, in such circumstances, the courts are in a position to provide protection. In addition, this avoids potential of conflicting rulings, one by the court and one by the ombudsman. The State Comptroller's Office has become a very significant authority in Israel, while remaining independent of the government. The State Comptroller is elected by the Knesset and not by the government.

ISRAEL (SECOND SESSION)

Reporting by public officials of acts of corruption to appropriate authorities

In October 2009, the Director of Discipline of the Civil Service Commission issued a Circular setting out the requirements for the reporting of corruption offences by public officials. The Circular provides instructions to employees of the civil service who, in the course of carrying out their functions, have either been personally offered a bribe or have obtained information of a bribe offered or accepted by a peer employee which has not been reported. Additionally, the Circular includes instructions for civil servants who have obtained information of a bribe offered by a peer civil servant to foreign public officials. Under the Circular, civil servants are obligated to promptly report any such information to their supervisors or to law enforcement authorities.

According to the circular, a civil servant is a public trustee and as such has special responsibility to carry out his or her duties with fairness, honesty, and integrity. The duty of civil servants to report information regarding suspicions of corruption is an integral part of a civil servant's duty of loyalty. This notion is further expressed in **Article 4.02 of the Code of Ethics** and **Article 17 of the Civil Service Law 17 (Discipline), 1963**. Accordingly, the Discipline Department of the Civil Service Commission will consider taking disciplinary measures, including disciplinary hearings, against a civil servant

failing to report as required any such substantial information concerning the payment of a bribe to either the relevant superior within the civil service or the law enforcement authorities. Civil servants in such actions would be charged of engaging in conduct unbecoming a civil servant or dishonest conduct.

The Circular also addresses the issue of protecting persons who expose acts of corruption. Under the Circular, any civil servant reporting suspicions of bribery is afforded protection as set forth in the **Civil Service Regulations**, in addition to the protections granted under the **Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law, 1997**. Finally, the circular refers to the Ministry of Justice's anti-corruption website.