



**Project on Provision of Legal Training Components
for Legal Institutions of Iraq**

Training session on “Anti Corruption”

Baghdad - February 6, 2011 to February 8, 2011

Explanatory paper



First: Introduction

This session is held in the context of the Project on “Provision of Legal Training Components for Legal Institutions of Iraq” implemented by ACRLI with the support of the United Nations Development Program (UNDP) in Iraq, in completion of the efforts deployed to support the development and growth process in Iraq by establishing Iraqi institutions and building the capacities of Iraqi judges in anti-corruption fields and by setting the rules for a fair trial in line with prevailing international standards.

This session focuses on the fair judicial texts and practices that ensure respect for the rights of litigants and guarantee equality among said litigants in order to establish the vision of an integrated strategy to modernize the criminal justice system in accordance with international and regional principles and standards, and in a way that reflects the needs and priorities of the Iraqi judiciary in light of the many changes and challenges facing the State and the citizens.

This explanatory paper on fighting corruption in Iraq, provides an overview of this topic and emphasizes on investigation and prosecution procedures for corruption cases in Iraq.

The phenomenon of corruption is a global, highly spreading and deep-rooted phenomenon having broad dimensions and including various overlapping factors that may not be easily distinguished. The corruption expansiveness varies from one society to another; corruption phenomenon drew the attention and interest of researchers in various disciplines such as economics, law, political science and sociology. This phenomenon is defined as such by some international organizations, which consider that no society or political system is free of corruption.

Corruption is a natural phenomenon in capitalist societies, where its degrees vary according to the evolution of state’s institutions. In third world countries, corruption of state’s institutions and low levels of social well-being are most significant, due to the degree of backwardness and increasing rates of unemployment. Corruption may target the infrastructures of the state and the society, in this case it expands and spreads in the functional system and the pattern of social relationships, slows back the evolution of society and limits the incentives for economic progress.

The devastating effects and the negative outcomes of the spread of this abhorrent phenomenon affect all of the fundamental components of people’s life. Corruption wastes funds, wealth, time and energy and impedes the performance of duties, jobs and services; it constitutes a system of sabotage and disruption, causing further delays in the reconstruction and progress process not only on the economic and financial level, but also in the political, social and cultural fields, not to mention institutions and public services having a daily and direct relationship with people's lives.

From this perspective and in light of the significant impact of the corruption on Iraqi society, which faces major challenges in building the state and combating many phenomena, among

which the phenomenon of corruption, this training session is held within the scope of the project on Provision of Legal Training Components for Legal Institutions of Iraq implemented by the Arab Centre for the Development of the Rule of Law and Integrity in cooperation with the United Nations Development Programme in Iraq, in completion of the efforts deployed to support the development and growth process in Iraq by establishing Iraqi judicial institutions and building the capacities of Iraqi judges to combat corruption, especially during the stages of investigation and trial.

Second: the content of the training course

1 - **The manifestations of corruption:** corruption has its mechanisms and its effects and complications that affect the fabric of societies and the behavior of individuals and the functioning of the economy. There manifestations of corruption are:

- A. Bribery
- B. Embezzlement
- C: Abuse an exploitation of public money
- D. Money Laundering

The crime of bribery is when an employee requests, accepts or takes bribes in return for his execution or non-execution of his functions or for his violation of his work duties. It even goes beyond that, for example an employee may take a bribe although the act he executes does not fall within his competence and he may allege or mistakenly believe that it does, in this case, the employee's behavior may be construed as a combination between fraud and bribery.

The crime of embezzlement, includes several possibilities; for example when the employee or the person entrusted with the performance of a public service embezzles the state's funds put at his disposal given his job, squanders public funds or facilitates the squandering of said funds by another person, damages the interests of the service he is entrusted with in order to obtain a benefit for himself or for others, reaps profits as a result of his performance of his work duties, takes hold of some of the wages of the workers he appoints, or appoints said workers under coercion and takes their wages for himself.

As for the crime of abuse of public money, this means the waste of time, non- achievement of formalities, use of public money for personal purposes. This crime includes also the damage caused by the employee, whether intentionally or as a result of his neglect for the purpose of reaping a benefit from this behavior.

The crime of money laundering is the transfer or transport of money while knowing that said money is the product of drug crimes. it includes the covering or the concealment of the true nature, source, acquisition, possession or use of said money, while being aware at the time of its delivery that it is the proceeds of one of the crimes stipulated in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances held in Vienna in 1988. Moreover, The Financial Action Task Force on Money, known as FAT and established by

the G7 summit in 1989 (now known as the G8 with the inclusion of Russia) issued forty recommendations including the necessity to combat money laundering domestically and internationally.

The G7 Summit held in Italy in 1994 focused on the need to include the widest range of predicate offences and not limit said offences to the cover up of drug trafficking to include all serious offences from which generate huge amounts of money and the use of the proceeds of said offences. The G7 Summit suggested the inclusion of other offences, such as arms and ammunition trafficking, theft, extortion, kidnapping, fraud and illicit traffic in antiquities trafficking in human beings, sexual exploitation and gambling.

Article 3 of Iraqi Anti Money Laundering Act No. 93 of 2004 promulgated by the Coalition Authority defined the person committing money laundering as “whoever conducts or attempts to conduct a financial transaction that involves, one way or another, the proceeds of unlawful activity, while knowing that the property involved is, in one way or another, the proceeds of unlawful activity”.

The law also sentenced whoever conceals or disguises the nature, location, source, ownership, or control of the proceeds of unlawful activity, while knowing that the proceeds is used for violating the law.

Lack of transparency in tenders is deemed one of the crimes relating to corruption, since time limits must be specified in tenders, including with respect to the receiving committees and the method of distribution and signature of tenders. Transparency is sharing of information and acting in an open manner, i.e. it is based on the free verification of information. It plays a crucial role in fighting corruption and facilitates the successful administrative development. Lack of transparency in the bidding process consecrates ambiguity in the administrative work and is one of the reasons that leads and exacerbates corruption, entailing to the following negative consequences, including:

- A. Waste of public money
- B. Economic downturn and lack of development
- C. Flight of capital and investments
- D. Increase in the external debt and insolvency
- E. Imbalance in the distribution of public expenditure on various sectors
- F. Inequality in the distribution of economic resources among citizens

2 - **Causes of corruption:** Corruption has many causes and implications that may be seen on the political, economic and social levels, provided that this does not mean that corruption is limited to the existence of these three factors, but for the purposes of scientific research and given the importance of these factors in the structure and composition of society, it is important to monitor said causes.

Therefore, causes of corruption may be political, economic, social or administrative. Corruption may be engendered by the poor functional and national morals restraints; it is when the employee fails to perform his job in a proper manner, with no sense of liability, i.e. with no competence and experience. Corruption may occur when the employee discloses the professional secrets he is entrusted with by virtue of his position, in violation of the provisions of the laws that prohibit the disclosure of professional secrets. Corruption may also occur when an employee shows no loyalty in the performance of his work. The weak of bodies controlling corruption and the lack of coordination among them may also encourage corruption.

3 – **Corruption control authorities:**

Control authorities are several and are entrusted with various functions including financial control over expenditures, administrative control and reporting of offenses and crimes, as well as interference in technical matters related to the completion of services or works of the ministry. Said authorities developed when some of them started carrying out investigations in cases of corruption.

Iraq had only two corruption control authorities. The Public Prosecution Office, in charge of protecting the state system, its security and institutions. It is also in charge of safeguarding democracy and the supreme interests of the people and of the preservation of public funds. The duties of the Public Prosecution Office also include supporting the democratic federal system and protecting its fundamentals and bases in line with legality and law enforcement. The Office contributes with the judiciary and the competent authorities in the rapid detection of offenses and settlement of actions.

The second authority is the Financial Supervision Authority known as the Audit Bureau. Its duties include the supervision and auditing of the accounts of the entities subject to financial supervision and the verification of the proper application of financial laws, regulations and instructions. The law was applicable to all governmental departments disposing of public funds, whether with respect to collection, disbursement, planning, foreign exchange transaction, commerce, the production of cash or the performance of financial control supervision services. The law only exempted the decisions rendered by the courts from its supervision. Each time the Financial Supervision Authority discovered a financial crime, it referred it to the Public Prosecution Office for taking the proper legal measures.

Following the fall of the old political system, the Commission on Public Integrity and the Iraqi Inspector General were established. The Commission on Public Integrity was established by virtue of Order No. 55 of 2004, and was given powers to investigate financial crimes, and all

matters related to financial and administrative corruption crimes. These crimes are sometimes of an international character and associated to money laundering, trafficking in drugs and transnational organized crime. It is worth mentioning in this respect that the international community has deployed huge efforts to combat these offenses and issued a number of agreements, whether in the form of bilateral or multilateral treaties.

The Inspector General was established as a result of the lack of efficiency in the Iraqi governmental institutions, the need for joint efforts in order to restore public trust and confidence in those institutions infested with corruption, and given that ministers needed a corps of qualified objective professionals dedicated to improving ministry performance and eliminating fraud, waste and abuse of authority power, and in order to improve the efficiency, effectiveness and integrity of the Iraqi ministries.

4 – An overview the United Nations Convention against Corruption in which the Republic Iraq became a party by virtue of Law No. 35 of 2007

The States Parties to this Convention, concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money laundering, and concerned further about cases of corruption that threaten the political stability and convinced that corruption is a phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential...”

“Recalling the work carried out by other international and regional organizations in this field, including the activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, the Organization for Economic Cooperation and Development and the Organization of American States, Taking note with appreciation of multilateral instruments to prevent and combat corruption, including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organization for Economic Cooperation and Development on 21 November 1997, the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,⁴ the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999,⁵ and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003...”

5 – Major objective solutions and remedies to reduce the apparent effect of corruption on human societies:

Corruption has many different causes, including for example individualism within work teams, administrative corruption, legal corruption, lack of judicial independence, lack of supervision and accountability, the nature of ruling political regimes, the loss of ethics and morals and the transcontinental spread of global corruption. Therefore, a unilateral solution will not be efficient, but a national or country solution should treat corruption creeping from foreign transnational corporations on one hand, and contribute to the creation of a united international will to combat corruption on a global scale, on the other hand. Such solution must benefit from the experiences of developed countries in combating corruption, and ensure cooperation with international organizations and institutions which are specialized or involved in this field, and that in line with our reality, values and principles such as International Transparency Organization and the World Bank. Therefore and for the purpose of finding objective solutions and remedies, one must know what the government needs to do to combat corruption and what must be conducted by senior management of each institution on the internal level in order to combat corruption and control it.

Third: Program of the training session and the retained methodology (training strategy)

The training program is divided into two parts, the first treats the legal and social aspect of the subject, with a focus on international conventions and their implementation methods at the national level, and the second part is practical and includes practical training modules aiming at increasing the trainees' information, capacity and efficiency in terms of combating corruption and at developing their skills in this respect and form them at the same time to become able to train their colleagues working in the judicial field.

1. The theoretical aspect

The first two days of the training shall be allocated to the theoretical part, and each day shall include several interventions each followed by an extensive discussion in which the trainees shall be involved.

In this part of the training, practical examples shall be used as much as possible with links and references to international and regional relevant standards. The interventions shall take the form of dialogues and open debates, rather than lectures, since the dialogue will strengthen the continuity of communication with the trainees, constitutes a strong incentive for them to participate in the discussion, and aims at determining the extent to which they tolerate the subject of the training.

* The first day will include an explanation of the manifestations of corruption, namely bribery, embezzlement, misuse and disposal of public money, money laundering and the lack of transparency in tenders and the resulting waste of public money, economic downturn and lack

of development, the smuggling of capitals and investments, the increase of debts and inequality in the distribution of economic resources.

* The second day will include an explanation of the causes of corruption and a presentation of supervision authorities controlling the phenomenon of corruption in order to identify corrupted persons and refer them to the judiciary. This day will also include an explanation of the role of Iraqi laws through legal texts tackling corruption as well as the role of the UN Conventions against Corruption, in which Iraq became a member by virtue of Law No. 35 of 2007. Finally, the objective solutions and remedies to reduce the impact of corruption on societies shall be reviewed.

2. The practical aspect:

The third day shall be allocated to practical training on combating corruption, and said training will be in the form of seminars and small working groups in order to create some interaction between participants. This training aims at raising a greater variety of different opinions, which will be discussed in the light of international and regional standards in the fight against corruption. The trainees shall be divided into small groups of no more than five judges. Each group shall be given an exercise on the subject, consisting of a set of pre-prepared questions, and each group shall be asked to answer said questions in accordance with the Iraqi current legislations in comparison to international standards on combating corruption. The participants will be asked to provide their own perspective on how to enhance and improve the role of those standards.

Final session:

The final session includes an evaluation of the trainees in order to determine the extent to which they benefited from the information provided to them through the theoretical or practical training.