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Training Course on Administrative Corruption

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Admin. Corruption Phenomenon



- Admin. Corruption is neither a new phenomenon nor is it related to a certain place or time. In 1997, a Dutch archaeology team has found panels of cuneiform transcripts in Dakkah, Syria that indicated an administrative office (similar to a supervisory department) evidenced cases of administrative corruption and accepting bribes by the employees of the Assyrian royal palace several thousand years ago.
- A preserved panel of the Indian culture (almost 300 B.C.), had the following sentence: “There’s no way to avoid tasting honey or poison that has reached your tongue, thus it is impossible for those who manage the government money not to take from the wealth of the king, even a little bit.”



Types of corruption



- **Accidental Corruption:** Accidental corruption occurs at the base of the governmental pyramid by lower echelon employees. It is expressed in personal behavior like petty theft, accepting small gratuities in exchange for favors or stealing office supplies, etc.
- **Regular or Systematic Corruption:** Systematic corruption happens when the management of the organization becomes corrupted. This usually means the whole system is run by a network of corruption where each one benefits and relies upon the other. Such corrupt networks includes senior leaders, projects managers, and financial and administrative managers.
- **Comprehensive Corruption:** Comprehensive corruption is the depredation of public money through fake deals and transferring public properties to personal properties on a large scale. This type of corruption is of the elite, on the top of the pyramid. It includes Political Corruption, Financial Corruption and Administrative Corruption.
- **Political Corruption:** Political Corruption refers to political behavior that abuses the law and public trust to achieve certain personal goals by adversely affecting the political process. It appears most often during the election process.
- **Financial corruption:** Financial Corruption refers to the illegal behavior causing misuse of public money and achieving personal interests through illegal behavior.
- **Administrative corruption:** Administrative Corruption includes practices or activities that take place inside the governmental administration which leads the authority to deviate from its main goals of achieving the public benefits. This deviation might be for an individual or a corrupt network.



Factors to spread corruption



- 1. Political factors:** Political factors leading to the creation of corruption start with the corruption of political systems. Such factors are noted through the intervention of the political elite or state sponsored political parties.
- 2. Economic factors:** Economic factors leading to corruption include the poor planning of the economic development process according to scientific bases, the absence of feasibility studies, poor distribution of wealth and a low level of per capita income.
- 3. Social and cultural factors:** Many values and rules of community social construction are barriers to sophisticated administrative systems that incorporate anti-corruption initiatives. Such factors include loyalty to the clan, caste or creed; or a weak loyalty to the country. These factors result in nepotism or discrimination in the provision of services to the public. It is well known that social inequality is a prominent feature in the third world, resulting from the expansion of cultural backwardness and the low level of education.
- 4. Organizational factors (administrative):** Organizational factors affecting corruption include excessive bureaucracy, weakness of control, corrupt authorities, underdevelopment, and lack of administrative infrastructure.
- 5. External factors:** Commonly referred to as cross-border corruption, Iraq has witnessed an increase in external factors such as the secretive or public interference in domestic issues by foreign governments or corporations.



What is Admin. Corruption?

- Some argue that corruption is a disobedience to the laws and regulations (non-compliance) or exploitation of their absence, in order to achieve political or economic interests of financial, commercial, or social benefits for the individual or for a particular group he is associated with.
- The International Transparency Organization defined corruption as “any business that includes the abuse a public office to achieve a personal interest;” i.e. any official to use his position to achieve a personal interest for himself or for his group.
- Administrative corruption is defined as a breach of the privileges of the profession and the values and beliefs of the person.
- International Monetary Fund has issued a definition for administrative corruption as: “the exploitation of power for special purposes whether through authority abuse, blackmail, favoritism, and abuse of public funds or manipulating it whether directly or indirectly.”
- In general, we can observe the following concomitant factors to the act of corruption:
First, disobedience to law, order and instructions of the public office which is incompatible with the prevailing moral values in society.
Second: Abuse of public office or exploiting it to serve private aims or personal benefits, physical or moral.



Results of the widespread of Admin. Corruption



- There is general agreement that development and economic growth are affected by corruption practices in terms of a reduced rate of return on investments since the amounts paid by the investor as bribes add to the cost of the project.
- Work ethic and the values of society or the domination of a mentality between individuals and groups to justify corruption or otherwise excuse its continuation.
- The discredit of the importance of individual action and its value, as long as income through immoral practices exceeds that of decent work.
- Loss of prestige of law in society because the spoilers are capable of hindering law and destroying decisions; accordingly, the individual loses his assuredness in law and disregarding the law becomes the prevailing case and respecting is an exception, hence the gap of mistrust between the public and state organizations increases.
- Corruption leads to the differentiation of social classes as the gap increases between “the have and have not”.
- Corruption generates a feeling of indifference, neglect, insincerity and disregard for the public interest.
- Corruption results in the growing of hostility towards the ruling regime.
- Dissemination of corrupt cultures become part of the work values.



And when it is said to them: "Make not mischief on the earth," they say: "We are only peacemakers." Verily! They are the ones who make mischief, but they perceive not.

Surah Al-Baqarah

Verses 11&12



What is the crime of Admin. Corruption?



- No crime, nor a punishment without a text
- Administrative corruption does not only mean the crime of bribery
- Forgery
- Embezzlement
- Abuse of public funds
- Profiting from the work function
- Circumvent the rules
- Mistreatment through torture, cruelty or coercion
- Taking Liberties
- Damage to property and interests
- Extortion



Tools to fight corruption in Iraq?



- Jurisdiction
- House of Representatives
- The Integrity Authority
- Office of Financial Supervision
- General Inspector



Fighting Admin. Corruption in Iraq



- The Commission for Public Integrity was formed by CPA Order No. 55 (2004) by the disbanded Coalition Provisional Authority. The Commission has the authority to investigate monetary crimes that target the financial interests of people and firms. The crimes include theft, embezzlement, breach of trust, fraud and other crimes as stated in the Penal Code as well as crimes of financial and administrative corruption.
- The Inspectors General were created in 2004 under Coalition Provisional Authority Order No. 57.



Fighting Admin. Corruption in Iraq



The text of Section (5) of the Coalition Provisional Authority Order No. 57 (Each of the offices of inspectors general, performs the following tasks:

- 1 - To examine and review all records of the ministry and all its activity in order to ensure integrity, transparency and efficiency in their operations, in order to provide information required for decision-making, and then make appropriate recommendations regarding the improvement of the ministry programs, policies and procedures.
- 2 - To conduct the administrative investigation in a manner consistent with the authorities set forth in Section 6 below.
- 3 – To review and audit the operations and functions of the ministry from the perspective of good governance of expenses and the efficiency and effectiveness of performance, and auditing any of the ministry’s systems in order to measure performance.
- 4 - To receive complaints relating to fraud, waste and abuse of power and mismanagement, which affect the interests of the ministry, evaluate its content and take the usual action on them, refer the complaints to the appropriate investigative authorities, provide provision of quality control including considerateness to no delay in responding to complaints and seeking independence to response and not to neglect any of the details contained therein.
- 5 – To follow-up on performance to ensure the corrective action is taken in response to the observations and recommendations of the General Inspector to achieve the targeted goals.
- 6 - To provide information and evidence related to criminal acts and submit them to the appropriate officials concerned of the application of the law.
- 7 – To receive complaints from any source, investigate or initiate the investigation in allegedly action of fraud or waste, misconduct or incompetence, and initiate investigation in shortcomings in the operation and maintenance of installations.



Fighting Admin. Corruption in Iraq



- 8 – To practice an activity that aims to prevent fraud, waste, abuse and inefficiency; this activity includes, but not limited to, review of legislation, rules, regulations, policies, procedures and transactions, and providing training and education programs.
- 9 - To refer matters to the concerned administrative, legislative bodies to take appropriate additional civil, criminal and administrative measures of them.
- 10 - To provide non-binding recommendations for the purpose of implementing the Ministry's actions to correct and overcome the shortcomings in the operation, maintenance or in the efficiency of performance identified by the office of the General Inspector.
- 11 – To issuance of the public reports as provided in Section 9 below.
- 12 – To follow up and monitor the implementation of the recommendations made by the office of the General Inspector and other review and scrutiny bodies.
- 13 - To issue written policies and procedures in order to provide guidance related to the tasks undertaken by the office of the General Inspector.
- 14 - Training of personnel in the ministry to identify the waste, fraud and abuse, and development programs in the Ministry where an environment and traditions, that care for responsibility and integrity and enhancing them, is provided.



Fighting Admin. Corruption in Iraq



- 15 – To maintaining information on the costs of investigation and cooperation with the appropriate administrative, legislative bodies to recover such costs from the non-governmental bodies that proved to have intentionally misconducted.
- 16 - Full cooperation with the concerned bodies and authorities in regard to the enforcement of the law and with the investigators, the courts and the Iraqi Office of Public Integrity to help them to perform their functions.
- 17 – To take as much as required of actions at every level of ministry operations to ensure the efficient performance of the functions of the General Inspector.
- 18 – To perform other necessary duties that are within their powers, according to the definition given to them in Section 6 below, in order to implement and fulfill their responsibilities pursuant to this matter.)



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Investigation



- The investigation of crimes follows the start of penal complaint filing, in accordance with the penal mechanism referred to in the Code of Criminal Procedure, as follows:

A - To file the complaint

- 1- Complaint is filed by several parties, when a crime is suspected by these parties; those parties include ((Public Prosecutor, the victims or their families, public officials, or anyone knowing of the crime and any breach that is subject to legal accountability)) [6].
- 2 . Submit the complaint to the judge who orders to start the investigation and to instruct the police or the Justice Department prosecutor to open an investigation, who writes the statements of the complainer and submit it to the judge. The judge, in turn, after checking the statements, summons the person subject of the complaint by a notice sent to the whereabouts, or arrest him if there were evidences to strengthen the conviction.

b – Initial investigation

After the above mentioned procedure, the person either comes at his own will or arrested by the police, and then records his primary statement in regard to the accusation; he either confesses or denies, and he may request the presence of his lawyer. The police officer is not required to appoint a lawyer at the expense of the State. Then, this statement to be presented to the competent judge, who decides whether to release him or release on bail a person or a guarantor of the amount of money depending on the discretion of the judge and the circumstances of the charge, or orders his arrest for a term not exceeds fifteen days that can be extended at the end; and the judge may give decisions that he deems necessary for the completion of the investigation. Upon conclusion of the proceedings mentioned in the initial stage of the investigation, the accused is to attend before a judge and record his statement once again, in the presence of a lawyer. If the accused didn't have a lawyer, the Court is to appoint a lawyer, also listening to the complainant's testimony and the testimony of witnesses and consider the expert reports and other similar procedures. After completion, the judge, after perusing the papers, the judge is to give one of the following decisions; the release of the accused if there is no sufficient evidence for submission to the court, or finds that the evidence is sufficient to transmit it to the court decreeing the issue whether the Court of misdemeanors or crimes, either arrested or released on bail [7].



The role of the general inspector in investigation



- Among his functions, the General Inspector role in criminal investigation for cases suspected to constitute a crime as this role is as follows:

A - The reporting of crimes:

This role, even if had been referred to in Articles 57 of the order for 2004, does not form a new issue because the General Inspector is an officer, according to the mechanism of appointment referred to in the provisions of earlier; and this is resulting in a bind which had been provided in Article 48 of the modified Code of Criminal Procedure (No. 23) for the year 1979; this article has committed each employee or member in charge of public service, crossed a crime, must inform the authorities investigating this violation, and his role end at this point, unless the investigating authorities requested information or cooperation in accordance with the provisions of the Code of Criminal Procedure.

B- Summon the witnesses and hearing them

Order 57 for the year 2004 granted the General Inspector the authority to summon witnesses and hear them under oath; this is a new authority that was never granted to any former government employee outside the authority of the judiciary. This authority might have been granted to the administrative authority of the investigative commissions to bring witnesses, but they have no right to ask people to hear them under the oath, as the oath that is legally considered is the one performed by a witness or informant to the jurisdiction exclusively , as proved in the text of Article (60) criminal procedure.



The role of the general inspector in investigation



Therefore, this power given to the general inspector will be considered because it would raise a number of legal problems

That the testimony, subject to legal consideration, is the one performed in accordance with the provisions set forth in the Code of Criminal Procedure, because the rules of procedures are governing and their violations cause invalidity of the procedure or to act; some of the scholars of criminal law identify the testimony as (as to make information concerning the crime to the investigating authority at the conditions set by the Act) [25]; so the performance of testimony before the investigating authority established by the modified Code of Criminal Procedure of Iraq No. 23 of 1971 is what's giving it the evidence and consider it of the investigative procedures; also order 57 for the year 2004 does not include a text that refers to the amendment of the Code of Criminal Procedure Act, or a reference to the fact that the actions taken by the General Inspector are part of the rules of due process. As his silence does not justify the capacity to process it, but must be explicitly stated, because the rules of procedures are governing rules and are considered of the public system. If some argued of legislation rule that (the private restricts the general), his argumentation is returned because the private should be of a general nature, and the proceedings of the general inspector were not of the nature of the trial proceedings or the investigation's, but includes multiple and varied functions in the specification and quality and as described in Section (5) of Order 57 of 2004. This is problematic because the important question is about its value if it was not effective and productive; the answer that it could be an indication to be used in courts and are not evidence that works with or against the accused. The value of indication is different from the value of evidence in the evaluation of the trial.



The role of the general inspector in investigation



- From the foregoing, we believe that the role of the General Inspector with regard to criminal investigation, is limited to informing and not confined to a range of criminal investigation.
- Taking into consideration that, it was amended by Order 19 of 2004, published in the Iraqi Wakaee Issue number 3995 during the time of the interim government headed by Dr. Iyad Allawi, who has amended the appointment of the General Inspector and exempting him to be conditioned by a decision of the Prime Minister based on the proposal of the Commission for Public Integrity; and thus eliminated the authority of Parliament in the appointment the General Inspector which was granted to them by Order 57 by the Coalition Provisional Authority to make the appointment is the prerogative of the Prime Minister only.



Investigator



- Linguistically, an investigator is defined as the person in charge of the validation of a particular fact-finding, scientific research and trace related issues, but idiomatically, he is the person who initiates a series of actions required by the court in order to ascertain truth through evidence-based commission of the crime attributed to a particular actor; or he is the person who is given the power to conduct an investigation in accordance with the provisions of the law referred to in the modified Code of Criminal Procedure (No. 23) for the year 1979; he shall be appointed by a court order issued by the President of the Supreme Judicial Council.



Investigator of the Center for Integrity



The Center for Integrity is entitled to appoint investigators from those employed there. However, the investigator in the crime of monetary, financial and administrative corruption differs from his peers of investigators in the ordinary courts in number of characteristics, including the following:

- A. He is solely concerned of financial crimes which lie on the financial interests of natural and moral people, as referred to in paragraph (1) of section (4) of the Order (55) for the year 2004.
- B. His work is under the auspices of the Central Court of Investigation exclusively, as the crimes of administrative corruption are of the crimes that fall into the work of the Central Criminal Court, unless applied the exception referred to in paragraph (4) of section (4) of Order (55), which allows the investigator to work in all parts of Iraq and in some areas where there is no close central court, or works in a remote area, as well as the exception mentioned in the stated, when Center for Integrity assumes the responsibility of the Office of the investigation.
- C. The investigator is to exercise his functions under the supervision of an investigating judge in accordance with the provisions of paragraph (5) of section (4) of the Order (55). When the Center for Integrity wants to assume responsibility for investigation, as then, the judge transfers the case file to the Center and pauses any investigations himself.



Investigating Judge



1. The acceptability of the complaint, Article (1) fundamental
2. Starting the investigation, Article (35 / 1) fundamental
3. Receive reports and fact-findings from police officers and members of the judicial control, Article (49 / 1) fundamental
4. Ordering police officers to investigate as well as the members of law enforcement and reading the investigation documents, Article (50 / 1) fundamental
5. Taking over the preliminary investigation, Article (51 / 1) fundamental
6. Conducting the investigation and disclosure the scene of the crimes, Article (52 / 1, 2) fundamental
7. Prevent complaint parties from attending the investigation for the reasons identified by the law, Article (57 / 1) fundamental
8. Codification of witness statements from persons whom the investigator knows that their testimony is an addition to the investigation, Article (58) fundamental



Investigating Judge



- 9- Call witnesses and issuance of the summons to attend, Article (59 / 1) fundamental
10. The signing of all the records of the investigation and have the status of official papers, Article (63 / 1) fundamental
11. Permission to bring the question to the witness, Article (64 / 1) fundamental
12. Note-taking of his observations on the witness that he deems to have an effect on his eligibility to give testimony in the record, Article (65 / 1) fundamental
13. The transition to a place of the witness to the codification of his statement, Article (67) fundamental
14. Delegacy of an expert to give an opinion related to the crime being investigated and attendance when the expert performs his work, Article (69 / 1) fundamental
15. Compel the accused to show his body, take his photographs or fingers prints, or a small amount of his blood or hair or his fingernails, or other, which is required to perform the investigation.



The role of Center for Integrity in investigation



- The work of the investigator is subject to judicial supervision of the investigating judge, and he can not conduct any investigation that is included within the framework of the criminal investigation unless made under the supervision of the investigating judge and in accordance with legal provisions that govern the work of the investigator, mentioned in the Code of Criminal Procedure. In regard to the entitlement of the Integrity Center to assume responsibility for the investigation in any case, it relates exclusively to the issues informed through a body other than the Center for Integrity, because complaint Order (55) abided the investigating judge to inform the legal director of the Office of any crime in which public funds or crimes of admin. corruption [15] is submitted, even if in that case where the accused was arrested or issued a warrant of arrest or the right to bring any of them, the Integrity Center can not withdraw the case because it is related to the fate of the accused; the Integrity Center can not request the transfer of the case because it is related to the fate of the accused, which is one of the exclusive powers of the judiciary. It is similar to the issues of investigation and inspection that are executive powers reserved to judiciary.



(And when it is said to them: "Make not mischief on the earth," they say: "We are only peacemakers." Verily! They are the ones who make mischief, but they perceive not.)

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Article (136/b) of The Criminal Procedure Code



Article 136b: Except for violations and penalties provided for in the Traffic Law, this article requires that where any alleged offenses took place in the course of/or arising from official duties, that the accused may not be referred for trial unless the responsible minister or any authorized head of a body not linked to a ministry is in agreement.



Suspension of the Article (136/b)



This Article is suspended under Para (e)/
section (4)/ Memo No. (3) of 2003 issued
by CPA.



Reinstated the Article (136/b)



Article 136/b of the Criminal Procedure Code No. 23 of 1971 amended, was reinstated when the interim government headed by former PM Ayad Allawi issued the Order No. 14 of 2005, signed by Deputy Prime Minister Dr. Barham A. Salih.



Discussion

The Constitution dominated in that time is the Transitional Administrative Law (TAL). In its Article (24), Para (c), it stated: “No official or employee of the Iraqi Transitional Government shall enjoy immunity for criminal acts committed while in office”. This provision is absolute and without any exception, as this it has superiority i.e. it is the supreme law of any other law provisions, as stated in Para (a)/ article (3) of the TAL :“ This Law is the Supreme Law of the land and shall be binding in all parts of Iraq without exception ”. It represents the standard under which we could measure and match the legitimacy of laws and orders. Therefore, the Order 14 of 2005 has conflicted with the provisions of this law and it may constitute a breach to the TAL which is considered as the Supreme Law, as mentioned above. In addition to what is stated in Para (b)/ article (3): “ Any legal provision that conflicts with this Law is null and void”, we notice that the provision of Order 14 of 2005 is considered null and void in accordance with Para (b) above, because it contradicts with Para (c) of article 24, which withdrew the immunity from any government official or employee.

The Order was signed by the Deputy Prime Minister (DPM) and not by the Prime Minister (PM). Anyone who are aware of the TAL shall not find a provision that referred to a right or power granted to the PM to authorize one of his Deputies to sign Orders or even the PM himself does not have the right to issue legislations, laws or orders having law effectiveness power.



The Text of the Federal Supreme Court Decision No. (1/federal/2005) on 29/May/2006, published on the website of the Iraqi Center of Documentation and Studies



Upon consideration and discussion made by The Federal Supreme court, it was found that plaintiff is requesting cancellation of the Order 14 of 2005 on cancellation of suspending Article 136/b of the criminal procedure code under the ground of incompatibility with Article 24/c of the TAL which included that “No official or employee of the Iraqi Transitional Government shall enjoy immunity for criminal acts committed while in office”. As the article (136/b) requires that where the alleged offenses took place in the course of/or arising from official duty, the responsible minister must permit referral of the accused official for trial. This does not mean that the accused official enjoys immunity from offenses committed, because the permission here is related to the referral only and not related to other legal procedures such as investigation. Once, an offense is reported, the investigation shall be proceeded and all legal procedures shall be taken. Upon the end of the investigation, if there is sufficient evidence, then a permission of referral shall be taken for trial only. If a minister or any authorized official shall decline to give permission, the victim may file a claim before an Administrative Court in accordance with Article (7/d, second) of State Shura Council Law No. 65 of 1979 amended by the Law 106 of 1989. The ruling issued by Administrative Judiciary Court is subject to appeal before this Court. Therefore, minister’s decision to permit referral shall not be final, but it may be subject to appeal. As a result, the official shall not enjoy immunity that relieves him/her from offense committed. In addition to that, the provision requested to be cancelled gives the relevant minister and any authorized official certain period to carefully study the position before deciding to approve referral or not approve it, if the minister found that the alleged offense does not deserve referral to a criminal court or the offense is vexatious designed to offend official’s reputation or prestige of public service. So, given the aforesaid reasons, the sentence is issued and included that plaintiff claim is rejected along with resuming it all relevant fees. The ruling is issued by agreement that it is final and not subject to appeal in pursuant to Article 5/Para (second) of the Federal Supreme Court Law No. 3 of 2005, and publicly understood on May 29/2006.