

AN OVERVIEW OF THE SAUDI ARABIAN CRIMINAL JUSTICE PROCEDURES AGAINST CORRUPTION IN THE PUBLIC SECTOR

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I. INTRODUCTION

Nations suffer from many kinds of problems, including war, poverty, disease, backwardness, and corruption. However, corruption is considered the most damaging for all societies; most other problems are caused by intensification of corruption.

Corruption is a global phenomenon that raises concern worldwide. It is related to social, economic and political conditions, and is considered to be a most dangerous and destabilizing phenomenon.

The word “corruption” and its derivations are mentioned in the Holy Koran about 53 times. Almighty Allah said: “when he turns his back, his aim everywhere is to spread mischief through the earth and destroy crops and cattle but Allah loveth not mischief” and said: “but do thou good, as Allah has been good to thee, and seek not mischief in the land” and said: “O my people! give full measure and weight fairly, and defraud not men their things, and do not act corruptly in the land, making mischief” and said: “Shall we treat those who believe and work deeds of righteousness, the same as those who do mischief on earth? Shall we treat those who guard against evil, the same as those who turn aside from the right?”

The Prophet Mohammed (peace be upon him) said “Allah’s curse is on the one who offers the bribe and on the judge who accepts it” and, peace be on him, cursed the one who offers the bribe, the one who receives it, and the one who arranges it, and peace be upon him, said “a man’s foot will not be settled on ground, until he is been asked about four things; one of them is his wealth, from where he got it, and on what he spent”.

Accordingly, we find Sharia law, a law set out by Allah, forbids corruption and considers it one of the most terrible sins. It is then natural for Saudi Arabia, a country ruled by Islamic law, to combat corruption as a most important mission. In this regard, Saudi Arabia is implementing Islamic law to eradicate corruption and is seeking international co-operation to develop modern techniques in order to eliminate corruption from society.

II. THE SAUDI ARABIAN CRIMINAL JUSTICE RESPONSE TO CORRUPTION IN THE PUBLIC SECTOR

A. Anti-Corruption Strategies

Corruption in the public sector includes crimes such as: bribery of public officials; embezzlement; infringement of public property; evasion of public bidding in public contracts; nepotism and favouritism; trading in influence; sub-contracting; extortion or giving of protection money; illegal donation and illicit enrichment.

Saudi Arabia has adopted many strategies and procedures to fight corruption in the public sector, which may be listed as follows:

- Presence of political will to fight corruption.
- Making internal reforms in the service sector.

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- Creating direct and clear systems to fight corruption and regular review of these systems when needed.
- Creating security, control, investigation and judicial establishment to embark on the fight against corruption.
- Participating with the international community in the concern of fighting corruption through its desire to attend international conferences and seminars concerning anti-corruption efforts.
- Taking care of the edification side through working on increasing citizens' awareness of the dangers of corruption by empowering the nation's religious conscience via media and educational curricula, and by urging universities and specialized research centres to carry out research and seminars to fight corruption.

These measures and regulations are considered the most important bases for the strategy that Saudi Arabia has adopted to prevent corruption. We will concentrate on the most important proposals and measures and explain them in some detail.

1. Political Will to Fight Corruption

Saudi Arabia takes its laws and regulations from Islamic law (Sharia) which forbids everything leading to corruption, which damages the individual and society. Therefore, the political will of the leadership to fight corruption in Saudi Arabia is present in all of its anti-corruption measures. It is a number one priority to gain the support of the media and civil society. Strong leadership supported by all sectors of society would ensure the success of Saudi Arabia's anti-corruption plans and strategies.

2. Establishing Systems to Fight Corruption and Regular Reviews

There is political will to fight corruption and this requires management reforms; it was necessary to render this will to reform into clear regulations and certain agencies to fight corruption. These regulations include criminalizing all sorts of corruption:

(i) *Public-post-related Crimes*

Royal Decree No. 43 of 1957 concerns public-post-related crimes. Article 2 of this decree referred to the punishment for an individual committing any of the crimes mentioned, including abuse of authority for personal interest; accepting a bribe; asking for a bribe from other parties; management abuse such as misusing laws, orders, and instructions and profiteering for contract of tenders and bids; defalcation; squandering; neglecting public property; and maltreatment such as coercion through torture, severity, confiscating property and interfering with personal freedom.

This decree is the first rule concerning public property crimes. It lays down defalcation, squandering and neglect of public property. Pursuing the public property is laid down by Royal Decree No. M/77 of 1975. It lays down in its first article that this decree covers everyone occupying a public post that is related to trusteeship of cash or movable properties, stamps and valuables. The ninth article of this decree defines the punishments of every employee covered by this law, convicted of committing defalcation, squandering or abusing public property held by him or her. The same punishments are imposed on everyone who shared or colluded with him or her in committing any of these crimes.

(ii) *Bribery Law*

The first anti-bribery law was enacted in 1930 when the General Civil Servants' Law was issued to incriminate bribery and abuse of position. The present anti-bribery laws were issued in 1992 by Royal Decree No. M/36, through enactment of the following articles:

Article 1: Every public employee who requests for himself or others, accepts or acquires a promise or offer to do one of his duties or alleged duties, even if this duty is a mere draft, shall be considered a briber and be punished by imprisonment of no more than ten years and fined by no more than a million Saudi Riyal; or by one of either. Employee's intentions of not doing his duties shall not affect the incrimination.

Article 2: Every public employee who requires to himself or to others an offer to cease doing his duties or alleged duties, even if this duty is a mere draft shall be considered a briber and be punished by the

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penalties mention in Article One. Employee's intention of not doing his duties shall not affect the incrimination.

Article 3: Every public employee who requires for himself or others, accepts or acquires a promise or an offer to neglect his duties or to award him of what he did even without prior agreement, shall be considered a briber and be punished by the mentioned penalties in Article One of this law.

Article 4: Every public employee who violates his duties by doing or not any of these duties as a result of request, recommendation or mediation shall be considered a briber and be punished by no more than three years of imprisonment and filled by no more than a hundred thousand Saudi Riyal or by one of either.

Article 5: Every public employee who requires for himself or others, accepts or acquires an offer to use a real or alleged authority to obtain from any public authority a labor, order, decision, commitment, authorization, import agreement, job, service or any kind of advantage shall be considered a briber and be punished by the penalties mentioned in Article One.

Article 6: Every public employee who requests for himself or for others, accepts or acquires a promise or an offer because of his job to follow up a transaction in any government department and to whom none of the terms in this law apply shall be punished by no more than two years of imprisonment and filled by no more than fifty thousand Saudi Riyal or by one of either. One who offers or suggests or promises to offer for the aforementioned purpose shall be punished by the same punishment(s). That applies to mediator(s) in any of these cases.

Article 7: Everyone who uses force, violence or threat against any public employee to obtain fulfillment of illegal transaction or to cause him not to perform his official duties shall be punished by the same penalties mentioned in Article One.

Article 8: A public employee to whom the articles of this law apply are the following:

1. Everyone who works for the government or for any institution either body or body corporate either he works permanently or temporarily.
2. The arbitrator or the expert hired by the government or any committee that has judicial authority.
3. Everyone hired by any government institution or any other administrative authority to perform a given duty.
4. Everyone who works for private companies or establishments that execute administrating or operating, maintenance or exercise of public service of any public institution or work for joint-stock companies or companies of shares held by the government and companies and establishments that exercise banking.
5. Managers and members of administrative boards mentioned in (4) of this article.

Article 9: One who offers a rejected bribe shall be punished by no longer than ten years of imprisonment and fined no more than a million Riyal or by one of either.

Article 10: The briber, the mediator and any participant in any of the crimes mentioned in this law shall be punished by penalties of the article of incrimination. Everyone who agrees, motivates or helps in committing this crime intentionally shall be considered a participant in this crime once it is committed on the basis of this agreement, motivation or help.

Article 11: Everyone hired by the bribee or briber to obtain the bribe and accepted it with knowledge of the reason behind it shall be punished by no longer than two years of imprisonment and fined by fifty thousand Saudi Riyal or by one of either.

Article 12: Every advantage or interest obtained by the bribee whichever the type, name of that advantage or interest either corporeal or incorporeal shall be considered a form of promise or offer in inflecting this law.

Article 13: Termination, deprivation of holding a public post and deprivation of holding what is considered a public post mentioned in Article Eight are consequences of incrimination of one of the crimes mentioned in this law.

Article 14: The Council of Ministers may reconsider the following punishments five years ahead of completing the punishment.

Article 15: In all cases, confiscation of money and any advantage resulting from this crime will be implemented whenever possible, in practice.

Article 16: Briber and mediator are exempted from prime and consequent punishment if they inform the authorities before discovering the crime.

Article 17: Everyone who provides information of any of the crimes mentioned in this law and leads to proving the crime and is not a briber, participant or mediator shall be given a reward no less than five thousand Riyals and no more than half of the money confiscated. The reward is identified by the authority issuing the verdict. The ministry of Interior may pay a higher reward than what is been identified in this article after the approval of the Prime Minister.

Article 18: A repeater is one who was convicted of one of the crimes mentioned in this law and was proved to have committed another crime in accordance with its articles before five years of completing the punishment. In this case he may be sentenced to higher than the maximum punishment determined but no more than twice as much.

Article 19: The authority assigned to judge in crime cases shall inflict a fine no more than ten times as much as the bribe or a deprivation of purchasing contract, executing projects and work with Ministries, government departments or body corporate or by both penalties on any company or establishment if its manager or any worker is convicted of committing any crime mentioned in this law proved to be for its interest. The Council of Ministers may reconsider the deprivation penalty, mentioned in this article, after, at least, five years of issuing the verdict.

Article 20: If any company or establishment either national or foreign is deprived according to Article Nineteen, government departments contracting with it should forward to the Council of Ministers their views of the possible action toward labor that this company or establishment is executing even if the department(s) has no relation with the crime of the verdict.

Article 21: The Ministry of Interior has to publish verdicts issued in bribe crimes and announce them.

Article 22: This law substitutes the anti-bribery law issued by Royal Decree No. 15 on 7.3.1382 and the following amendments and voids every contradiction to its articles.

Article 23: This law shall be published in the official paper and be put into effect thirty days afterwards.

This law covers all aspects of corruption including many programmes that relate to the central crime (public bribery) and the resulting effect, regardless of the variation of its degree. It is the crime of misusing public sector responsibility. Some innovations of this law include:

- A precautionary article to punish public employees who bribe a person to use his post to follow any transaction in any government body. This provision also inflicts the same punishment on a person who is offered or promised a bribe.
- A libel punishment which makes it necessary to publish sentences of all bribery crimes.
- A provision allowing for the sentencing of an offender for repeating a crime of bribery. It is a specific sentence restricted by certain conditions specified in the law. When these conditions are met it becomes possible to inflict more than the maximum punishment laid down for this crime, to a maximum of double the stipulated punishment.
- Allowing the questioning of individuals associated with the briber if that crime is committed for their interest and making the punishment a fine of no more than ten times as much the bribe or forbidding

the briber from entering any tender, bid or contract, or both together. That is because the law maker is aware that most bribery crimes are committed to further the private interest of companies or establishments. Hence the companies and establishment are removed from the control of law which the briber secures for them in spite of their individual interest. In an attempt for the company or the establishment not to escape punishment as a beneficiary of the bribe the law provides for the questioning and punishment of a legal person.

3. Establishing Security, Control, and Investigating Institutions to Fight Corruption in Saudi Arabia

All government authorities and all sectors of society within Saudi Arabia participate in measures and activities against corruption.

Fighting corruption is not limited to one institution; rather, security, control, investigation and legal institutions make collective efforts to implement criminal policy. This work is to achieve management reforms and to prevent all kinds of corruption by implementing preventive, controlling procedures and Islamic and legal punishments. These authorities are outlined below.

(i) *The Arrest Authority*

- Corruption Investigation Department (Administrative Detection)
- Criminal Investigation Department (Public Security)

These institutions are responsible for search, investigation and arrest. Their power is limited to conducting investigation of corruption, gathering evidence, planning to arrest the suspected perpetrators, and then preparing reports of inspection and conducting primary investigation. It is noticeable that every one of these institutions has a special field defined by the kind of crime it deals with.

The Corruption Investigation Department deals with anti-bribery crimes. These crimes are misuse of a post as a result of recommendation, connection or real or fake abuse of power; accepting the gains of bribery while being aware of its nature; and the crime of using force or violence or blackmail against a public post holder to make him or her commit an act or cease his or her work. The employee may be following a transaction in any government department and profiteering from his or her post.

The Criminal Investigation Department deals partially with other forgeries, defalcation tied to forgery crimes or any felony crime.

It is notable that if any institution discloses any public property defalcation it conducts the primary investigation. It takes the initial procedures to reserve documents and papers related to the crime and maintain reports required. It analyses them along with notifying the investigation institution and the General Control Council to exert their authority, by examining and reviewing relevant documents.

(ii) *Control Authority*

The Control Authorities in Saudi Arabia are listed below.

(a) Ministry of Economy and Finance

The Ministry of Economy and Finance practices its fields of authority in advanced control of budgeting, expenditure or confirming contracts such as bids.

It's been agreed to call this kind of control "continuous and preventive control", to prevent mistakes and misuse in advance. This is conducted in a regular and consistent way (by the ministry) through its financial representatives in all ministries and government departments.

(b) General Control Council

The General Control Council has the duty of controlling budget income and expenditure. It's been agreed to call this type of control "consistent exposing control", to expose violation of budgetary control. This control is conducted in a consistent and regular way through members of the council.

(c) Supervision in the Control and Investigation Board

The role of this institute differs completely from the role of both the Ministry of Economy and Finance and the General Control Council. The board neither practices continuous preventive control nor consistent exposing control. It rather practices a role which emanates from the aforementioned duties. It doesn't interfere with their duties but completes their role to make them integral. That role depends on participating in public-post holder rectification, protecting government departments from mistakes and violations or preventing them beforehand, such as acting on reports and complaints. Here the board practices a kind of advanced control that may require re-examining documents and records. Such practice is a kind of forward control of records.

(iii) *Investigation Authority*

The Investigation Department in the Investigation and Control Board represents investigative and prosecutorial power in bribery, forgery, and public property crimes.

The disciplinary systems gave investigators the power required to carry out their duties. They were then given by Royal Decree No. 51 in 1402H (1982 in the Gregorian calendar) the power to carry out their duties in bribery and other crimes with all authority necessary, such as:

- Visiting all government departments and viewing all documents required. These departments must enable investigators to do that;
- Searching all public localities and seizing whatever results from the search;
- Hearing witnesses and others who may have any connection to the case or who may have any information that leads to exposing the truth.

If investigations prove the incrimination through evidence, then the case will be submitted to the Grievance Board through the head of the prosecuting authority after preparing an indictment.

(iv) *Judicial Authority*

Two Judicial Authorities are assigned to deal with corruption matters:

(a) The Grievance Board

This is a judicial institution linked directly to the King and exercises its jurisdiction through various circuits. These circuits are to adjudicate in retribution cases against those who are accused of committing forgery and bribery.

In addition to retribution circuits, a board was established to scrutinize cases. It is assigned to scrutinize cases from all circuits of the Board. Furthermore, it scrutinizes cases in a manner defined by prosecution before the Board. It is noteworthy that prosecution rules before the board, enacted in 1989, have illustrated in detail the procedures to prosecute; contested cases; setting appointments; session regulation; sentencing and executing these sentences; and the procedures to contest. According to these rules and procedures, a scrutiny board monitors prosecuting and sentencing.

(b) The General Courts (Islamic Sharia Courts)

The Arrest Authority forwards some cases that don't fall under their jurisdiction, and cases that lack the legal basis for bribery, forgery or defalcation crimes, to these courts. It forwards the case to these courts when the incident forms another crime or is inimical to the public interest. It is noticeable that the relevant authority is the Investigation and Prosecution Board.

4. Working with the International Community in Fighting Corruption

Saudi Arabia works with other countries by attending conferences and international gatherings concerning corruption and by supporting international efforts to fight corruption.

Saudi Arabia has participated in many international forums, seminars, agreements and protocols in the field of safeguarding integrity and fighting corruption. Such events were arranged by specialized regional and international organizations such as the United Nations, the Islamic Conference Organization, the Arab League,

the Gulf States Cooperation Council, Interpol and others, all of which emphasize the effective role that Saudi Arabia plays in fighting all types of corruption. Some of the most important agreements Saudi Arabia has signed are as follows:

- The Security Agreement between the Gulf States;
- The Arab Anti-Drug Agreement, 1994;
- The Riyadh Agreement between Arabs for Judicial Co-operation;
- The Forty Recommendations regarding fighting Money Laundering approved by the Saudi Ministers Council by Decree No. 15 dated 17/1/1420H;
- The United Nations Convention against Transnational Organized Crime, signed by Saudi Arabia in December 2000;
- The United Nations Convention against Corruption, signed by Saudi Arabia in 2004.

III. STRATEGIES TO FIGHT CORRUPTION AND TO SAFEGUARD INTEGRITY

In its effort to fight corruption and safeguard integrity Saudi Arabia conducts a national strategy of procedures and specific effective plans for this purpose at domestic and international levels.

A. On the Local Level

1. Establishment of units and associations to fight crime in general and crimes of corruption in particular:
 - Establishment of a national association for fighting corruption. This association co-ordinates the necessary strategies such as planning and monitoring in both public and private sectors.
 - Establishment of financial investigations to prevent misuse of the banking system and follow up with the other external similar parties.
2. Insistence that the concerned party undertakes a periodic review of the anti-corruption regulations and rules.
3. Insistence on a periodic review of the regulations relating to fighting corruption by concerned departments and making use of modern methods worldwide in this field.
4. Developing internal control systems in finance and administration in all government and private sectors, especially in government purchases, collections, customs and sections issuing licenses and permits, etc.
5. Supporting the investigation, judicial and control departments by providing them with funds, manpower, experience, training, technology and modern scientific methods.
6. Quick formal actions on corruption cases confirming the principle of compensation for the victims of corruption crimes after obtaining a formal court decision.
7. Encouraging civil organizations to play their role in fighting corruption.
8. Encouraging co-operation with universities, institutes, academies, and training centres to carry out studies, research, and training sessions in the field of fighting corruption.
9. Protection through the following initiatives:
 - Strengthening religious teaching concentrating on integrity and corruption fighting, through media, debates and educational institutions;
 - Concentrating on strengthening the role of the family in building a Muslim society that will stand against corrupt acts;
 - Encouraging educational institutions to introduce in general education and university programmes an emphasis on integrity and fighting corruption;
 - Arranging an ideal cultural programme in the form of lectures, slides, video tapes, books, etc. in both government and private sectors.

B. On the International Level

1. Making use of the experience of international governmental and nongovernmental organizations' experience in integrity and corruption fighting.
2. Following up international findings in corruption crimes by participating in international conferences and forums.
3. Working on more co-operation and exchange of regulations, information and experience in respect of integrity and anti-corruption efforts between GCC, Arab and Islamic countries.

IV. CONCLUSION

Corruption has become a major concern for all countries; its causes are many and are inter-related with various circumstances, mainly economical, political and social.

The Saudi Arabian government gives its full attention to fighting corruption, and to that end it has made many plans to diagnose the problem. It also works in co-ordination with all the concerned government authorities and social sectors to ensure that through co-operation with each other, they will free the country of corruption.