

DOI: <https://doi.org/10.63332/joph.v5i12.3810>

## The Objective and Subjective Scope of Direct Prosecution in Omani and Palestinian Legislations: A Comparative Study

Dr. Saher Ibrahim Al-Waleed<sup>1</sup>, Dr. Juma'a Musallam Al-Azri<sup>2</sup>

### Abstract

*This research discusses the substantive and personal scope of direct prosecution, through which a public lawsuit may be initiated outside its traditional path represented by the public prosecution (as the representative of society in seeking the right to punish the offender). The study compares these scopes in both the Omani and Palestinian legal systems, and in other legal systems worldwide wherever relevant. The central research problem is expressed in the following question: To what extent are the goals of criminal justice achieved within the substantive and personal scopes for individuals to initiate criminal proceedings through direct prosecution in both Omani and Palestinian criminal justice systems? This research aims to highlight the importance of providing broader substantive and personal scopes for initiating public lawsuit via direct prosecution than currently found in Omani and Palestinian laws, to ensure the achievement of criminal justice. Despite the effective role played by the public prosecution in initiating public actions and ensuring society's right to punish offenders, many cases may go unaddressed due to negligence or failure by this judicial body, which undermines criminal justice, equality before the courts and law, and allows many offenders to escape punishment, depriving victims and society of justice and stability. The study employed descriptive, critical analytical, and comparative methodologies to describe, analyze, and compare the provisions of Omani and Palestinian legislations and related studies, alongside scholarly literature and relevant case law, ultimately achieving the research objectives. The study concludes the necessity of amending Omani, Palestinian, and many other legislations to provide a broader substantive scope allowing the initiation of action in any crime neglected or ignored by the public prosecution, rather than limiting it to one crime as in Omani law. Additionally, it recommends granting the right to initiate such actions not only to those harmed but also to victims, even if they are not directly harmed by the crime.*

**Keywords:** Substantive Scope, Personal Scope, Direct Prosecution.

### Introduction

Criminal proceedings are the legal mechanism through which the state uncovers offenders, imposes prescribed punishments, and achieves the objectives of criminal justice. Under the inquisitorial system, the initiation of criminal proceedings was an exclusive prerogative of the public prosecution. If this body failed to act—a possibility inherent in human systems—those harmed by a crime had no means of initiating criminal action.

This limitation was one of the major criticisms of the inquisitorial model. In response, most mixed legal systems sought to rectify this issue by allowing crime victims to initiate criminal proceedings through direct prosecution. However, the scope of this right varies across jurisdictions. Some allow direct prosecution for all types of offenses; others limit them to misdemeanors and infractions, excluding felonies. The same variation applies to the personal

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<sup>1</sup> Assistant Professor of Criminal Law College of Law – Sultan Qaboos University

<sup>2</sup> Assistant Professor of Criminal Law College of Law – Sultan Qaboos University



scope: some legislations restrict the right to the harmed party, while others deny it to the victim unless actual harm is proven. Certain legal frameworks have conferred this right upon any person, irrespective of whether they possess a direct legal interest or standing in the criminal act under litigation.

### **1.1. Research Questions**

This study seeks to search a critical aspect of direct prosecution: their objective and subjective scope. It aims to answer the following questions:

1. How do Omani and Palestinian legislation regulate the substantive and personal scope of direct prosecution?
2. What is the rationale behind granting this right to the harmed party but not to the victim if no harm is proven?
3. Does the mandatory nature of preliminary investigations in felonies justify excluding them from the scope of direct prosecution and limiting this right to less serious offenses such as misdemeanors and infractions?
4. Do the approaches taken by the Omani and Palestinian legislations reflect a philosophy grounded in justice or one driven by utilitarian considerations?

### **1.2. Methodology**

The study adopts a comparative analytical approach, focusing on legal provisions governing direct prosecution in Omani and Palestinian legislation and other jurisdictions globally. These provisions are analyzed and compared with reference to relevant jurisprudence and scholarly opinions. Following a conceptual and legal analysis of direct prosecution and their prerequisites under both systems, the objective and subjective scopes of this exceptional procedural mechanism will be examined, highlighting the areas that remain legally contentious or underdeveloped.

## **2. The Legal Nature of Direct Prosecution**

Discussing the essence of direct prosecution requires first defining the concept, then examining its legal nature under Omani, Palestinian laws and some other legislations around the world, followed by outlining the general conditions required for its exercise in both jurisdictions.

### **2.1. Definition of Direct Prosecution**

Direct prosecution or private prosecution, as a means of initiating criminal proceedings, refers to

the victim of a crime initiating such proceedings by filing a civil claim before the criminal court to seek compensation for harm suffered as a result of the crime (Husni, 1998; Al-Qarqar, 2021). The rationale behind granting the civil claimant the authority to initiate criminal action is that establishing the defendant's criminal liability inherently supports the victim's civil compensation claim. When the public prosecution neglects or delays in pursuing criminal proceedings for any reason, this harms not only the public interest but also the interest of the harmed individual (the civil claimant). To remedy this, many legal systems have granted crime victims the right to initiate criminal proceedings under certain conditions through what is termed a *direct prosecution or civil claim* (Ramadan, 1998).

In practice, it has been observed that the number of cases initiated through private prosecution has steadily increased in certain judicial systems following the COVID-19 pandemic. This rise is largely attributed to the overwhelming volume of cases and the inability of state institutions responsible for investigation and prosecution to handle all of them simultaneously. Consequently, some cases were prioritized while others were delayed, resulting in harm to the interests of the victims whose cases were postponed (DWF, 2023).

The Omani legislature has recognized this concept under (**Article 4 bis**) of the **Criminal Procedure Law No. 97 of 1999**, which states:

*“Any person harmed by the crime stipulated in Article 230 of the Penal Code may file their claim directly with the competent court. The court registry shall notify the Public Prosecution with a copy of the claim to allow it to undertake the public prosecution. No claim may be filed against heads of administrative units of the state or other public legal persons unless authorization is obtained from the competent authority. Authorization for heads of administrative units shall be granted by the Council of Ministers upon request by the Public Prosecutor based on an application submitted by the harmed party with supporting documents. Heads of administrative units may delegate one of the legal officers within their respective units to represent them in court proceedings and appeals at all levels.”*

Similarly, (**Article 3**) of the **Palestinian Criminal Procedure Law No. 3 of 2001** addresses direct prosecution, stating:

*“The Public Prosecution shall initiate criminal proceedings if the harmed person institutes a civil claim in accordance with the procedures provided by law.”*

In the United Kingdom, the **Prosecution of Offences Act 1985** titled **Section (6)** by **‘Prosecutions instituted and conducted otherwise than by the Service’** and states that:

*(1) Subject to subsection (2) below, nothing in this Part shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Director's duty to take over the conduct of proceedings does not apply.*

*(2) Where criminal proceedings are instituted in circumstances in which the Director is not under a duty to take over their conduct, he may nevertheless do so at any stage.”*

## 2.2. The Legal Nature of Direct Prosecution under Omani and Palestinian Law

Direct prosecution is a legal mechanism through which criminal proceedings are initiated by the harmed civil claimant. Under this mechanism, while the initiation originates from the harmed party, the actual prosecution remains with the public prosecutor. This role of direct prosecution is explicitly affirmed in **Article 4 bis of the Omani Criminal Procedure Law**, which provides that the harmed party initiates the criminal proceedings independently of the public prosecution, while the public prosecution proceeds with the case.

In contrast, **Article 3 of the Palestinian Criminal Procedure Law** is less clear. Its wording raises ambiguity as to whether the role of the harmed party is to initiate proceedings or merely to pressure the public prosecution into doing so. The distinction is crucial: in the former scenario, the harmed party initiates, while the public prosecution follows through; in the latter, initiation remains solely with the prosecution, and the harmed party merely acts as a catalyst.

This ambiguity stems from the wording of **Article 3**, which states:

*“The Public Prosecution shall initiate criminal proceedings if the harmed person files a civil claim...”*

The use of the term *initiate* implies that the prosecution remains the sole entity authorized to initiate proceedings, thereby reducing the role of the harmed party to one of indirect influence.

However, we contend that a literal interpretation of the provision is insufficient. Although the legislature uses the term *initiate*, it likely intends it to mean *proceed with* or *undertake* the prosecution. The legislator’s language across different provisions is inconsistent, at times using terms such as “initiate,” “file,” “bring,” or “proceed.” More importantly, the concept of direct prosecution inherently entails that the harmed party turns directly to the criminal court using a civil claim as the procedural gateway<sup>3</sup>.

It is well established that criminal courts cannot hear civil claims in isolation without the presence of a parallel or accompanying criminal prosecution. Therefore, it would be inconsistent to suggest that the court could entertain a civil claim while the corresponding criminal case is pending initiation by the prosecution. Accordingly, we argue that **Article 3 of the Palestinian Criminal Procedure Law** does, in fact, authorize direct prosecution, with the harmed party initiating criminal proceedings directly—though the terminology used (“initiate”) would be more appropriately replaced with “proceed with.”

In all cases, the authority of the victim of a crime under Omani and Palestinian legislation is

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<sup>3</sup> This is also the approach adopted by the Omani legislator, who at times uses the term “initiation” to mean the commencement of criminal proceedings, as reflected in Article 4 of the Criminal Procedure Law. At other times, the legislator employs the term “conduct” in a broader or more comprehensive sense, encompassing various procedural actions such as initiation, referral, and advocacy before the court. This is evident in Article 86 of the Basic Statute of the State, which uses the phrase “undertaking the public action,” as well as in Article 1 of the Public Prosecution Law.

limited to initiating the criminal action, without engaging in any of the other related criminal procedures or bearing their costs. This differs from the position under British legislation, which imposes on the private prosecutor the obligation to collect evidence, prepare the case for the competent court, bear the costs of investigation and prosecution, and comply with confidentiality obligations related to the case as stipulated in **the British Criminal Procedure and Investigations Act 1996** (Garbutt; Bowker, 2025).

### **2.3. Conditions for Initiating Criminal Proceedings through Direct Prosecution**

In this section, we will focus solely on the general conditions required for initiating criminal proceedings through direct prosecution, leaving the specific conditions—those shaped by the legislative stance of each jurisdiction—to be addressed in later sections, particularly when discussing the personal and objective scopes of direct prosecution.

The general conditions are as follows:

- **Admissibility of the Civil Claim:** This is a logical prerequisite, as it is the civil claim filed before the criminal court that activates the criminal proceedings. If the civil claim is inadmissible—due to procedural defects, lack of standing, or because the plaintiff has already brought the claim before a civil court—it will have no legal effect before the criminal court. Once a civil claim is initiated in civil court, it cannot be refiled in criminal court. It should be noted that this condition is not required under British law, given that the right to initiate direct legal action is not restricted solely to the victim of the crime, as will be clarified later.
- **Admissibility of the Criminal Action:** For a criminal case to be initiated through a civil claim, the criminal action itself must be admissible. Criminal courts are primarily empowered to adjudicate criminal cases, whereas their jurisdiction over civil claims is an exception. Therefore, if the criminal case—the primary matter—is inadmissible, it would be illogical for the criminal court to consider the civil claim alone, as that jurisdiction is only incidental to a valid criminal case (Abdel Sattar, 2000).

#### **Criminal actions are deemed inadmissible in the following circumstances:**

- A.** If the action has been extinguished for any of the reasons stated in **Article 15** of the **Omani Criminal Procedure Law** or **Article 9** of the **Palestinian Criminal Procedure Law**.
- B.** If the Public Prosecution has issued a final or still-standing decision to dismiss the case.

While the legislature permits the harmed party to initiate a direct prosecution when the Public Prosecution Authority fails to act, it does not permit such action after Public Prosecution has already exercised its rule and issued a decision to dismiss the case. Although neither Omani nor Palestinian criminal procedure laws explicitly state that a dismissal decision bars a harmed party from pursuing a direct prosecution, this legal effect can be inferred based on the following rationale:

- The **legal finality** of the dismissal decision prevents the case from being reopened before the same court and regarding the same act and individuals, whether by the Public Prosecution or by the harmed party via direct prosecution.
- The **civil claimant may not possess greater authority than the Public Prosecution**. If the prosecution is procedurally barred by a final dismissal decision, the same limitation must apply to the claimant (Saeed, 1982). Even in jurisdictions that allow for a broad subjective and objective scope for private prosecutions — such as the British legislation referenced above — the Public Prosecution Authority retains extensive powers to intervene in private proceedings. These powers include oversight of the extent to which the prosecution serves the public interest and adheres to the principles of justice. In fact, the public prosecutor may request the continuation of the legal process, at which point it may decide either to proceed with or discontinue the case (Garbutt; Bowker, 2025). Other legislations have gone further, such as the Kenyan statute, which stipulates that direct prosecution requires prior court approval. Furthermore, it grants the Public Prosecutor the authority to take over the case and decide whether to proceed with it or not (Candia, 2017).
- The **inability to file a direct prosecution following a dismissal decision** does not prejudice the civil claimant’s interests, as both the Omani and Palestinian systems allow for judicial challenge of dismissal decisions. In Omani law, this is referred to as a *grievance*, which is effectively a legal appeal. If the grievance is upheld, the case proceeds to court. If rejected, the right to initiate criminal proceedings through direct prosecution is lost, although the right to file a civil claim in civil court remains intact (Abdel Sattar, 2000).

It is worth noting that the absence of explicit provisions regarding the extinguishment of the right to direct prosecution following a case dismissal is not unique to these jurisdictions. For example, in **France**, although the law does not explicitly state that the right to direct prosecution is extinguished upon the issuance of a *non-lieu* order (a decision that no grounds exist for prosecution), jurisprudence and legal scholarship have consistently recognized that such a decision bars the filing of a direct prosecution (Chambon, 1997).

C. The criminal action is also inadmissible if the law conditions its initiation on a complaint, authorization, or formal request—and such prerequisites are not fulfilled. Thus, the civil claimant, like the Public Prosecution, is bound by these procedural requirements.

- **The Civil Claim Must Be Filed by the Harmed Party**: It is important to distinguish between the *victim* and the *harmed party*. The victim is the direct target of the criminal act, while the harmed party may be someone else who suffers consequences from the crime. For instance, Egyptian case law has ruled that the wife and children of a murder victim, the husband of a woman subjected to insult or defamation, and the father of a girl who was raped or sexually assaulted—all are considered harmed parties eligible to file a direct prosecution, even if they are not the immediate victims (Tahir, 2020).

### 3. The Objective Scope of Direct Prosecution

The Objective scope of direct prosecution refers to the types of criminal offenses for which this

procedural route is available. In other words, it defines the substantive boundaries within which individuals may initiate criminal proceedings independently of the Public Prosecution.

In this regard, **the Palestinian and British legislators** have adopted a broad and unrestricted approach. **Article (3)** of the **Palestinian Criminal Procedure Law** and **Section 6(1)** of the **British Prosecution of Offences Act 1985** places no limitation on the objective scope of direct prosecution. For instance, the approach adopted by British lawmakers applies broadly and is not confined to any particular category of crime. Numerous judicial rulings have been issued in the United Kingdom in various types of crimes, where proceedings were initiated through direct prosecution, such as in the case of *R (on the application of the Federation Against Copyright Theft) v James and Others* (2009) and *R (on the application of Virgin Media Ltd) v Zinga* (2014). The provisions grant an unequivocal right to initiate proceedings through direct prosecution without excluding any category of offenses. In fact, the wording of these articles is so expansive that it permits direct prosecution even in felonies, effectively bypassing the traditional requirement of mandatory preliminary investigation for such serious crimes. This approach contrasts with that of other legal systems, such as the Egyptian one, which prohibits direct prosecution in felony cases (Mohammad, 2015; Falah, 2016).

The Palestinian and British legislator's approach is commendable. Denying the harmed party, the right to initiate criminal proceedings in felony cases may result in grave harm, especially if the Public Prosecution fails to act. While the mandatory nature of preliminary investigations in felony cases serves an important procedural function, this can be offset by the final (judicial) investigation. When weighing the competing interests, the interest of the harmed party in seeking justice for a serious offense should prevail. It would be inconsistent to grant the harmed party a right to direct prosecution in minor offenses—such as misdemeanors or contraventions—while denying it in felonies, which are of greater gravity.

In contrast, the **Omani legislator** has adopted a much narrower view. **Article (4) bis** of the Omani Criminal Procedure Law states:

*“Any person who has suffered harm from the offense stipulated in Article (230) of the Penal Code may file a direct complaint with the competent court. The court registrar must notify the Public Prosecution with a copy of the complaint to initiate public proceedings. A lawsuit may not be filed against heads of administrative units of the State or other public legal entities without prior authorization from the competent authority. Authorization for heads of administrative units is issued by the Council of Ministers. The request for authorization is submitted by the Public Prosecutor based on a petition from the harmed party accompanied by supporting documents...”*

This provision clearly limits the use of direct prosecution to a single offense, namely the crime set out in **Article (230)** of the **Omani Penal Code 7 of 2018**. This Article criminalizes the willful refusal or obstruction by a public official to execute a judicial judgment, decision, or order. For this crime to be established, the following conditions must be met:

- A.** The existence of a judicial judgment, decision, or order that is final and enforceable.
- B.** The refusal to execute such order must be attributed to a public official with the legal competence to do so.

- C. The non-execution must be intentional, excluding cases of negligence or inadvertent omission.
- D. The official must have received a formal warning to comply with the order, and at least thirty days must have elapsed since the warning without compliance.

This legislative approach reflects a model that closely resembles the inquisitorial phase of criminal procedure, where the Public Prosecution holds exclusive authority to initiate criminal proceedings. In reality, the mere exception for the offense stipulated in **Article (230)** of the **Omani Penal Code** does little to disrupt this monopolization. By maintaining a blanket prohibition on direct prosecution for all other offenses, the Omani legislator effectively preserves the traditional monopoly—a stance that is legally and ethically problematic for several reasons:

**First**, although the Public Prosecution in Oman is an organ of the judiciary and enjoys judicial guarantees such as independence and impartiality, these qualities do not rule out the possibility of deviation. Human error, negligence, or even intentional misuse of discretion by prosecutors can and does occur. This concern is exacerbated by the fact that, under Omani law, members of the Public Prosecution are not subject to recusal, unlike judges who may be disqualified where circumstances call their impartiality into question. Consequently, if the Public Prosecution fails to initiate proceedings, the harmed party is left with no procedural recourse.

**Second**, this restrictive legislative path represents a violation of the principles of equality and justice. Granting only those harmed by the crime outlined in **Article (230)**—namely, the willful refusal by a public official to enforce a court judgment—the right to initiate proceedings via direct prosecution, while denying the same to victims of all other offenses, is a denial of procedural justice. The criminal process, more than the civil one, carries symbolic and restorative weight for victims. The imposition of criminal penalties offers victims a greater sense of justification and justice than financial compensation alone. Therefore, denying other victims access to direct prosecution constitutes a serious erosion of equality before the law.

**Third**, the right of direct prosecution is not incompatible with the principle of prosecutorial discretion (*opportunité des poursuites*), which underpins the role of the Public Prosecution. This principle entails a judgment call by the prosecutor on whether or not to initiate proceedings. However, such discretion is inherently subject to human fallibility. Safeguards—such as procedural alternatives or external oversight mechanisms—are essential to ensure accountability and preserve justice. Allowing direct prosecution by victims is one such safeguard and does not undermine prosecutorial discretion, just as judicial decisions based on discretion remain subject to appellate review.

**Lastly**, the lack of any legal recourse against a prosecutor's inaction in Oman underscores the inadequacy of the current framework. The Omani legislator provides no explicit oversight mechanism over the Public Prosecution's refusal to act—no appeal or judicial challenge to a decision of inaction. While a complaint may be filed in cases where the prosecutor decides to close the case file at the stage of preliminary inquiry, this is only possible because such a decision is administrative in nature, rather than

judicial, as it is taken during the stage of evidence-gathering and not formal investigation (Al-Majali, 1986). Thus, the harmed party remains legally powerless to compel action, even in the face of serious rights violations.

The administrative nature of the Public Prosecution's decision to close a case file at the preliminary inquiry stage has significant legal implications. Chief among them is the fact that such a decision lacks judicial force and is therefore not subject to appeal before the courts (Andre, 1947). Neither the Omani nor the Palestinian Code of Criminal Procedure provides for judicial character. In contrast to the decision to formally dismiss a case, neither jurisdiction recognizes a right to complain against the prosecutor's decision to shelve a file at the evidence-gathering stage—whether explicitly or implicitly. Even where a complaint may be made, it offers fewer guarantees than an appeal, as it is typically reviewed by the same authority that issued the original decision. Notably, the Omani legislator has provided no procedural alternative for the harmed party to contest prosecutorial inaction, except in the single case permitted under **Article (4) bis** of the **Code of Criminal Procedure**—i.e., for offenses under **Article (230)** of the **Penal Code**. This extreme narrowing of legal remedies renders the right to pursue criminal justice via direct prosecution virtually non-existent.

A closer reading of **Article (230)** of the **Penal Code** reveals that the offense in question—the willful failure or obstruction by a public official to enforce judicial decisions—is classified merely as a misdemeanor. This classification raises critical questions: Why has the legislator allowed for direct complaint in this single misdemeanor while continuing to prohibit it for all other offenses? Is the interest of a victim harmed by this particular misdemeanor more worthy of protection than that of a victim of a felony?

Such questions lay bare the inconsistency and inadequacy of the current legislative design. Limiting direct prosecution solely to a single misdemeanor undermines the overall coherence of the criminal justice system. Even if one were to argue that the special nature of the offense under **Article (230)**—namely, the symbolic and institutional harm caused by non-enforcement of court decisions—justifies exceptional treatment, that argument fails for several reasons:

**(a)** The **victim's interest** must always be central to legislative concern, regardless of the type of offense. If the protected interest in **Article (230)** is indeed significant, the same must apply to felonies, which by definition threaten more serious societal values. The fact that the legislator allows for direct complaint only in a misdemeanor and denies it in more serious crimes contradicts the very logic of criminal policy.

**(b)** It is true that the offense under **Article (230)** poses serious threats to the rule of law by undermining respect for judicial authority. But if this justifies opening the door to direct prosecution, then consistency requires that the same procedural path be available for all offenses—especially felonies and serious misdemeanors. The current legislative approach reflects a prioritization of instrumental utility (ideas of expediency) over substantive justice, a point underscored by the leniency of the penalty prescribed for this offense. While the harm to institutional trust is clear, the law imposes only a fine ranging from **100 to 1,000 Omani Rials**, with a **daily fine of 300 Rials** if the offender fails to comply post-conviction—an amount that continues until enforcement occurs. Even more

striking is the fact that subsequent compliance by the public official results in extinguishing the criminal action, provided no final judgment has yet been issued.

This structure indicates that the legislator's emphasis was not on ensuring justice per se, but rather on encouraging eventual compliance, thus leaning more toward utilitarian considerations than a robust commitment to the principle of criminal accountability. If the legislator is genuinely concerned with the harm suffered by victims of this offense, that concern should logically extend to victims of all crimes—who, like the plaintiff in **Article (230)** cases, seek redress and recognition through the criminal process.

#### **4. The Subjective Scope of Direct Prosecution**

According to the explicit provision of **Paragraph (6/1)** of the **Prosecution in Crime Act of 1985**, the right to direct prosecution as a means of initiating criminal proceedings is granted to all individuals, without being restricted to a specific status or party involved in the crime under investigation—such as the victim or the injured party—regardless of whether the direct prosecutor is a natural or legal person.

This broad personal scope of direct prosecution under British law is supported by several legal justifications, most notably:

- **The failure of state authorities** responsible for investigation and prosecution (police and public prosecution) to fulfill their role, whether due to financial constraints or prioritization of certain cases.
- **Achieving swift justice and expediting case resolution**, given that state agencies may delay investigations due to the sheer number of crimes they are required to address, which negatively impacts victims' rights and undermines social peace.
- **Ensuring better control and oversight over cases** when pursued via direct prosecution, thereby enhancing both general and specific deterrence—particularly in cases involving public funds such as corruption and fraud, which state authorities may seek to conceal. (Garbutt; Bowker. 2025)

Despite these legal justifications, granting individuals and institutions the authority to initiate criminal proceedings has not been free from criticism, as evidenced by practical applications. The most notable concerns include: the abuse of direct prosecution as a means to harm the accused and damage their reputation; violations of the rights and safeguards of the accused during the initiation of direct prosecution procedures (Mujuzi, 2015); the potential undermining of direct prosecution's significance due to the public prosecutor's authority to intervene and assume control of the case, which may ultimately lead to its discontinuation (Candia, 2017), the absence of a regulatory framework for direct prosecutors in some jurisdictions (DWF, 2023). Some scholars have even rejected the very notion of granting the right to initiate direct prosecutions, arguing that it creates a conflict of interest for the private complainant and constitutes an encroachment upon the authority of the public prosecutor, who represents society in criminal proceedings (Nichols, 2001).

Whereas British law permits direct prosecution by all individuals, some other legal systems restrict this right solely to affected parties. The Omani legislator regulates the right of direct prosecution in **Article (4 bis)** of the **Code of Criminal Procedure**, which allows any person who has suffered harm from the offense stipulated in **Article (230)** of the **Penal Code** to initiate criminal proceedings directly. This provision affirms the constitutional guarantee articulated in **Article (81)** of the **Omani Basic Law** promulgated by **Royal Decree No. 6 of 2021**, which states:

*“Judgments shall be issued and executed in the name of the Sultan. Refusal or willful obstruction of their execution by the competent public officials shall constitute an offense punishable by law. The judgment creditor shall have the right to initiate criminal proceedings directly in such case.”*

These provisions clearly establish that the right to direct prosecution is vested in the injured party, as **Article (4 bis)** unambiguously states: *“Anyone who has suffered harm...”*. Similarly, **Article (81)** of the Basic Law grants the judgment creditor—who has been denied the benefit of an enforceable judgment—the right to initiate criminal proceedings directly, thereby recognizing such a person as a harmed party.

The Palestinian approach mirrors that of Oman. **Article (3)** of the **Palestinian Code of Criminal Procedure No. 3 of 2001** (as amended) provides:

*“The Public Prosecution shall initiate criminal proceedings if the injured party brings a civil claim in accordance with the procedures prescribed by law.”*

Likewise, **Article (106)** of the **Palestinian Basic Law** acknowledges the right of the judgment creditor—considered the injured party in cases of willful non-enforcement of judicial decisions—to pursue direct complaint.

From these legislative provisions, it is evident that both the Omani and Palestinian legal systems assign the right of direct complaint to the injured party. Notably, the terminology adopted in both jurisdictions explicitly refers to the injured party, rather than the victim. While this distinction may seem subtle, it has significant implications: a victim is the individual directly subjected to the criminal act, while the injured party may include any person who suffers harm—whether directly or indirectly—as a result of the offense.

In this respect, we argue that the scope of the relevant provisions should be broadened to include both the injured party and the victim, especially in instances where the victim cannot demonstrate quantifiable harm but is nonetheless closely connected to the offense. This expansion of the personal scope would ensure a more inclusive and responsive justice system.

Undoubtedly, recognizing both the victim and the injured party as holders of the right to initiate direct criminal proceedings constitutes a step in the right direction. It fosters a broader and more equitable application of the right and strengthens the participatory dimension of criminal justice. The significance of this approach becomes evident through an evaluation of both the Omani and Palestinian legislative models, as well as through a deeper examination of the interplay between principles of justice and utilitarianism that shape each legislator’s underlying rationale.

#### **4.1 Evaluation of the Omani and Palestinian Legislators' Approach in Restricting Direct Prosecution to the Injured Party**

Some scholars argue that the restriction of the right to direct prosecution to the injured party arises from the requirement of legal interest as a precondition for initiating a civil claim, which, in turn, opens the path for the concurrent initiation of criminal proceedings. From this perspective, when the injured party resorts to direct complaint, they do so through the civil claim before the criminal court, thereby triggering both civil and criminal proceedings simultaneously. This procedural outcome, it is argued, presupposes that the civil claimant is a party who has suffered harm as a result of the offense (Al-Rahali, 2017).

While this view is not without merit, it fails to fully capture the underlying legislative philosophy that guided the restriction of direct prosecution to the injured party. We contend that the legislator's fundamental objective is not merely to preserve the procedural link between civil and criminal claims, but rather to safeguard the public interest by ensuring that criminal prosecution is not left solely at the discretion of the public prosecutor. By empowering the injured party—rather than merely the victim—with the right to initiate criminal proceedings via direct complaint, the legislator seeks to expand the pool of legitimate actors capable of ensuring that justice is pursued, particularly since the injured party may include individuals other than the direct victim (Abdul-Ati, 2019).

Moreover, the argument that only the injured party has the legal standing to file a civil claim (and thus trigger criminal proceedings) may be challenged on the basis that the victim also possesses a direct interest in initiating criminal prosecution. In fact, in many cases, the victim and the injured party are one and the same. Even where they differ, both parties have a compelling interest in seeing justice done.

The legislator's choice to confer the right of direct prosecution upon the injured party also stems from practical considerations: in some instances, such as homicide cases, the victim may no longer be alive. In such cases, the injured party—often a relative or legal successor—is the only one capable of taking legal action.

From this analysis, it becomes evident that the restriction of direct prosecution to the injured party is driven by both pragmatic and justice-based considerations, rather than utilitarian logic. The mechanism of direct prosecution is intended to activate criminal proceedings where the public prosecution has failed or declined to act, regardless of the reason. It is a procedural tool aimed at enabling the imposition of criminal liability and ensuring accountability. Such a process serves not only the interests of the injured party but also contributes to the collective sense of justice within society.

If the legislator's primary concern were purely utilitarian—limited to compensation and efficiency—then the right to direct prosecution would have been omitted altogether in favor of civil remedies. However, the legislator's express provision for direct prosecution affirms the primacy of justice, not utility (Al-Qudah, 2017).

Accordingly, the injured party's right to direct complaint should be seen not merely as a means of obtaining personal compensation through civil litigation, but rather as an expression of the public interest in criminal accountability, thereby reflecting a justice-centered legislative philosophy.

#### 4.2. The Notions of Justice and Utility in the Legislative Approach of Oman and Palestine to Direct Prosecution

As previously concluded, the decision to vest the right of direct prosecution in the *injured party*—rather than the *victim*—reflects the legislator's intent to broaden the scope of public interest protection. By granting this right to any person harmed by the offense, and not exclusively to the direct victim, the legislator prioritizes the principle of justice over utilitarian considerations (Sharif, 2020).

A close examination of the Palestinian legislator's approach supports this conclusion. **Article 106** of the **Palestinian Basic Law** embodies the notion of justice and affirms the constitutional commitment to safeguarding the public interest by expanding the class of individuals entitled to file a direct prosecution. Although **Article 106** addresses a specific context—namely, the crime of willful non-enforcement or obstruction of judicial decisions—it nonetheless demonstrates a constitutional-level recognition of the importance of this procedural tool. This recognition is further reinforced by the legislator's decision to attach punitive consequences, including dismissal from public office as an accessory penalty, in addition to the primary sanction against public officials who violate the judicial authority.

Furthermore, the **Palestinian Criminal Procedure Law (Article 3)** authorizes the injured party to file a direct prosecution without restricting this right to specific categories of offenses, thereby affirming a general legislative commitment to protecting the public interest through wider procedural access. In this context, the Palestinian legislator exhibits a justice-oriented philosophy, recognizing that ensuring access to criminal proceedings promotes institutional legitimacy and societal confidence in the legal system.

In contrast, the Omani legislator—while appearing to adopt a similar justice-based premise in **(Article 4 bis)** of the **Omani Code of Criminal Procedure** by granting the injured party the right to direct prosecution—ultimately reveals a utilitarian orientation upon closer study. The constitutional provision in **Article 81** of the **Omani Basic Law**, which enshrines the right of direct prosecution in the event of unlawful non-enforcement of judicial decisions, articulates a clear commitment to the ideals of justice and enforcement of judicial authority. However, **Article 4 bis** of the **Code of Criminal Procedure** substantially narrows the scope of this right by limiting it to a single offense—the crime set forth in **Article 230** of the **Omani Penal Code**.

This restriction suggests a legislative focus on functional outcomes (i.e., compliance with judicial decisions) rather than a broader commitment to public justice. **Article 230** defines the relevant offense as a misdemeanor, subject not to imprisonment but merely to a fine ranging between 100 and 1,000 Omani Rials. Moreover, the legislator imposed an additional weekly coercive fine of 300 Rials following conviction, designed to incentivize compliance rather than to express reprobation or reinforce the symbolic authority of criminal law.

Perhaps most significantly, **Article 230** stipulates that the performance of the judicial obligation—i.e., execution of the judgment—extinguishes the criminal case at any procedural stage. This provision exemplifies a legislative approach grounded in utility, whereby enforcement, not punishment, is the central aim. While the practical necessity of enforcing judgments is undeniable, such a design overlooks the broader societal harm caused by deliberate non-enforcement, namely the erosion of trust in judicial institutions and the perceived impunity of public officials.

In short, the Omani legislator's emphasis on compliance and restitution, to the exclusion of retribution or deterrence, signals a utilitarian policy rationale that undervalues the justice-based need to uphold the authority of the judiciary and penalize conduct that undermines the rule of law. This utilitarian orientation stands in tension with the justice-driven constitutional values articulated in **Article 81**, and suggests a need for legislative recalibration toward a more balanced model that properly reflects both public interest protection and procedural fairness

## 5. Conclusion

### 5.1. Findings

- Granting the right of direct prosecution to the injured party—while withholding it from the victim unless they are also considered injured—does not primarily stem from the civil law requirement of standing (interest) to initiate legal proceedings via a civil claim. Rather, this legislative choice reflects a deliberate intention to broaden the scope of those entitled to activate the public prosecution mechanism. By expanding eligibility to include any injured party, the legislator ensures greater protection of the public interest, particularly in cases where the public prosecutor refrains from initiating criminal proceedings.
- The mandatory nature of preliminary investigations in felony cases should not constitute a legal or procedural barrier to exercising the right of direct prosecution in such cases. It is illogical to authorize this right in the context of minor offenses (misdemeanors or infractions), yet deny it in cases of greater severity (felonies). If the justification for this restriction lies in the statutory requirement of preliminary investigation for felonies, such justification is unconvincing. The harm resulting from failure to prosecute a felony—especially from the injured party's perspective—is far more serious than the omission of the preliminary investigation stage. This procedural step may be dispensed with, given that the case will still proceed to the full judicial investigation phase, which guarantees comprehensive evidentiary review and procedural safeguards.
- The Omani legislator has adopted a narrowly confined legislative approach to the scope of direct prosecution, restricting its application to a single offense—namely, the crime of willful failure to enforce judicial rulings, as defined in **Article 230** of the **Penal Code**, and in line with **Article 81** of the **Basic Statute**. However, the manner in which this crime is legislatively structured reflects a utilitarian outlook that prioritizes procedural efficiency and enforcement over substantive justice. This utilitarian focus does not align with the nature of the offense, which represents a serious injury to the authority and integrity of the judiciary, and thus calls for a framework grounded in principles of justice and deterrence rather than mere administrative compliance.

## 5.2. Recommendations

- It is recommended that the Omani legislator reconsider its legislative approach regarding the right of direct prosecution, by expanding its scope to include any injured or victimized party, irrespective of the nature or classification of the offense, and refraining from limiting this right to a singular crime. Such expansion would align the legislative framework with the principles of justice and equal access to judicial remedies.
- It is further recommended that the Omani legislator amend **Article 230 of the Penal Code**, which addresses the offense of willfully refraining from executing judicial judgments, decisions, or orders. The penal policy underlying this provision should be reformulated to reflect the principle of justice, rather than a utilitarian approach. Given the grave implications of undermining the authority and dignity of the judiciary, the prescribed sanctions must be proportionate, deterrent, and devoid of leniency, particularly when the offense entails a deliberate disregard of binding judicial instruments. The reliance on financial penalties and the automatic extinguishment of criminal liability upon subsequent compliance do not suffice to safeguard the public interest or maintain judicial integrity.
- It is also recommended that the Palestinian legislator intervene to establish a coherent and comprehensive legislative framework governing the exercise of direct prosecution within the **Code of Criminal Procedure**. The current provision—**Article 3**—merely acknowledges the right in principle, yet lacks the necessary procedural and substantive elaboration required to ensure effective implementation and legal certainty.

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