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## **PARTICIPANTS' PAPERS**

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### **EFFECTIVE LEGAL AND PRACTICAL MEASURES TO COMBAT CORRUPTION IN IRAQ**

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#### **I. INTRODUCTION**

Corruption acts as a major deterrent to growth and development. It is a global and widespread problem which affects development and growth nationally as well as globally. The importance of the problem has been increasingly recognized by the international community and in particular in developing countries. The aim of this paper is to summarize existing conditions in relation to corruption in Iraq. In similarity with many other developing countries and a country in transition, Iraq suffers from increasing trend in corruption with negative effects on its reconstruction and development programmes. Iraq by the constitution is a federal system and the region of Kurdistan is constitutionally recognized as federal region. This paper focuses on the Iraqi legal system for combating corruption. Since the political situation in Kurdistan from 1991 is different from the rest of the country, the paper mentions briefly the legal system in Kurdistan as well.

The rest of the paper is organized as follows. The paper begins with a brief overview of corruption, and then turns to a review of the situation in Iraq. This is followed by a discussion of the corruption related offences in the Iraqi Criminal Law. The discussion above is continued with an overview of the entities that monitor transparency and combat corruption in Iraq. Media and its role have been briefly studied. The paper ends with a summary which includes some of the challenges that face fighting corruption in Iraq and some suggestions that support the effort to retain the transparency in the country.

#### **II. A GENERAL BACKGROUND TO CORRUPTION**

According to the United Nations Global Programme against Corruption, currently there is no single, comprehensive and universally accepted definition of corruption. However, listing specific types or acts of corruption can be recognized and clearly identified. Corruption can be defined as the abuse of publicly entrusted power for private ends and it usually involves officials from the public sector. Though the states are reluctant, corruption in private sector is increasingly recognized recently.

Corruption can be "Grand" or "Petty". The first pervades the highest levels of national government leading to a broad erosion of confidence in good governance, the role of law, and the economic stability. In the case of Iraq "Grand" can relate with the oil industry where the looted money reach millions of dollars. The looted money in the oil for food programme is also an example for this type of corruption. The minister of trade has been accused in misusing his authority and getting personal benefits from the programme.

Petty corruption involves the exchange of very small amounts of money, the granting of minor favors by those seeking preferential treatment or the employment of friends and relatives in minor positions. . This type of corruption is been practiced in Iraq on daily basis. Kurdistan region suffers less from corruption in the shape of bribes; however, preferential treatment for political supporters and relatives is a major problem. It is a reason for suspicion of the government among the people.

Also corruption can be "active" which refers to the offering of the bribe or "passive" which refers to the receiving of the bribe. According to the Iraqi criminal law both offering and receiving are in the same legal category. According to the last paragraph of Article 310 "... The person who offers a bribe as well as the intermediary is punishable by the penalty prescribed by law for a person who accepted such bribes".

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Research indicates that corruption exists in all societies, but it is more pervasive in some societies and more common at some times in their process of evolution. They focus on a number of studies where researchers investigate the reasons for corruption to be more widespread in some countries than others. A number of determinants of corruption are identified in the literature ranging from political modernization and the speed at which it takes place, lag in adjustment of laws and regulations to adapt to new conditions with the objective to prevent corruption, historical and cultural traditions, levels of economic development, political institutions, government policies, to duration in democracy and ethnicity.

### III. AN OVERVIEW OF THE CONDITIONS IN IRAQ

Iraq is a country which has been in a series of wars including wars with its nation of Kurds. In 1991 the central government withdrew its authority from the region. The Kurdish parties established a local government after the election in the area. Since then the Kurdistan Regional Government (KRG) ruled though facing massive challenges including the economic embargo from the Government in Baghdad. After the 2002 and the toppling of the dictator regime in Baghdad KRG has been recognized officially and Iraq is considered according to its new constitution a federal country. The separation between Kurdistan Region and the Central Government of Baghdad led to different level of development and slightly different legal system. Though the leading parties in Kurdistan are consisting an important component of the government of Iraq, the relationship between the region and the centre is smooth. There was no relationship since 1991 until 2002. Since 2002 though there is high level of co-operation and political relationship there is no administrative avenue between the institutions in the region and those in Baghdad.

In Iraq most of the types and cases of corruption can be found. Iraq was ruled by a dictator with strong influence from his clan and political party. The handful of people with strong influence and holding the key institutions in the society determined the level of production, flow of resources, its distribution, welfare and priorities of the society. In addition they neglected easily the laws and regulation in the absence of minimum levels of public sector transparency and accountability.

The sources of income for the state have had been limited to few including: revenues from Oil and Gas, tariffs, income from fees charged for automobile registration and housing constructions, and limited revenues from provision of public utilities to the households. Thus, corruption and abuse of power was a result of political institutions and government policy that was strongly rooted in the public institutions with major impacts on every aspect of the life of the citizens.

In the aftermath of the American invasion and the toppling of the dictatorship, the country worsened among the developing and transitional countries as ranked by their levels of corruption. The Transparency International Corruption perception index score that ranges from ten (squeaky clean) to zero (highly corrupt) puts Iraq at the end of its index. According to this index Iraq ranked 1.9 in 2006, the country number 160 among 163 countries. It ranked 1.5 in 2007, the country number 178 among 180 countries. And it ranked 1.3 in 2008, the country number 178 among 180 countries.

According to various professional journalists' and NGOs' reports, corruption in Iraq remains untouchable and it is protected by senior Iraqi government members. On the other hand the anti-corruption entities are affected by the political environment and the Shiite/Sunni division of the government which makes combating corruption in Iraq more difficult. Each side tries to protect its alliance, though they are corrupt, that of course happens through intervention in the work of the anti-corruption entities.

Iraqi society is a society where religion plays a great role in the people's life. However many who practice religion seriously never come across other people's belongings and do not have any conscience when it comes to the public domain. Though a legal and governing system is vital for combating corruption, the way corruption has been judged socially is worthy of study and research. The sense of shared responsibility plays a role in determination of some types of corruption. There is a lack of sense of responsibility in the Iraqi society. People are aware of corruption as serious threat to their lives; however, they rarely contribute to any efforts to fight corruption.

The United Nations Convention against Corruption is the first legally binding international anti-corruption

instrument available. It provides a unique opportunity for mounting a global response to corruption. Iraq has joint membership to the Convention since 17 March 2008.

#### **IV. CORRUPTION OFFENCES IN THE IRAQI PENAL CODE**

Corruption offences are set in chapter six of the Iraqi Criminal Code No. 111 of 1969 under the title (offences in breach of the duties of office). This chapter is divided into the following three sections.

##### **A. Section One (Bribery)**

Section one starts with Article (307) and ends with Article (314). It is penalizing different acts of bribes. There are different penalties for taking or giving bribe or other roles played in the bribery action. The punishment may reach ten years imprisonment in some cases. According to Article (314) "In addition to the penalties stipulated in this section, an order for the confiscation of the gift received by or offered to the public officials or agents will be issued".

##### **B. Section Two (Embezzlement)**

Section two of this chapter is dealing with any action of embezzlement. Articles 315 to 321 of the code, set penalties for different cases of embezzlement. The punishment rang between fine and life imprisonment according to the circumstances of the embezzlement case. Similarly in the cases of embezzlement the offender shall be ordered to make restitution for the funds he has embezzled or appropriated for him or for the value of the benefits or gain which he has obtained of course in addition to the penalties stipulated in this code.

##### **C. Section Three (Officials Who Overstep the Bounds of Their Duty)**

The third section includes Articles 322 to 341 is concerning "officials who overstep the bounds of their duty". Any act of public officials includes abuse and misuse of the public authority is punishable according to this chapter. For example arresting people in circumstances stipulated by the law or engaging slave labour in activities unconnected with the legally or constitutionally recognized public interest are punishable. Article 330 deals with well-known "WASTA" problem in the Iraqi society. It sets "Any public officials or agents who unlawfully refrains from executing the duties of his office or wilfully fails to fulfil his duties in response to a request or instruction or to mediation by another or for any unlawful reason is punishable by detention".

Some of the cases of this chapter, like Article 334, sets that there shall be an order to make restitution for the property that has been appropriated or its value if it has no substance in addition to the compensation if necessary of any person who has suffered harm as a result of the offences. Of course there is always the right to ask for compensation in all the criminal cases according to the general principles.

It is obvious that there is a rapid development in the area of corruption and related cross border crimes. In parallel there is an active legal response in the international level and in the national law around the world to deal with corruption. However, Iraqi penal code is the same since 1969. The developed international legal standards related to combating corruption are not reflected in the Iraqi laws satisfactorily.

#### **V. TRANSPARENCY MONITORING RELATED ENTITIES**

There is a kind of monitoring according to the administrative hierarchy in all the public offices. So managers in any public office may and even should use their authorities to monitor the transparency in the office. However there are offices are specialized and deal directly with the mission of fighting corruption. Following is a discussion about these entities.

##### **A. Board of Supreme Audit (BSA)**

The Iraqi Board of Supreme Audit has been established according to Law No. (17) 1927. Since then it witnessed various development phases to fill the existing gaps that has been emerged through application of the law or in response to the dramatically political changes in the country. Since 1990 the Audit is regulated by the Board of Supreme Audit law. According to Article 6 of the law the Board's primary tasks are to set the roles, specify duties, and specialties of the Board of Supreme Audit and enhancing its role to participate in improving the performance of the state's institutes. The law sets the role to enable this board to secure

the auditing requirement and its needs of resources, human capital, and information whether to express an opinion about the truth of the financial situations and the activities or to evaluate the structures that go along with the phases of the development of the national economy. Finally the law gives sufficient flexibility to the Board in planning and assigning duties and specialties.

The way the board functions aims to secure the required central supervision. That helps to direct controlling tasks and development bases principles, means and ways of implementation and assessment the results are required. In addition in order to enable the law one needs to enable the board to cover all the services and institutions of the state in the governorate with auditing and supervision with the highest level of competence and efficiency.

The Board of Supreme Audit works as part of the ministry of finance and it has no independent legal personality. It plays a role in combating corruption and following the performance of various levels of government but it has no such broad authorities as the Integrity Commission have as we will see next.

It should be noted that the Iraqi Board of Supreme Audit has no control over the Kurdistan Region which has its own Board of Supreme Audit and it follows similar techniques and roles in order to enhance the performance of the Kurdistan Regional Government.

### **B. Inspector General Office (IGO)**

This office is another new experience to Iraq. It is established according to order No. 57 in 2004. The major task of this office is to evaluate the performance of public service within by the officer with the ministries. In performing its mission the office has access to any documents in the ministry. It also supervises and reports the conduct of civil servant. It might conduct investigations and it has the authority to refer the result of such investigation to the Commission of Public Integrity. Again the Inspector General Office has no control over Kurdistan Region and there is no such experience for monitoring the conduct of civil servant in the administrative institutions.

### **C. The Commission of Public Integrity (CPI)**

Iraqi Commission of Public Integrity is one of the institutional mechanisms specialized in combating corruption in the country. It is an independent, public, integrity and combating corruption entity. It was set up in Iraq under the name of the Office of Public Integrity. The Commission was established under the formal law of the Iraqi Governing Council and in accordance with the authorization granted by the Coalition Provisional Authority dissolved matter (55 of 2004). The Commission was established in accordance with the Articles (6) and (36) of the United Nations Convention against Corruption in 2003.

According to the Iraqi constitution of 2005, the Integrity Commission is one of the independent bodies. It is subject to the control by the House of Representatives. Article (102) of the Constitution sets "High Commission for Human Rights, the Independent High Electoral Commission, and the Integrity Commission are independent bodies which operate under the control of the parliament, and its actions organise according to a law".

The independence of the Commission and that it does not follow any branch of the executive gives the Commission crucial importance. This makes the Commission different from the Board of Audit. The Commission has the legal power to and the freedom to watch, investigate, compel any official no matter how high ranked they were. However, in practice the political atmosphere might affect the work of the Commission.

As mentioned previously, the Integrity Commission aims to prevent and to combat corruption and it has the legal means to achieve such goal. To perform its goal the commission activities are divided into two areas:

The first area is legal and is implemented through four mechanisms:

1. The investigation of corruption cases by the investigator under the supervision of specialized criminal investigation judges. The specialty here is according to the area where the crime occurs.

2. Preparing legislation proposals in the field of combating corruption and development of a culture of probity, integrity, transparency, accountability and acceptance of interrogation, equality and justice.
3. Compel Iraqi leaders to disclose their assets and financial interests.
4. Issuing a code of conduct in the field of public sector employment. Such code sets the standards of the ethical conduct in the field of public service.

The second area – education and media, operates through:

1. Curriculum development to promote ethical conduct in the public services in cooperation with the Ministry of Education and Ministry of Higher Education.
2. Preparation of studies and research.
3. Training.
4. Media campaigns and outreach activity through media.
5. Organization of seminars.
6. Any action in the field of raising awareness and training of public sector employees and the public to strengthen the calls for transparent and accountable government and public institutions subject to interrogation.

The law gives the commission a great power. In relation to the Commission's authority Section (3) of the Act attached to the Law No. (55) of 2004 "For achieving its goals the commission is allowed to take any necessary actions". The term is flexible and gives the Commission a wide scope of authority. It has no determination in action in order to achieve its goals.

Accordingly the commission acts through six offices or directorates to carry out the goals mentioned in the law:

1. Investigation office.
2. Legal affairs office.
3. Prevention office.
4. Education and public service office.
5. Relations with non-governmental organization office.
6. Administrative office.

The Commission is headed by an official in the rank of minister being appointed by the prime minister. Only the House of Representatives has the authority to remove the chief of the Commission. The procedure is the same as the procedure followed in the case of dismissal of ministers.

CPI's mission is reinforced by the Board of Supreme Audit (BSA) and the Inspector General Office (IGO) within each Ministry. The BSA serves as Iraq's oversight auditing institution; Whilst IGOs conduct fact-finding investigations, audits and performance reviews within the minister and report cases of suspected criminal conduct involving corruption to CPI for review and appropriate action.

The Integrity Commission has no control over the Kurdistan Regional Government. There is no such commission in the region. Recently there are many calls in the media for the establishment of a similar commission in the region where the corruption is publicly being discussed in public and private places but with no effective practical measures or official will for combating it.

#### **D. The Public Prosecution office**

According to the Iraqi Public Prosecution Law No. (159) of 1979, the prosecutor's office plays a vital role in protecting public property. For that purpose it has a wide range of authorities. The public prosecutor office can ask for the initiative of investigation of public rights. Also it can play according to the law an active role in monitoring investigations, collection of evidence and monitor all the decisions made by the investigative judge and the decisions made in all stages of investigation and trial procedures. The investigation judge has the authority to conduct investigation in cases referred to by the police as well as to initiate investigation by

themselves. The public prosecutor may refer a case to the investigation judge. In all cases the decision is made by the judge. The public prosecutor has to be informed about each single decision in the case and s/he has the authority to appeal any of these decisions.

The legal authority given to the public prosecutor is not applicable or it is not applied in practice easily. There is a limited role played by the public prosecutor office in raising corruption related cases by itself. That has to do mostly with the inactive role of the office. Undoubtedly, the case that been brought to the office has to be followed and the office usually plays a role in taking the needed legal measures according to the law to deal with them. However, it is not popular that the public prosecutor office watches the performance of public service to monitor the public prosperity which has been mentioned in the public prosecutor law.

According to the public prosecutor law the public prosecutor plays a vital role in detection, investigation, prosecution, adjudication punishment of offence. The same role is true for the corruption offences. Nevertheless, the role of public prosecution office is a negative role according to the law. In practice the personality of the public prosecutor him or herself plays a great role in activating such vague code.

In general the public prosecutor does not play a proactive role in combating corruption. In practice the investigation is been lead by the judge. The public prosecutor has to be informed by about the judge's decisions. If the public prosecutor found any of these decisions in disagreement with the law he or she can appeal the decision. So the public prosecutor is aware of the procedures of the legal cases and can follow and ask the judge for taking any needed decision according.

So the public prosecution office is not a special corruption fighting entity but it can play a role in fighting corruption. Its role in a corruption case is not any different than its role in any other crime. A bribe is the same as a murder in relation to the role of public prosecution office. The judge leads the investigation and takes decision at the end of it. The public prosecution office monitors the process and has the right to appeal in any stage of decision making.

#### **E. The Judiciary Supervision Commission**

The judiciary Supervision is not one of the agencies that specialized in fight against corruption; however it plays a vital role in this area. Judges and public prosecutors in fulfilment of their duty have to be under special kind of supervision. The Commission is consist of experienced judges and public prosecutors to monitor the conduct of judges and public prosecutor and their fulfilment of the duty.

The Judiciary supervision works through its irregular visits to the courts and public prosecutor offices. In these visits the judges or the public prosecutor from the commission follow the daily work in the court and public prosecutor office. The reports written as a result of these visits, whether positive or negative are important and reliable for promotion or delay of promotion of the judge or public prosecutor according to the case

### **VI. THE ROLE OF THE MEDIA**

The media can play a great role in combating corruption. The space of freedom expression has been used in Iraq recently in accusation of high ranks official and other levels of officials in Iraq and Kurdistan region involvement in corruption. It is not always the case that reports concerning corruption and accusing of officials are true or based on evident. Often such accusations are related to political disagreement or for the purpose of gaining personal interests by certain politicians or their political parties. That strongest effect which an independent media can play is in enhancing public awareness and serving as a monitoring measure. However, some cases have been brought to the court by a journalist report.

Public sector in its capacity as the main employer and provider of services is a main source of corruption through financing and implementation of public projects. The combination of public-private-politics is the root of the problem. Public finances and provision of services is decided by politics who own business. Unless these three-party alliances are separated it will be hard to fight against corruption in an effective way. In a recent case of abusing public property a case law brought to my court and accordingly the investigation started. The case is

an important case related to a preservation of a historical site and its alleged embezzlement.

Media can also play a role in building trust in the Judiciary and other entities that specialized in fighting against corruption. Raising awareness about how these entities conduct its mission. It is also crucial for greater role to these entities to simplify and publicised how people can contact and inform these entities about corruption cases. In addition it is very important to inform the public of the successful corruption cases which establish for confident in the government.

## VII. SUMMARY AND CONCLUSIONS

Iraq is a country suffering seriously from the vast negative impact of wide spread corruption on the country's ability to reconstruction and development. There is a crucial need for a comprehensive approach to development. Implementation and evaluation of an anti-corruption approach covering all sectors of the society from the central government to the individual being involved at every stage is necessary. It implies inclusion of international community, international aid agencies and local NGOs, individuals, media, governments, public and private institutions.

Because of the dictatorship and decades of war, destruction and sanctions, the country is experiencing massive psychological, social, political and economical complexities and irregularities. It makes combating corruption much more difficult. Organization of the World Transparency indexed Iraq as one of the most corrupt countries. This makes the task of combating corruption in a critical stage of reconciliation, reorganization, reconstruction and development rather tough work.

The new era after the fall of the dictatorship heralded dramatic changes in the country. It led to the fall of the whole system and all kinds of difficulties, in particular ethnic conflict and internal security difficulties rise at different levels in the society. On the other hand a kind of democratic experiences accrued. The freedom of media was a new experience and plays a role in public awareness about corruption. However the negative side of such freedom is that it is practiced with no responsibility. In many cases the media accuse officials without having any evidence against them and that might be for political purpose. That led to injustice when such reports cause damages for innocent people.

The second newly established organization in the country is the Integrity Commission. The Commission is publicly well known though it has been working since few years ago. It is a new experience to the Iraqi society. It is particularly new in that the Iraqi leaders and high rank officials have to disclose their financial assets. That is a positive tool that helps the Commission to implement its goals in fighting corruption. It also has other important benefits for the officials themselves when it will prevent accusing them by other political parties or civil society.

The role which possibly can be played by the public prosecutor office is not effective in its application. The public prosecution law gives wide authority to the public prosecutor office in protecting public prosperity and in combating corruption as part of such task. Nevertheless the law is vague. In addition in practice the role is not that active. The other challenge that faces the criminal justice is the slow procedure which hinders a powerful investigation and evidence collections.

### A. The Challenges

Some of the Challenges that face the fight against corruption are related to the nature of corruption in general, and others related to Iraq and its political, social and legal situation. Below are some of these challenges and accordingly some suggestions to enhance the general situation in the country as a whole:

1. Security;
2. Lack of data and systematic research to shed lights on problem and possible solutions;
3. The need to update the existing laws to reflect general development in and outside the society;
4. The gap between the existed laws which are sometimes sufficient and their actual application which is done often by neglecting the laws need to be diminished. In another word the absence of the basic principle of role of law is a major challenge;
5. The mass of public servants in the different government organs that help the corrupt people to slip easily;

6. Lack of specialized people in all the governmental organs that secure transparency in the country;
7. Article 136 (b) of the criminal procedure law which gives the ministry the authority to block any case. Although the law contemplated the application after the investigation judge finishing investigation, the Article has been used by the current regime to stop investigation prior to the decision made by the investigation judge;
8. The negative role of the public prosecutor office;
9. The absence of effective banking system allow economics of crime to blooming and the judiciary system is unable to trace illegalities in the banking system;
10. Lack of skill in the public prosecutor office and judiciary system is another manpower problem facing the system;
11. Delay in investigation is a common cause of incapacity to handle the situation effectively. Some cases stay in the court for years and the general public and the administration lose incentive and interest;
12. Lack of funding and resources is another problem to build up capacity to face the problem;
13. The usual challenge is associated with fighting against corruption related to its hidden nature and high rank people involvement;
14. People are cynical about the government and there is a belief that bribery and all sorts of corruption are inevitable. This undermines the rule of law and its legitimacy. As a result there is no effort in the downstream level to combat corruption.

## **B. Suggestions**

The issue of corruption has been discussed sporadically in the media. Its extent is however widespread and both general public and non-governmental organizations feel unable to impact the public sector which is the main nest of it to be willing to tackle it in an effective way. Despite the lack of interest, means and effective channels there has to be both a long term and a short term plans to fight corruption such as:

1. Supporting the independence of judiciary as the most active anti corruption mean in the society;
2. Specialized anti-corruption research centres should be established;
3. Data to be collected systematically and used in research analyzing economics of crime;
4. Training and skill building of manpower at the national and regional level be conducted;
5. Strengthening the independency of transparency monitoring entities to enhance our knowledge about the actual conditions in the public sector;
6. Legal reform, for example Article 136 (b) regarding ministerial consent for a case to be adjudicating exclusion;
7. Giving the public prosecutor's office a more proactive role in exercising their duties and working with individuals case without unauthorized interventions;
8. Benefit from international experiences;
9. Engaging individuals and civil society in the fight against corruption to build a transparent culture in the society at the grass root level;
10. Guaranteeing that media have the freedom to receive and publish information on corruption cases and their follow ups;
11. Introduction of laws reducing intervention of political parties in governance, and separation or private businesses and public decisions.