



**UNODC**

United Nations Office on Drugs and Crime



*Iraq*

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# **SUPPORTING IRAQI COMPLIANCE WITH THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC) AND COMBATING CORRUPTION AT THE GOVERNORATE LEVEL**

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**THIRD QUARTER - 2011  
PROGRESS REPORT # 12**

**IMPLEMENTED BY THE UNITED NATIONS DEVELOPMENT PROGRAMME  
(UNDP) AND THE UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC)**

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## 1. Activities during the Reporting Period

**Comprehensive Good Governance and Integrity Survey** – during this reporting period and the field work for the survey in all ministries (Federal Government and KRG) commenced on the 10<sup>th</sup> July 2011 targeting a sample size of approximately 30,000 civil servants (20,000 in the Federal Government and 10,000 in KRG). This was conducted in accordance to the work-plan (see Annex 1) under the technical supervision of UNDP and UNODC in collaboration with Central Office of Statics and Information Technology (COSIT), Kurdistan Region Statistic Office (KRSO) and the Commission of Integrity (Col).

To date, the following activities were completed:

- a) Finalization of draft questionnaire
- b) Workshop to introduce survey activities and questionnaire to stakeholders
- c) Pre-test of Questionnaire (300 interviews)
- d) Finalization of questionnaire in English, Arabic and Kurdish
- e) Finalization of questionnaire in English, Arabic
- f) Definition of sample design
- g) Sample extraction according to agreed upon sample design and size
- h) Develop manual for supervisors and interviewers
- i) Translate manual for supervisors and interviewers
- j) Training of trainers (jointly for COSIT and KRSO)
- k) Selection of interviewers and supervisors
- l) Printing/reproduction of the questionnaire (desired sample + 10%)
- m) Approach ministries/agencies covered by survey to ensure smooth survey operations.
- n) Data collection.
- o) Development of data entry software.
- p) Questionnaire check and editing

The overall ‘Survey on Working Conditions and Integrity of Civil Servants in Iraq’ aims at collecting baseline information on several aspects connected with integrity and corruption of employees working in ministries and public institutions of the country.

The remaining tasks are expected to be completed in February 2012 which includes the followings:

- a) Preparation of database in SPSS format (codebook provided by UNODC)
- b) Preparation of technical report on data collection (model provided by UNODC)
- c) Preparation of final report

**Anti-Corruption Curricula in primary and secondary schools** – working sessions took place with UNDP, education experts (SRD) and representatives from the Iraqi Ministries of Education (Federal and KRG) and the Commission of Integrity on 20<sup>th</sup> August where need assessment, methodology and work-plan was agreed (see Annex 2).

It was agreed that the curriculum will cover all subjects including mathematics, science, languages, civic education, history, geography and religious education. A technical committee of specialist was established and assigned for each school subject from the Ministry of Education (Federal and KRG). The participants agreed that the curriculum is seen as the overall educational experiences that will be made available for children, including

textbook, teacher and classroom teaching and extra-curricular activities, which will be planned and supervised by the school.



The final deliverable of this project will be in a form of a Reference Guide that includes extra-curricular activities – to promote the values of integrity and anti-corruption in the school curriculum that targeting school students and teachers. The new curriculum will not be produced as a separate learning subject as the current school timetable cannot accommodate any new topics as it will overburden the students.



Based on the agreed work-plan, a survey on all subjects at primary and secondary school levels took place to identify existing material on integrity, accountability and transparency. The result of the survey will be used to enhance the existing curriculum and introduce further material and extra-curricular activities for identified topics. The survey will be completed in October 2011.

**Roll-Out of the NACS to the Governorates** – great achievement were made within this activity which is now concluded with 731 workshops were conducted attended by 34,742 participants (24,989 males and 9,753 females) – (see Annex 3).

The objective of the anti-corruption roll-out strategy was designed to contribute to the prevention of corruption at the governorate level. The delivery of a series of training courses on anti-corruption constitutes one component of capacity building and awareness raising interventions within the framework of a joint UNDP-UNODC Programme, *“Supporting Iraqi compliance with the United Nations Convention against Corruption & combating corruption at the governorate level”*.

The roll-out was designed to be conducted in four phases: (i) set up of a team of experts (Wide Expert Team); (ii) set up a team of master trainers; (iii) set up a pool of trainers; and (iv) delivery of a series of training for stakeholders countrywide. The first three phases were completed in May 2010 and the fourth phase started in June 2010 (due to be completed by July 2011).

Three categories of participants were targeted:

- (i) Governorates (newly elected, governors, provincial council, high judiciary at the governorates and municipalities),
- (ii) (ii) Ministries including their representative offices at the governorates), and
- (iii) (iii) The Civil Society (tribal leaders, religious groups, academia, media, NGOs, Private Sector the public).

**Standard Operating Procedures (SOPs)** – this activity is considered a distinguished milestone in establishing unified processes and procedures for the Offices of Inspectors General (OIGs) and the Commission of Integrity (Col). The final version of SOPs for the Col and the OIGs were developed and documented under the technical supervision of UNDP and Khleif & Samman Business Advisers and Public Accountants and in cooperation with technical staff from Col and OIGs.

The SOPs will be printed as manuals for the Col and the OIGs and due to be ready in November 2011.

**Enforcement Output** – preparation is underway to implement all sub-activities of this output starting with workshops that will take place in November in Iraq on Financial Investigations and international cooperation on this topic. This will be followed by a series of other workshops in December 2011 and February 2012.

Providing **Inventory (activity 3.1)** of laws and legislations pertaining to combating corruption has successfully completed in this reporting period and categorized as follows:

**Anti-corruption Bodies**

- The Integrity Committee and the scope of its work
- The Board of Supreme Audit and the scope of its work
- Inspectors General Offices and the scope of their work
- The Central Bank of Iraq’s Money laundering reporting office

### **The public sector**

- Recruitment, hiring, retention, promotion and retirement of non-elected public officials
- Working conditions
- Candidature for and election to public office
- Employees' conduct
- Systems that promote transparency
- Disqualification for public office
- Sabbaticals, training and technical assistance

### **Public contracts and procurement, public tender and management of public finances**

- Public contracts and procurement and public tender
- Management of public finances
- The Judiciary
- Nomination and promotion of judges
- Sabbaticals and retirement rights
- Independence of the Judiciary
- Control and supervision of the judiciary
- Immunity of Judges
- Measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary
- Public sessions and the publication of court decisions
- Time frame for resolving cases
- Training of Judges
- Rules with respect to the duties and conduct of members of the judiciary
- Disciplinary penalties and trial of judges

### **The private sector**

- Non Governmental Organizations and cooperative societies
- Syndicates
- Unions
- Corporate entities
- Control and inspection
- Auditing control and maintenance of books and records
- Infringements and sanctions
- Tax exemption
- Protection of Iraqi products
- Investment promotion
- Consumer protection
- Competition and anti-monopoly
- Measures to protect citizens and deter offenders
- Rules of conduct for professions
- Subsidies and licenses granted by public authorities for commercial activities
- Exemptions and privileges
- Preventing conflicts of interest on the professional activities of former public officials

### **Criminalization**

- Bribery in the public sector
- Bribery in the private sector
- Embezzlement of property in the public sector

- Embezzlement of property in the private sector
- Trading in influence
- Abuse of functions
- Breach of mandate by public officials
- Illicit enrichment
- Laundering of proceeds of crime
- Concealment
- Obstruction of justice
- Participation or attempt to commit an offence
- Illegal mediation
- Forgery
- Liability of legal persons for participation in the offences

#### **Law enforcement**

- Reducing the immunities of public officials
- Rights of defence and presumption of innocence
- Early release or parole of persons convicted of offences
- Remove, suspend or reassign a public official accused of an offence
- Procedures for the disqualification, by court order or any other appropriate means, for a period of time, of persons convicted of offences
- Reintegration into society of persons convicted of offences
- Freezing, seizure and confiscation
- Protection of witnesses, experts and victims
- Protection of persons reporting any facts concerning offences
- Compensation for damage caused as a result of an act of corruption
- Encourage cooperation with law enforcement authorities

#### **Mechanisms and requirements of International cooperation**

- Extradition
- Transfer of sentenced persons
- Transfer of criminal proceedings for the proper administration of justice
- Mutual cooperation between security authorities
- Legal and judicial cooperation
- Arbitration
- Joint investigations
- Special investigative techniques
- Implementation of the provisions of foreign courts

## **2. Background to the Project**

Post-conflict reconstruction is normally characterized by large scale injection of resources in an environment where the legal and institutional frameworks are weak, fragile or inexistent and expertise scarce. Detection of crime is therefore generally low and enforcement difficult. Post-conflict governing structures are characteristically weak in terms of financial, fiscal, administrative and regulatory capacities with limited oversight over informal and sometimes criminalized sectors. The institutions are often transitional in nature, carrying little legitimacy, and therefore prone to capture by the privileged elite with access to power and resources. As a general rule, this lack of popular participation in reconstruction creates

vulnerabilities to corruption, waste of available scarce resources, lack of maintenance and monitoring by beneficiaries and further delegitimizes government authority.

At the first international anti-corruption conference, held in Baghdad on 7-8 March 2008, the Iraqi government, represented by the Deputy Prime Minister and the heads of the main anti-corruption bodies, namely the Commission of Integrity (COI), the Board of Supreme Audit (BSA), the Inspectors General (IG), the Joint Anti-Corruption Council (JACC), and the Parliamentary Committee of Integrity (COI-COR), confirmed their commitment to the effective implementation of the United Nations Convention Against Corruption (UNCAC). In this context, the Government declared its intention to develop a comprehensive national anti-corruption strategy, to review and streamline the existing legal and institutional framework, to establish effective preventive measures, such as codes of conduct, asset declaration systems, and effective auditing standards, to promote ethical conduct, transparency and accountability throughout society, to design a public complaints and whistleblower protection system, and to build domestic capacities to recover the proceeds of corruption.

The United Nations Convention against Corruption (UNCAC) was ratified by the Iraqi government on 17 March 2008. Consequently, there was an immediate need to strengthen the relevant legal and institutional anti-corruption framework as well as the related operational capacities of Iraq to effectively meet the requirements of the Convention and to respond to the Iraqi government's commitment to implement the UNCAC.

UNDP Iraq and UNODC jointly drafted a five year programme to support an effective anti-corruption system in Iraq, with a framework of Iraqi Compliance with the United Nations Convention Against Corruption.

An integral part of this programme is a US State Department-supported joint UNDP/UNODC programme.

Under the programme, two projects, as follows, were developed by UNDP and UNODC and funded by the U.S. Embassy in Baghdad: "1. Supporting Iraqi Compliance with the United Nations Convention against Corruption (UNCAC), and 2. "Combating Corruption at the Governorate Level".

**Project 1:** Joint UNDP/UNODC assistance to the Government of Iraq to combat corruption through policy support for compliance with the United Nations Convention against Corruption, including:

- I. Conduct comprehensive anti-corruption assessments;
- II. Development of a comprehensive national anti-corruption strategy;
- III. Technical assistance and training for UNCAC compliance.

**Project 2:** Joint UNDP/UNODC assistance to the Government of Iraq to combat corruption at the Regional and Governorate Level, including:

- I. Anti-corruption training for newly elected officials;
- II. Anti-corruption training for middle level managers in the governorates;
- III. Assist in developing prevention and enforcement capacity of BSA, COI and the IGs at regional and governorates levels;
- IV. Develop and introduce anti-corruption curricula in primary and secondary schools at regional and governorate levels.



### 3. Progress Achieved in 3<sup>rd</sup> Quarter 2010 as per the Project Work Plan

<b>Output 1.1</b> <b><i>Institutional Anticorruption Assessment and Governance Survey completed</i></b>		
<b><u>Targets as per the work plan :</u></b>  1.1.1 Baseline data on perceptions of accountability, transparency and public participation in governance processes to be compiled and Good Governance Survey to be completed. <i>Work Plan , Q2-2009</i>  1.1.2 Training with formation of a corruption assessment team including COSIT, BSA, CoI, and IG staff on development and implementation of corruption assessment methodologies and tools; identification of indicators and focus groups; data analysis; presentation and research based policy formulation to be carried out. <i>Work Plan Q3-2009</i>  1.1.3 Assessment on the nature, location, causes and consequences of corruption in Iraq as well as an assessment of the legal, institutional and operational anticorruption capacities to be conducted in 20 key Public institutions. <i>Work Plan Q4-2011</i>  1.1.4 Development of long-term corruption monitoring system, including pilot/feasibility study of a survey (or a survey module) targeting households. <i>Work Plan Q4-2010</i>	<b><u>Status:</u></b>  <b>Completed Q2 2010</b>  <b>Completed Q1 2010</b>  <b>Ongoing - On time in accordance to the Work Plan</b>  <b>Completed</b>	<b><u>Progress/activities during the period:</u></b>  <ul style="list-style-type: none"> <li>• 1.1.3 Progress of the Survey.               <ul style="list-style-type: none"> <li>a) Finalization of draft questionnaire</li> <li>b) Workshop to introduce survey activities and questionnaire to stakeholders</li> <li>c) Pre-test of Questionnaire (300 interviews)</li> <li>d) Finalization of questionnaire in English, Arabic and Kurdish</li> <li>e) Finalization of questionnaire in English, Arabic</li> <li>f) Definition of sample design</li> <li>g) Sample extraction according to agreed upon sample design and size</li> <li>h) Develop manual for supervisors and interviewers</li> <li>i) Translate manual for supervisors and interviewers</li> <li>j) Training of trainers (jointly for COSIT and KRSO)</li> <li>k) Selection of interviewers and supervisors</li> <li>l) Printing/reproduction of the questionnaire (desired sample + 10%)</li> <li>m) Approach ministries/agencies covered by survey to ensure smooth survey operations.</li> <li>n) Data collection.</li> <li>o) Development of data entry software.</li> <li>p) Questionnaire check and editing</li> </ul> </li> </ul>
		<b><u>Planned Activities:</u></b>  <ul style="list-style-type: none"> <li>➤ 1.1.3 Planned activities for completing the Survey               <ul style="list-style-type: none"> <li>d) Preparation of database in SPSS format (codebook provided by UNODC)</li> <li>e) Preparation of technical report on data collection (model provided by UNODC)</li> <li>f) Preparation of final report</li> </ul> </li> </ul>

## Output 1.2

### National Anti-Corruption Strategy Developed

<u>Targets as per the work plan :</u>	<u>Status</u>	<u>Progress/activities during the period:</u>
<p>1.2.1 Establish and equip a national anticorruption working group comprising representatives from JACC, BSA, CoI, IGs, Central Bank and Money Laundering Office, and CoR Commission of Integrity. <i>Work Plan Q2-2009.</i></p>	<b>Completed</b> <i>Q4-2009</i>	<ul style="list-style-type: none"> <li>• 1.2.1, and 1.2.2 Activities completed as previously reported.</li> <li>• 1.2.3 Activity completed as previously reported (national conference was replaced by an official process of written consultation by the JACC)</li> <li>• 1.2.4 The National Anti-Corruption Strategy (NACS) was finalized in October 2009,</li> <li>• 1.2.4 NACS was circulated by the JACC to the Council of Representatives, Ministers, Governorates, Provincial Councils and high level key personnel for approval,</li> </ul>
<p>1.2.2 Undertake national and governorate level consultation meetings to solicit inputs for the formulation of the national anticorruption strategy <i>Work Plan Q3-2009</i></p>	<b>Completed</b> <i>Q3-2009</i>	<ul style="list-style-type: none"> <li>• 1.2.4 Approval and positive feedback received by the JACC,</li> <li>• 1.2.4 NACS was printed in Arabic version (1680 copies),</li> <li>• 1.2.4 Dissemination plan for the NACS is in place pending official launching of the NACS (expected to be launched after the March 2010 election).</li> </ul>
<p>1.2.3 National conference to present, review and finalize the draft national anticorruption strategy <i>Work Plan Q3-2009</i></p>	<b>Completed</b> <i>Q3-2009</i>	<ul style="list-style-type: none"> <li>• 1.2.4 Implementation and Roll-out plan for the NACS including the governorates was established.</li> <li>• 1.2.4 Nomination and selection of experts 'Wide Experts Team (WET)' for the Implementation and Roll-Out was established.</li> </ul>
<p>1.2.4 Print, disseminate and promote the finalized national anticorruption strategy <i>Work Plan Q2-2011</i></p>	<b>Completed</b> <i>Q1- 2010.</i>	<ul style="list-style-type: none"> <li>• 1.2.4 Developing and training WET to become master trainers (ToT basis) for the Implementation Roll-Out to the governorates is underway. First meeting of WET in December 2009, training plan including content agreed by WET, ToT scheduled for 14-18 February 2010.</li> <li>• 1.2.4 The Strategy will be officially launched in March 2010 in Baghdad.</li> <li>• 1.2.4 Hold further training sessions for WET, aiming to complete all training necessary by Q1-2010.</li> <li>• 1.2.4 Nomination and selection of trainers in the governorates for the Roll-Out.</li> <li>• 1.2.4 Develop material for training in accordance to the developed plan.</li> </ul>
		<p><b><u>Planned Activities:</u></b></p> <p>None- Activities completed</p>

## Output 1.3

### *Iraqi compliance with the UNCAC achieved through technical assistance and training*

<u>Targets as per the work plan :</u>	<u>Status</u>	<u>Progress/activities during the period:</u>
<p>1.3.1 Based on the findings from the legal assessment and self assessment, propose amendments to the current legal framework and suggest new anti-corruption laws. <i>Work Plan Q2- 2009</i></p>	<b>Completed Q2 -2009</b>	<ul style="list-style-type: none"> <li>1.3.1 In depth assessment was conducted with technical assistance from UNDP and UNODC, resulting in 39 recommendations on current legal framework.</li> <li>1.3.1 Six committees were established to look into: <ul style="list-style-type: none"> <li>❖ Financing Political parties,</li> <li>❖ Right of Information,</li> <li>❖ Civil Service Law,</li> <li>❖ Public Servants and Anti-Corruption,</li> <li>❖ Code of Conduct,</li> <li>❖ Civil Society</li> </ul> </li> <li>1.3.1 Training on 'Legislative Drafting' conducted 14 Dec.2009-16 Jan. 2010 resulted in developing a draft Law on Anti-Corruption.</li> <li>1.3.1 Working sessions with the Wide Expert Team on amendment of the legal framework and finalizing Draft Anti-Corruption Law.</li> </ul>
<p>1.3.2 Conduct workshop on model law on anti -money laundering and counter terrorism financing. <i>Work Plan Q3 - 2010</i></p>	<b>Completed Q1 - 2010</b>	<ul style="list-style-type: none"> <li>1.3.2 Workshop conducted on Anti-Money Laundering and Counter Terrorism in July 2009. Further workshop will take place in Q1 2010.</li> <li>1.3.2 Further sessions on AML and Stolen Assets Recovery in March 2010.</li> </ul>
<p>1.3.3 Representatives of relevant Iraqi Institutions to attend a programme on legislative drafting. <i>Work Plan Q4-2010</i></p>	<b>Completed Q1 - 2010</b>	<ul style="list-style-type: none"> <li>1.3.3 Phase I and II of 'Legislative Drafting' were completed in Q4 2009 and Q1 2010 respectively. The training consisted of Theory of Modern Legislative Drafting, practical session where existing/new laws were drafted and finally field visits and job shadow in Lebanon. Phase II will be advanced Legislative Drafting and ToT.</li> <li>1.3.3 As a result of this training, drafts of four laws were developed; <ul style="list-style-type: none"> <li>❖ Draft Anti-Corruption Law,</li> <li>❖ Draft Conflict of Interest Law,</li> <li>❖ Draft Witnesses and Whistleblower Protection Law,</li> <li>❖ Draft Government Procurement Law,</li> </ul> </li> <li>1.3.3 Phase II and III – Advance Training on Legislative drafting (for 10 CoI staff – March 2010).</li> </ul>
<p>1.3.4 Conduct workshop on witness and whistleblower protection. <i>Work Plan Q3 2009</i></p>	<b>Completed Q1 - 2010</b>	<ul style="list-style-type: none"> <li>1.3.4 Held a workshop in December 2009 to assist Iraq in its efforts to create a draft law on Witness Protection This was conducted by Sabra Group (see 1.3.3 on draft legislation).</li> <li>1.3.4 Reference material was provided, and included the UNODC Model Law on Witness Protection and</li> </ul>

<p>1.3.5 - 20 training sessions for government officials and key private sector groups on the UNCAC, and how to promote transparency <i>Work Plan Q1 - 2010</i></p> <p>1.3.6 Analyse Iraqi compliance with UNCAC and propose amendments and new laws as appropriate <i>Work Plan Q4-2010</i></p>	<p><b>Completed</b></p> <ul style="list-style-type: none"> <li>Arabic language copies of the 2008 UNODC publication “Good Practices on the Protection of Witnesses in Criminal Proceedings.” Examples of witness protection laws were also provided.</li> <li>1.3.4 Training on ‘Legislative Draft’ resulted in developing a draft Law on Witness and Whistleblower Protection.</li> <li>1.3.4 Provide Training on Witnesses and Whistleblower Protection through the Legislative Drafting in Q1 2010.</li> </ul>
	<p><b>Completed Q3 - 2010</b></p> <ul style="list-style-type: none"> <li>1.3.5 Four sessions (as previously reported in Q2 and Q3 2009) took place where participation included the Commission of Integrity, The Central Bank, Central Statistical and Information Office, Inspectors general, Board of Supreme Audit, NGOs and members of the Parliament.</li> <li>Iraqi delegation comprising JACC, BSA, CoI and IGs were supported to participate in the annual United Nations Conference of the State Parties COSPIII, held in Doha in November 2009.</li> <li>1.3.5 Four sessions were held in Q1 2010 in (Amman, Bahrain and Beirut).</li> <li>1.3.5 Two sessions on UNCAC took place on 02 April 2010 and 09 April 2010 in Baghdad.</li> <li>1.3.5 A session on UNCAC and NACS held in Dohok for five days, 18-22 April 2010.</li> <li>1.3.5 One session on UNCAC and NACS for three days (24-26 April 2010) in Baghdad.</li> <li>1.3.5 A session on UNCAC held in Babil for three days (08-10 May 2010).</li> <li>1.3.5 Three sessions conducted in Baghdad for three days (24 July, 29 July and 29 Aug 2010).</li> <li>1.3.5 A session held in Karkuk on 21 July 2010.</li> <li>1.3.5 A session held in Karbala on 26 Sept 2010.</li> <li>1.3.5 A session conducted in Basrah on 28 Sept 2010.</li> <li>1.3.5 A session conducted Diyala on 24 August 2010.</li> <li>Analysis of Iraqi compliance with UNCAC is completed (see annex 2)</li> </ul> <p><b><u>Planned Activities:</u></b></p>

## Output 2.1

### *Public Awareness on Accountability and Integrity Enhanced, with Scrutiny of Public Decision Makers Increased*

<u>Targets as per the work plan :</u>	<u>Status</u>	<u>Progress/activities during the period:</u>
2.1.1 Two orientation workshops on public accountability and integrity outreach to be conducted for representatives from governorate level administrations in Baghdad (45 governorate representatives for each meeting) <i>Work Plan Q3-2009</i>	<b>Completed Q2 - 2010</b>	<ul style="list-style-type: none"> <li>2.1.1. Conducted an orientation workshop in Arbil in Q2-2010. Governors, provincial councils staff, governorates judiciary staff attended this event.</li> <li>In line with a proposal put to ACCO – US Embassy/Baghdad, this activity is proposed to be included in 2.2 and 2.3.</li> <li>170 sessions were conducted this quarter, of which 150 sessions were conducted in various ministries with 8717 participants (6074 males, females) and 20 sessions for the civil society at various locations in the Iraq with 608 participants (424 males, 184 females). To date, the total number of workshops conducted for the roll-out since June 2010 is 731 with 34,742 participants (24,989 males and 9,753 females).</li> </ul>
2.1.2 Public service announcements to be prepared and launched by governorate level representatives in collaboration with the CoI. <i>Work Plan Q4-2010</i>	<b>Completed</b>	<u>Planned Activities:</u>

## Output 2.2

### *Integrity related rights and responsibilities under the law well understood by newly elected officials*

<u>Targets as per the project plans :</u>	<u>Status</u>	<u>Progress/activities during the period:</u>
2.2.1 36 workshops on ethics, responsibilities and obligations under the law with emphasis on how to promote transparency and accountability to be carried out in all governorates <i>Work Plan Q1-2012</i>	<b>Completed Q3-2011</b>	<ul style="list-style-type: none"> <li>In line with a proposal put to ACCO – US Embassy/Baghdad, this activity is proposed to be included in 2.2 and 2.3.</li> <li>170 sessions were conducted this quarter, of which 150 sessions were conducted in various ministries with 8717 participants (6074 males, females) and 20 sessions for the civil society at various locations in the Iraq with 608 participants (424 males, 184 females). To date, the total number of workshops conducted for the roll-out since June 2010 is 731 with 34,742 participants (24,989 males and 9,753 females).</li> </ul>
		<u>Planned Activities:</u>

### Output 2.3

#### ***Accountability and Integrity related rights and responsibilities under the law well understood by Senior and Middle Level Managers of the Local Administrations***

<b><u>Target as per the work plan :</u></b>	<b><u>Status</u></b>	<b><u>Progress/activities during the period:</u></b>
<p>2.3.1 - 36 workshops on ethics, responsibilities and obligations under the law, including how to practice and promote transparency and accountability</p> <p><b><i>Work Plan Q1 - 2012</i></b></p>	<p><b>Completed</b></p> <p><b>Q3-2011</b></p>	<ul style="list-style-type: none"> <li>• In line with a proposal put to ACCO – US Embassy/Baghdad, this activity is proposed to be included in 2.2 and 2.3.</li> <li>• 170 sessions were conducted this quarter, of which 150 sessions were conducted in various ministries with 8717 participants (6074 males, females) and 20 sessions for the civil society at various locations in the Iraq with 608 participants (424 males, 184 females). To date, the total number of workshops conducted for the roll-out since June 2010 is 731 with 34,742 participants (24,989 males and 9,753 females).</li> </ul>
		<p><b><u>Planned Activities:</u></b></p>

### Output 2.4

#### ***Prevention and Enforcement capacity of BSA, CoI and the IGs strengthened at the Regional and Governorate levels***

<b><u>Target as per the work plan :</u></b>	<b><u>Status</u></b>	<b><u>Progress/activities during the period:</u></b>
<p>2.4.1 Development of Standard Operating Procedures for BSA audits, IG inspections and CoI investigations for regional and governorate level institutions</p> <p><b><i>Work Plan Q4 - 2009</i></b></p>	<p><b>Completed</b></p> <p><b>Q3-2011</b></p>	<ul style="list-style-type: none"> <li>• 2.4.1 Final draft SOPs for the CoI and the OIGs are completed</li> <li>• 2.4.1 Final review of the draft manuals is underway with feedback provided by OIGs and CoI.</li> <li>• 2.4.2 Training on developing SOP for CoI and BSA is completed</li> <li>• 2.4.2 Training of Trainers is completed.</li> </ul>
<p>2.4.2 Training of trainers for BSA, CoI and IGs on the Standard Operating Procedures</p> <p><b><i>Work Plan Q2- 2010</i></b></p>	<p><b>Completed</b></p> <p><b>Q1 - 2011</b></p>	<p><b><u>Planned Activities:</u></b></p> <ul style="list-style-type: none"> <li>➤ 2.4.2 Printing of the SOP manuals for OIGs and CoI</li> <li>➤ 2.4.3 Implementation of IT tools to combat corruption at the regional level</li> </ul>
<p>2.4.3 Implementation of IT tools to combat corruption at the regional level.</p> <p><b><i>Work Plan Q4- 2010</i></b></p>	<p><b>ongoing</b></p>	

## Output 2.5

### ***Anticorruption Curricula in Primary and Secondary Schools at Governorate level Developed***

<b><u>Targets as per the work plan :</u></b>	<b><u>Status</u></b>	<b><u>• Progress/activities during the period:</u></b>
<p>2.5.1 Development of pilot anticorruption curriculum for primary and secondary level schools in 3 governorates <i>Work Plan Q4 - 2010</i></p>	<b>Ongoing</b>	<ul style="list-style-type: none"> <li>• 2.5.1 Held initial discussion with the Commission of Integrity on the requirements, curriculum and stakeholders involved.</li> <li>• 2.5.1Held initial discussion with the IG for the Ministry of Education to identify the appropriate mechanism to develop the principals and the correct way to go about it</li> <li>• 2.5.1 &amp; 2.5.2 Deployment of a consultancy firm to assist in the development of the curricula and the training of the teachers.</li> </ul>
<p>2.5.2Training of Trainers for 36 teachers representing 9 primary and 9 secondary level schools from 3 pilot governorates <i>Work Plan Q3-2009 toQ4- 2010</i></p>	<b>Ongoing</b>	
<p>2.5.3Translation and reproduction of training and educational material <i>Work Plan Q3-2009 toQ4- 2010</i></p>	<b>Ongoing</b>	
		<p><b><u>Planned Activities:</u></b></p> <ul style="list-style-type: none"> <li>• 2.5.1Consultation meeting with the Iraqi stakeholders</li> <li>• 2.5.1Development of pilot anticorruption curriculum for primary and secondary level schools in 3 governorates.</li> </ul>

Output 3.1		
Create an inventory of corrupt acts and a compendium of legal instruments to prosecute corruption crimes.		
<b><u>Target as per the work plan :</u></b>  Produce an inventory of corrupt acts and a compendium of existing laws and regulations for prosecutors, investigators and trial judges (with regards to the applicability to criminalisation and prosecution) <i>Work Plan Q1 - 2012</i>	<b><u>Status</u></b>  Completed Q3 - 2011	<b><u>Progress/activities during the period:</u></b>  • Final draft is provided to CoI for feedback
		<b><u>Planned Activities:</u></b>
Output 3.2		
Build a shared knowledge by the CoI and Judicial practitioners, of the inventory of corrupt acts and the compendium of legal instruments		
<b><u>Target as per the work plan :</u></b>  Build a sustainable shared knowledge of the inventory of corrupt acts and the compendium of legal instruments among investigative and judicial practitioners <i>Work Plan Q1 - 2012</i>	<b><u>Status</u></b>  ongoing	<b><u>Progress/activities during the period:</u></b>  • Produce a draft of the inventory including a compendium of legal instruments
		<b><u>Planned Activities:</u></b>
Output 3.3		
Develop a common standard practice of investigation & prosecution of corruption, based on the inventory and the compendium		
<b><u>Target as per the work plan :</u></b>  3.3.1 Deliver case based capacity building to investigators, prosecutors and trial judges <i>Work Plan Q1 - 2012</i>  3.3.2 Deliver technical information on criminalization of corrupt acts to select community institutions in support of AC Strategy <i>Work Plan Q1 – 2012</i>	<b><u>Status</u></b>  Ongoing	<b><u>Progress/activities during the period:</u></b>
		<b><u>Planned Activities:</u></b>  ➤ First workshop focusing on basic Criminal Case Management, including case intake, investigation process, joint investigations (between different national authorities), evidence management and report preparation (Nov 2011) ➤ Second workshop focusing on basic Financial Criminal Investigations, including transnational investigations, mutual legal assistance, and asset tracing, seizure and recovery. (Nov 2011) ➤ Advanced training workshop focused in greater detail on important practical legal and judicial topics related to the basic trainings above. (Jan 2012) ➤ Training workshop focusing on crisis communication management for high-ranking officials, including



3.3.3 Develop a curriculum for Judicial Training Institute (JTI) and Judicial Education <i>Work Plan Q1 – 2012</i>		managing information during a crisis where allegations of corruption are a component and how to address confidentiality issues (Oct 2011).  ➤ Developed through the assistance of national and international consultants, and includes expertise from the Criminal Law certification curricular unit at the University for JTI.
Output 3.4 Produce benchmarks for results and quality improvement for the CoI & Judiciary		
<u>Target as per the work plan :</u>  Establish mutually agreed standards and M&E tools on investigation, prosecution and trial of corrupt acts, by the CoI and the Higher Judicial Council (HJC) <i>Work Plan Q1 - 2012</i>	<u>Status</u>  ongoing	<u>Progress/activities during the period:</u>  •  <u>Planned Activities:</u>  ➤ Working session with COI to discuss and agree on a framework to monitor COI efficiency and effectiveness in the fight against corruption, including identification of potential indicators and benchmarks and their methodology (Sept 2011). ➤ Test feasibility of agreed framework through collection and analysis of available data and documentation on activities and effectiveness of COI (Dec 2011). ➤ Workshop to present results of data review and identification of a set of benchmarks (statistical indicators) to be used for monitoring efficiency and effectiveness of COI in the fight against corruption (Jan 2012)
Output 3.5 Provide information on prosecution of corruption crimes to the general Public, victims and defendants		
<u>Target as per the work plan :</u>  Produce information for non-technical stakeholders on criminalisation of corruption in Iraq <i>Work Plan Q1 - 2012</i>	<u>Status</u>  Ongoing	<u>Progress/activities during the period:</u>  •  <u>Planned Activities:</u>  ➤ Inventory and Legal Compendium

## 4. Expenditures

ACTIVITY	Planned TOTAL	2009				2010				2011			Cumulative Cost
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	
1.1 Conduct Comprehensive AC Assessments	810,101	151,862	46,001	80,309	187,022	20,670	9,413	--	--	--	123,225	--	618,502
1.2 Development of a comprehensive national AC Strategy	564,600	--	44,599	104,080	65,228	286,875	63,818	--	--	--	--	--	564,600
1.3 Technical assistance and training for UNCAC compliance	642,120	22,327	47,617	169,911	219,389	22,385	22,837	137,654	--	--	--	--	642,120
2.1 Public information	120,000					60,000	45,376	--	--	6,898	5,149	2,577	120,000
2.2 Training in anti-corruption for newly elected public officials	529,720	--	--	--	--	--	--	68,220	99,292	--	115,712	156,601	439,825
2.3 Training for senior and middle managers of the local administrations	529,720	--	--	--	--	--	--	68,220	99,192	--	115,712	156,602	439,826
2.4 Development of the COI, BSA and IGs capacity for prevention and enforcement at the regional and governorate levels	948,738	--	--	--	--	--	--	--	384,000	100,811	119,740	97,031	701,582
2.5 Development and pilot implementation of anti-corruption curriculum in primary and secondary schools under regional or governorate administration.	410,296	--	--	--	--	758	--	--	--	--	98,733	76,732	176,223
3.1 Create an inventory of corrupt acts and a compendium of legal instruments to prosecute corruption crimes.	144,329	--	--	--	--	1,647	1,507	--	14,959	2,913	31,458	91,845	144,329
3.2 Build a shared knowledge by the CoI and Judicial practitioners, of the inventory of corrupt acts and the compendium of legal instruments	151,450	--	--	--	--	--	--	--	--	--	--	--	--
3.3 Develop a common standard practice of investigation & prosecution of corruption, based on the inventory and the compendium	686,754	--	--	--	--	--	--	--	--	5,286	--	--	5,286
3.4 Produce benchmarks for results and quality improvement for the CoI & Judiciary	176,194	--	--	--	--	--	--	--	--	--	--	--	--
3.5 Produce benchmarks for results and quality improvement for the CoI & Judiciary	49,500	--	--	--	--	--	--	--	--	4,163	--	--	4,163
<b>Sub-total activities</b>	<b>5,763,522</b>	174,189	138,217	354,300	471,639	392,335	142,951	274,094	597,543	120,071	609,729	581,388	3,275,068
<b>UNDP technical and management costs</b>	<b>1,360,000</b>	30,125	118,221	188,100	105,166	101,534	85,712	98,712	145,691	53,793	120,902	84,751	1,132,707
<b>Experts/UNODC</b>	<b>876,478</b>	--	--	--	--	600,000	--	--	2,367	--	--	--	602,367
<b>TOTAL</b>	<b>8,000,000</b>	204,314	256,438	542,400	576,805	1,093,869	228,663	372,806	745,601	173,864	730,631	666,139	5,591,529

## **Annex 1: Work-plan For the Comprehensive Integrity Survey in Iraq – 02 August 2010**

### **Organizational arrangement**

- a) Steering group: set up and identify members – today (it will supervise all survey activities)
- b) Survey team composition (COSIT and KRSO): by 15 August
- c) Grant agreement between UNPD-COSIT ready for signature: 20 September

### **Sample size**

- a) Provide data on selected ministries/institutions disaggregated by governorate – KRSO – 5. September
- b) Check and complete data on ministries/institutions disaggregated by governorate – COSIT /CoI– 5. September
- c) Create final list of ministries to include – UNODC / UNDP / CoI /COSIT / KRSO - 13. September
- d) Final sample size – UNODC – 15. September

### **Sample frame and sample drawing**

- a) List of variables to be included – UNODC - today
- b) Collect individual data for all selected ministries/institutions on all their civil servants according to UNODC request– CoI / COSIT / KRSO
- c) Send out data request by 8. August
- d) Collect data by 30. September
- e) Check and process data by mid October
- f) Sample drawing: 31. October (COSIT – KRSO)

### **Cost assessment**

- a) Provide provisional sample sizes – UNODC – today
- b) Provide provisional cost assessment for two sample sizes specified by UNODC – COSIT – 15. August

### **Questionnaire:**

- a) Review and finalization of the questionnaire – UNODC/UNDP – Mid September
- b) Translation of questionnaire into Arabic and Kurdish – COSIT / KRSO - 30 September
- c) Printing/reproduction of the questionnaire (desired sample + 10%) – COSIT / KRSO – 31. October

### **Organization of survey fieldwork**

- a) Develop guidelines for manual of interviewers – UNODC – 15. September
- b) Develop manual for supervisors and interviewers – COSIT/KRSO – 30. September
- c) Selection of interviewers – COSIT / KRSO – 30. September
- d) Training of trainers – 10 November

- e) Training of supervisors and interviewers – COSIT / KRSO – 30. November
- f) Period of fieldwork – 1 December 2010 - 31 January 2011 - COSIT / KRSO

**Data processing**

- a) Training of coders and data entry staff: by 15 December 2010
- b) Data check and data entry – COSIT / KRSO – Mid December 2010– Mid February 2011
- c) Standard codebook to be provided by UNODC : by October 2010
- d) Final dataset by end February 2011

## Annex 2- Anti-Corruption Curriculum for Primary and Secondary School

### Integrity and Anti-Corruption Curriculum

#### *Curriculum Framework*



August 2011

### List of Participants:

- |  |   |
|--|---|
| <b>1. Dr. Mohamed Mohamed Ali Tamim</b>      | <i>Minister of Education, Baghdad, Republic of Iraq</i>   |
| <b>2. Mr. Muzaffar Yassine Saadoun</b>       | <i>Inspection General, Ministry of Education</i>  |
| <b>3. Mr. Abdul Aziz Sarhan</b>              | <i>Director General, Primary and Kindergarten - Ministry of Education - Kurdistan Region</i>                                    |
| <b>4. Mr. Ziluan Qazzaz</b>                  | <i>Deputy Director General / Office of Integrity and Governance / Office of the Prime Minister / Kurdistan region</i>           |
| <b>5. Mr. David Salman torment Shammari</b>  | <i>Office Director of the Minister of Education, Republic of Iraq</i>   |
| <b>6. Dr. Abdul-Abbas Abd al-Jasim Ahmed</b> | <i>Chairman of the Senior Research Platform - PhD in Linguistics</i>  |
| <b>7. Mr. Aqil Shahab</b>                    | <i>Director of Education and Academic Administration of Iraq Anticorruption</i>   |
| <b>8. Dr. Ghazwan Hadi Hassan</b>            | <i>Public Relations Manager in the Integrity Commission</i>   |
| <b>9. Mr. Yusuf Osman Hamad</b>              | <i>Education Psychologist, Curriculum - Ministry of Education - Kurdistan Region</i>  |
| <b>10. Dr. Hadeel Abdul Wahab</b>            | <i>PhD in Curriculum and Instruction, Science Curriculum, and Educational Psychological - Directorate General of Curriculum</i> |
| <b>11. Mr. Azad Aziz</b>                     | <i>Director of Educational Supervision and Vocational Training - Ministry of Education - Kurdistan Region</i>                   |
| <b>12. Mr. Ibrahim Reda Ibrahim</b>          | <i>Director of Nonformal Education, Ministry of Education - Kurdistan Region</i>  |

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## The Development of Integrity and Anti-Corruption Curriculum Project for Iraq

### **Mission:**

*Corruption is a phenomenon that threatens the rights of every Iraqi individual and harmful to society if we don't fight it.*

### **Introduction**

Corruption is one of the most prominent obstacles to the development movement in Iraq, so, all measures and mechanisms should be taken to limit the spread of this phenomenon. This curriculum seeks to build a generation that can contribute in the reformulation of the state institutions while possessing a sufficient level of integrity and transparency. It is obvious that the development of an integrity and anti-corruption curriculum will take a time, but much more time will be needed to transfer its impact to the general community.

The curriculum will cover all subjects including mathematics, science, languages, civic education, history, geography and religious education, which means no school subject will be excluded in this project. This requires at least one specialist to be assigned for each school subject from the Ministry of Education. The participants agreed that the curriculum is seen as the overall educational experiences that will be made available for children, including textbook, teacher and classroom teaching and extra-curricular activities, which will be planned and supervised by the school.

The final deliverable of this project will be in a form of a Reference Guide) that includes extra-curricular activities – to promote the values of integrity and anti-corruption in the school curriculum that targeting school students and teachers. The new curriculum cannot be produced as a separate learning subject because the school timetable cannot accommodate any new additions overburden the student. Moreover, the existing school curriculum includes a great body of the integrity concepts that need to be enriched through extra-curricular activities.

## **Principles of the Curriculum Framework**

### **Background**

- The integrity and anti-corruption curriculum is a preventive measure, in addition it will include references to sanctions that result from the different manifestations of corruption. It will focus more on the preventive aspects of the deterrence aspects, where it was noted that there is a lot of incorrect notifications and reports that consume most of the time of the control institutions.
- This curriculum aims not only to achieve the objectives of education for integrity and anti-corruption, but also aims to develop the child personality through achieving the objectives of educational and social.
- The curriculum should include a series of experiences that develop students' abilities and motivate them learn and think critically.
- The curriculum concepts and topics should address all forms of corruption.

### **Purpose of the Curriculum Framework**

The framework is reference guidelines for all the work on the development of the curriculum, so all stakeholders will turn to it in their work, including:

- Decision Makers
- Educational Supervisors
- Trainers
- Curriculum Developers
- Authors of School Textbook and Learning Materials
- Teachers
- Learning Assessment Officers

### **Iraqi Anti-Corruption Strategy**

According to the Iraqi Anti-Corruption Strategy (IACS) which is to be implemented over the period of 2010-2014, anti-corruption education program will be developed, which should actively promotes 'the culture of honesty, integrity, transparency, respect of public service ethics, and accountability in both public and private sectors carried out via public awareness and educational programs'.

## **Value Education**

The integrity and anti-corruption curriculum is a type of value education that seeks to instill the values of human dignity, integrity, transparency, and raising awareness of individual rights and duties towards his community and his country in general.

## **Role of Educational Institutions**

Educational institutions are capable of undertaking the following missions:

- A. Introducing subjects explaining citizens' duties into the educational curricula at all stages and activating students' role in disclosing and reporting all negative situations to the concerned authorities.
- B. Expanding the scope of education vis-à-vis the importance of preserving public funds and citizens' right to have the best services.
- C. Expanding psychologists' and educators' concern in the areas of accountability, integrity and transparency.
- D. Investing and exploiting capacities in creativity, openness, adaptation and steadfastness to serve the cause of public interest through developing special programs that impact citizens' behavior.
- E. Converting the transparency requirement into a concrete daily option.
- F. Involving students into certain educational institution problems arising from negligence.
- G. Developing special activities designed to urge students to participate in the management of public funds.
- H. Intensifying practical subjects at the educational institutions with regard to public funds.

The infusion of integrity values and anti-corruption education in school program has different forms:

1. Separated learning modules, each consisting of a number of lessons to be infused in the school textbooks.
2. A reference manual which can be used by students and teachers of in selected subjects as extra-curricular activities to promote the achievement of the objectives of the formal school curriculum and at the same time achieve the objectives of integrity and anti-corruption.
3. View topic in the curriculum as part of another subject being taught at the school.
4. The introduction of a new separated school subject.

The final deliverable of this project will be in a form of a Reference Guide) that includes extra-curricular activities – to promote the values of integrity and anti-corruption in the school curriculum that targeting school students and teachers.

## Rationale

- The need to support Iraq Government in dissemination of the values of integrity and anticorruption through raising awareness and provide students with positive attitudes towards it.
- Since Iraq is among the countries who signed on United Nations Convention against Corruption (UNCAC), Iraqi Government prepared a national strategy for anticorruption. So, this curriculum is one of the main tools and mechanism to practically implement the content of the strategy.
- Iraqi resources exposed to waste and mismanagement over years which had lead to social and economic transformations. These changes required a parallel intervention to provide the people of Iraq with an appropriate values and attitudes.
- The need to accommodate the student and the teacher's role in Iraqi society and its institutions in terms of the need to adhere to the principles of transparency, fairness and civil rights.
- To build the future of Iraq, there is a pressing need that Iraq students and teacher understand well their roles in the community and Iraqi institutions in relation to the principles of integrity, transparency, and civil rights.

## Topics and Concepts of Integrity Curriculum

### Main topics of Integrity Curriculum

Main topics	Sub-Topics
<b>The concept of corruption</b>	<ul style="list-style-type: none"><li>• Exploration of the concept</li><li>• Origin of corruption</li><li>• Where is it?</li></ul>
<b>anticorruption</b>	<ul style="list-style-type: none"><li>• Problems of combating corruption. Possibilities of combating corruption</li><li>• Success stories</li></ul>
<b>Ethical Issues</b>	<ul style="list-style-type: none"><li>• Notions of public responsibility</li><li>• Bad Credit</li><li>• Maintaining public money</li></ul>
<b>Corruption and Human Rights</b>	<ul style="list-style-type: none"><li>• Corruption and the Universal Declaration of Human rights (UDHR)</li><li>• Right to fair trial</li><li>• The real victims</li></ul>
<b>Corruption and the Market Economy</b>	<ul style="list-style-type: none"><li>• Impact on businesses</li><li>• Impact on the public purse</li></ul>
<b>Corruption and the Law</b>	<ul style="list-style-type: none"><li>• The legislative framework</li><li>• Breaking the law</li><li>• Consequences of corruption</li></ul>
<b>Corruption and Democratic Society</b>	<ul style="list-style-type: none"><li>• Freedom of opinion and expression</li><li>• Representation and participation</li></ul>

--	--

## Basic Concepts of Integrity Curriculum

1. Corruption
2. Anticorruption
3. Corruption crimes
4. Bribery
5. Abuse of power
6. Not doing the official's duty
7. Government official
8. Civil servant
9. The foundations of the fight against corruption
10. Public interests
11. Special interests
12. Conflicts of interest
13. Dependency
14. Favoritism
15. Integrity
16. Transparency
17. Accountability
18. Consequences of corruption
19. The concept of public responsibility
20. Human rights
21. Right to fair trial
22. Freedom of thought and expression
23. Business world
24. State Treasury
25. Law
26. The emergence of corruption
27. Means of combating corruption
28. Public money

These concepts will be integrated in the Reference Guide, and so, it has been agreed that the definitions of these concepts will be derived from Iraqi legislations and international charters. And then, these definitions will be harmonized and smoothed to meet the educational requirement for each students grade level.

## The pedagogical principles

### The Role of Curriculum

Integrity and anti-corruption curriculum should:

- enable students to learn how to recognize corruption (and separate it from other types of crime);
- provide students with arguments why corruption is evil;
- demonstrate means of reducing corruption.

Provision and obtaining of information for anti-corruption education may be carried out in the same way as for the other social disciplines which include lectures; analysis of various written sources of information (articles, survey reports, historical sources); discussions with various people (law enforcement officials, witnesses, politicians and civil servants); review of video material, etc.

Yet when dealing with anti-corruption education, there is always a threat that mere provision of information can turn into a methodological material of training young people about the possibilities of corrupt conduct or contribute to tearing up the fabric of society we live in and its institutions. Therefore, provision of information should be done in a moderate and tasteful manner, bearing in mind that the key objective is not to gain the most knowledge but to make the best judgment.

### **Learning and Teaching Strategies**

The main appropriate strategies are:

1. Thinking Strategies: including concept mapping, collective thinking, and participation in group discussion where teacher facilitate the group work and encourage children to write their ideas on flipcharts.
2. Communication and Listening Skills: such as using pictures to start discussions about the similarities and differences between countries in dealing with integrity and anticorruption issues to encourage children extending their thinking about the related values.
3. Inquiry Skills: such as field survey to discover the class opinion about the most important value for each child and what are the shared values among each group of children, and this should be followed by surveying the parent's opinions. This activity may need teaching children some research methods and data analysis, and then presenting the results.
4. The Use of Information and Communication Technologies: such as make a show of selected pictures, and then the students develop a story which may reflect their values towards corruption. After that, they start brainstorming about the story and prepare a plan to get new pictures and write the dialogue and animations.
5. Arts: the use of some programs to encourage children to positive practices through discussion about pictures.
6. Competitions: through forming criteria to select the integrity teacher and integrity student. These criteria should be set by a committee from the Integrity Commission and the MoE.
7. Educational Satellites: Satellite channels have a role to strengthen the integrity values and anticorruption among children.
8. Educational Mass Media: such as the journals and brochures which noramly issued by some educational directorates and schools.
9. Community Leaders: such as the clergies.

### **Teaching and Learning Activities**

Similar to other school learning subjects, teaching about integrity and anticorruption may include the following list of learning activities:

- Lectures
- Text analysis
- Brainstorming and discussions
- Reports and data analysis

- Current Events analysis
- Meetings with Official Persons.
- Watching Educational Films
- Educational Theater and competitions, including the Integrity Applaud and Integrity International Day.

Participants emphasized the importance of using several learning tools and activities in order to achieve the objectives of Integrity curriculum.

## **Educational Principles for Developing Integrity Culuture among Children**

While providing information about corruption teachers seek to develop attitude on the basis of cognitions. To achieve this goal, pupils should:

### **1. Understand the information.**

The harm of corruption is usually demonstrated using economic, social and political arguments. Young pupils may find them difficult to understand and to the majority of them it is hardly relevant. Therefore, these arguments should be ‘translated’ into the pupils’ language by showing how corruption threatens their interests and the interests of their family and friends.

### **2. Remember.** Undoubtedly, “repetition is the mother of all learning”, yet if the same is repeated more than three times, one feels saturated and stripped of the right to make a free choice. Thus it is worthwhile changing the form of information provision to the most unexpected and impressive ways.

### **3. Persuade Themselves.** Attitude becomes particularly strong when it is not foisted on people but when they develop it by intensive reasoning. This means that it is sufficient to provide information without the “processed” evaluation of the phenomenon. The effect will be stronger if information analysis, interpretation, reasoning and summarizing is left for pupils, in other words, using the method of active learning. “The effect of self-persuasion” is bigger if notes (in the form of conclusions, statements, recommendations, etc.) are taken of the results of active reasoning and publicly presented. Besides that, people tend to believe the statements they ardently support. With this in mind, anti-corruption education should not employ the method of debates, where two opposite sides argue against each other, because the pro-corruption statements may stick in the mind of those who represented corrupt attitudes. In case you wish to have such debates, the provocative position favoring corruption may be taken by teachers only. However, in that case, ethical problems arise (what do teachers propagate?).

## **Lesson Plan**

The teacher needs to select the most appropriate activities that fit the school environment and enrich the school curriculum. The lesson plan form for this activity in Annex 1, using this form teacher can plan for integrity education as an education for specific purposes. Using this form teacher can:

- Use different ways to organize the lesson objectives to give the students equal opportunities to work with their peers at the same grade level, in small groups or in pairs.
- Use Collection of activities that encourage students and motivate them to learn.

- How to meet the learning needs of different students.
- Use a variety of learning resources, including learning and technology education.

### **Alignment with Iraqi National Curriculum**

- The Integrity and Anticorruption Curriculum aims at empowering students to be able to make decisions towards the corruption issues in the community.
- Teaching for anticorruption is emotional teaching more than any other learning domains, thus the role of teacher should focus on:

- Teach students how to distinguish the crime of corruption from other forms of crimes.
- To provide logical arguments to show that the scourge of corruption hurt the individual and society.
- Review the means which help to reduce corruption.

What strikes teachers who are involved in values education is that pupils already possess attitudes contrary to the ones teachers defend. Confronted with denial and resistance, some of them feel powerless. Awareness of psychological patterns of attitude change could help them feel stronger. In fact, preconceptions block information that is contrary to what one knows (for example, “again this prattles about corruption”). To avoid such a situation, information should be presented unexpectedly (for instance, without introducing the topic or goal of the lesson) and in a non-conventional way (such as a game-experiment, a paradoxical story, etc.). Another strategy of attitude change is based on the fact that knowledge and attitudes are stored in memory separately and that time is required to reach accord between them. Therefore, pro-corruption attitude should not be attacked by persuasion.

### **Integrity Values**

Value system that seeks to promote integrity Platform:

- The first value: the pride of the individual himself.
- The second value: relations with and respect of others and concern for them.
- The third value: social and civic responsibilities.
- Fourth value: respect for Iraqi cultural heritage and preserve the resources of the country.

<b>First value: the pride of the individual himself</b>		
Elementary (1-6)	Preparatory (7-9)	Secondary (10-12)
<ul style="list-style-type: none"> <li>• Self control</li> <li>• Secretariat</li> <li>• Self-esteem</li> <li>• Responsibility</li> </ul>	<ul style="list-style-type: none"> <li>• Integrity</li> <li>• Perseverance</li> <li>• Honesty</li> </ul>	<ul style="list-style-type: none"> <li>• Self responsibility</li> <li>• The development of talent and creativity</li> <li>• Entrepreneurship</li> </ul>
<b>Second value: relations with and respect of others and concern for them</b>		
<ul style="list-style-type: none"> <li>• Respect for the family</li> <li>• Respect for community members</li> <li>• Security (the impact of</li> </ul>	<ul style="list-style-type: none"> <li>• Teamwork</li> <li>• Rights and duties</li> <li>• Altruism</li> <li>• Security (the impact of corruption on</li> </ul>	<ul style="list-style-type: none"> <li>• Freedom</li> <li>• Justice</li> <li>• Democracy</li> <li>• Security (the impact of corruption on security)</li> </ul>



corruption on security)	security)	
<b>Third value: social and civic responsibilities</b>		
<ul style="list-style-type: none"> <li>• Evaluating the individual's own culture</li> <li>• Loyalty to the homeland</li> <li>• Maintaining public property and an interest in</li> <li>• Concern for the environment</li> </ul>	<ul style="list-style-type: none"> <li>• Loyalty to the homeland</li> <li>• Interest in the natural environment and industrial environment</li> <li>• Volunteering</li> </ul>	<ul style="list-style-type: none"> <li>• Volunteer</li> <li>• Loyalty to the homeland</li> <li>• Preserving public</li> </ul>
<b>Fourth value: respect for Iraqi cultural heritage and preserve the resources of the country</b>		
<ul style="list-style-type: none"> <li>• Representation and participation</li> <li>• Cooperation</li> </ul>	<ul style="list-style-type: none"> <li>• Friendship</li> </ul>	<ul style="list-style-type: none"> <li>• Time management</li> </ul>

### Social Needs Related to Learn Integrity Values

Children mental health may be positively supported by meeting their basic social needs. All children will benefit from meeting of normal daily life experiences such as family and community activities, school, sports and play. Resuming structured activities within a daily routine will help the child's self-confidence, increase social integration and may raise an outlook of hope for the future. Education programs can assist in meeting these needs. Such programs can contribute in achieving the following educational needs:

Children's Needs	Possible Interventions
<b>Sense of Belonging</b>	<ul style="list-style-type: none"> <li>* Establish an educational structure where children feel included.</li> <li>* Promote the restoration of family and community-based cultural, traditional practices of childcare, whenever possible.</li> </ul>
<b>Relationships with Peers</b>	<ul style="list-style-type: none"> <li>* Provide a dependable, interactive routine through school or other organized educational activity.</li> <li>* Offer group and team activities (e.g., sports, drama) that require cooperation and dependence on one another.</li> </ul>
<b>Personal Attachments</b>	<ul style="list-style-type: none"> <li>* Recruit teachers who can form appropriate caring relationships with children and who, as leaders in their communities, support families and others to care for children.</li> <li>* Provide opportunities for social integration and unity by teaching and showing respect for all cultural values, regardless of differing backgrounds.</li> </ul>
<b>Intellectual Stimulation</b>	<ul style="list-style-type: none"> <li>* Enhance child development by providing a variety of educational experiences.</li> </ul>
<b>Sense of Control</b>	<ul style="list-style-type: none"> <li>* Offer opportunities for children to complete regular and manageable assignments to promote a sense of accomplishment and give children a sense of control over some part of their lives.</li> </ul>
<b>Physical Stimulation</b>	<ul style="list-style-type: none"> <li>* Encourage recreational and creative activities, both traditional and new, through games, sports, music, dance and so on.</li> </ul>

Children's Needs	Possible Interventions
<b>Feeling of Self-Worth</b>	<ul style="list-style-type: none"> <li>* Create opportunities for expression through individual/group discussions, drawing, writing, drama, music and so on, which promote pride and self-confidence.</li> <li>* Recognize, encourage and praise children.</li> </ul>

In order to connect the Integrity Curriculum with school national curriculum, a technical team from the MoE will survey the whole school curriculum using the enclosed form (Annex # 2).

## Assessment of Learning the Integrity and Anticorruption Curriculum

Each school can take the evaluation policy and plan which is more relevant to its own school timetable. The plan helps teachers to improve teaching and learning through a good schedule. It should be emphasized the importance of ensuring that the process of assessment and recording student performance and progress is easy to manage. Evaluation alerts teacher for the low level of students or who exceeding expectations, and helps them to maintain the development of learning through the provision of information that he needs, within a continuous cycle of teaching, learning and assessment. The feedback provided by the teacher to students, as well as self-evaluation, will encourage students as a mean to achieve the basic goal of learning through helping students how to improve the quality of their performance.

Finally, Integrity curriculum should be directed to develop positive attitudes and values more than focusing on improving the learning achievements related to the acquisition of knowledge.

## Objectives of Formative Assessment

The objectives of formative assessment as follows:

1. Check the students understand of the basic learning objectives in each lesson and whether they had any misconceptions.
2. Help teachers to provide feedback, set targets to be achieved, and plan for the next class.
3. Help students learn how to assess their performance and improve it.

## Formative Assessment Strategies

The formative assessment strategies should meet the main objectives of the integrity anticorruption curriculum, as follows:

- Use a range of questions during the lesson to assess students' understanding of, and determine the extent of their interaction and participation in the activity, and whether they were able to use and apply what they learn in new contexts.
- Make the students aware of the specific lesson to take into account individual differences, or by doing a particular activity to evaluate their responses and the extent of their progress.

- A discussion with the students to follow up any surprises in their responses when they receive the lessons.
- Discuss the responses of students to activities or oral assignments or practical tasks to identify any errors or misconceptions and correct them, and assess their level of understanding, and make sure they know what they need to do, and work to improve their performance and scalability.
- Analyzing and correcting student work written and identify any errors or misconceptions are common, and the oral and written it to guide the students and guide them.
- Demand from learners determine what they understood and what performance they can, and what still find it difficult to understand, and what should be the goals of learning, and this is by working to form pairs or groups.

This formative assessment strategies should be a part of everyday practice in the teaching process. At the end of some lessons, for example, students reflection and review what they have learned, as a student or two at the end of another lesson explained the ways and solutions to their colleagues which allowing the teacher to judge the participation of the students in the activity.

The important feature in the assessment that it provides feedback to the teaching and learning processes with the necessary information for improvements. And remains the ultimate goal of formative assessment is to determine what students have learned which will enable them to take sound decisions about teaching the integrity and anticorruption values.

## Annexes

### Annex # 1

#### Integrity and Anticorruption Curriculum Project

#### Lesson Plan Form

**Grade:**

**Lesson Title:**

**Main Value:**

**Date:**

<b>Objectives:</b>
After completion of the lesson, it is expected that the student will be able to:
<b>Main Value:</b>
<b>Sub-Values:</b>
<b>Resources:</b>

Specific Learning Objectives	Activities	Outputs
<b>Self Evaluation:</b>		

## Annex # 2

## Integrity and Anticorruption Curriculum Project

## Textbook Analysis Form

**Grade:**

Textbook Title:

**Name of Officer/Teachers:**

**Tel:**

**Email:**

[illegible]

Signature:

**Annex # 3****Contact Information**

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## Annex 3 – Role out of the National Anti-Corruption Strategy and awareness raising campaign

The objective of the anti-corruption roll-out strategy was designed to contribute to the prevention of corruption at the governorate level. The delivery of a series of training courses on anti-corruption constitutes one component of capacity building<sup>1</sup> and awareness raising interventions within the framework of a joint UNDP-UNODC Programme, *“Supporting Iraqi compliance with the United Nations Convention against Corruption & combating corruption at the governorate level”*.

The roll-out was designed to be conducted in four phases: (i) set up of a team of experts (Wide Expert Team); (ii) set up a team of master trainers; (iii) set up a pool of trainers; and (iv) delivery of a series of training for stakeholders countrywide. The first three phases were completed in May 2010 and the fourth phase started in June 2010 (due to be completed by June 2011).

A pool of trainers was established through the delivery of Training of Trainer (ToT) courses. The ToT methodology ensured that training was provided to the largest number of participants and stakeholders in the shortest possible time through a cascade effect. The pool of trainers was selected from among BSA, IGs, CoI staff, academia, civil society, NGOs and the private sector. Two distinct groups of trainers were formed:

**Master Trainers:** the custodians of the training content and will constitute the expert core group on anti-corruption training inside Iraq. The Master Trainers received training from UNDP, UNODC, and specialized agencies.

**Governorate Trainers:** responsible for delivering the anti-corruption curricula to participants at the local governorate level. The Governorate Trainers trained by the Master Trainers with supervision and support from UNDP, UNODC and CoI staff.

The training curriculum was developed by the Master Trainers in consultation with the Wide Expert Team, UNDP, UNODC and CoI. The training curriculum consisted of three modules (the National Anti-Corruption Strategy “NACS”, Citizenship and finally legislative and institutional framework for fighting corruption). This was completed on 15 April 2010.

The selection of participants for the training courses was carried out by the master trainers, implementing team/CoI in consultation with UNDP and UNODC. Participants were selected from among BSA, IG and COI staff, academia, civil society, NGOs and the private sector.

The stakeholders were categorized into three groups; (i) Governorates (newly elected, governors, provincial council, high judiciary at the governorates and municipalities), (ii) Ministries including their representative offices at the governorates), and (iii) The Civil Society (tribal leaders, religious groups, academia, media, NGOs, Private Sector the public).

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<sup>1</sup> UNDP recognizes capacity building as a long-term, continuing process, in which all stakeholders participate, and which supports the creation of an enabling environment with appropriate legal frameworks, institutional development including community participation, and human resources development and strengthening of managerial systems.

UNDP and UNODC provided (Jan. - May 2010) and will continue to provide technical assistance to the thematic sessions of the training courses. Expert technical input by leading international anti-corruption organizations, such as Transparency International, will also be included as required.

The Governorate Trainers were deployed to provide training to different stakeholders throughout the 18 governorates.

**Annex 4- Analyse Iraqi compliance with UNCAC and propose amendments and new laws as appropriate**



UNITED NATIONS  
*Office on Drugs and Crime*

# IRAQ

## **Review of Iraqi Compliance with the United Nations Convention against Corruption (UNCAC)**

**Erik Larson – UNODC  
February 2010**

- A. Implementation of the United Nations Convention against Corruption**
- 1. Introduction and Methodology**

## **1.1 Introduction**

### **a. United Nations Convention Against Corruption (UNCAC)**

UNCAC was adopted by the General Assembly by its resolution 58/4 of 31 October 2003. The Conference of the States Parties to the United Nations Convention against Corruption was then established in accordance with Article 63 of the United Nations Convention against Corruption (General Assembly resolution 58/4, annex) to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in the Convention and to promote the review of its implementation, focusing on periodic reviews of the implementation of the Convention and making recommendations to improve its implementation (art. 63, paras. 1 and 4 (e) and (f)). To perform these functions, the Conference requires knowledge of the measures taken by States Parties in implementing the Convention and of the difficulties they have encountered in doing so, through information provided by them (art. 63, para. 5). Each State Party must accordingly provide the Conference with information on its programmes, plans, practices and legislative and administrative measures to implement the Convention (art. 63, para. 6).

The first session of the Conference was held from 10 to 14 December 2006 in Jordan, in accordance with Article 63, paragraph 2, of the Convention. In its resolution 1/2, the Conference (a) recognized the importance of gathering information on the implementation of the Convention; (b) decided that a self-assessment checklist should be used as a tool to facilitate the provision of information on implementation of the Convention; (c) requested the Secretariat to finalize the self-assessment checklist, in consultation with and reflecting input from States Parties and signatories; (d) requested the Secretariat to distribute the self-assessment checklist to States Parties and signatories as soon as possible to begin the process of information-gathering, urging States Parties, and inviting signatories, to complete and return the checklist to the Secretariat; and (e) requested the Secretariat to collate and analyze the information provided by States Parties and signatories through the self-assessment and to share that information and analysis with the Conference. At the second session of the Conference held from 28 January to 1 February 2008 in Indonesia, the results of the self-assessment checklist were presented to the Conference.

### **b. The International Compact with Iraq and the Baghdad Declaration**

From 17-18 March 2008, a meeting of the International Compact with Iraq Initiative on Good Governance and Anti-Corruption Conference was held in Baghdad. During the conference, the *Baghdad Declaration on Combating Corruption* was issued by the Iraqi government, UNDP-Iraq, UNAMI, and UNODC. Pursuant to Article 1 of the *Baghdad Declaration*, Iraq agreed to “take the necessary steps to ratify the United Nations Convention against Corruption, in line with Parliamentary approval for such ratification.” On 17 March 2008, Iraq complied with this commitment and acceded to the UNCAC.

Various undertakings were also pledged by the United Nations under the *Baghdad Declaration*, including to “provide technical assistance to the Government of Iraq’s self-assessment of the existing legal and institutional framework as well as operational capacities against the requirements of the United Nations Convention against Corruption with a view to effecting the required reforms.” (Art. 11, *Baghdad Declaration*.) This report is designed to provide this promised technical assistance to Iraq’s self-assessment of its existing legal and institutional framework and operational capacities as related to the UNCAC and its self-assessment checklist. It is also designed to provide a detailed analysis of both the current and proposed legal framework of the three primary anti-corruption agencies in Iraq: the Commission of Integrity, the Board of Supreme Audit, and the Inspectors General. Finally, it

is also hoped that this report will serve as a tool to assist in the designing of long-term technical assistance proposals for Iraq and its anti-corruption efforts.

## **1.2 Methodology**

In preparation for this report, the first step undertaken was the analysis of both Iraq's general legal infrastructure and also its specific penal and anti-corruption legislation. These included:

- a) 2005 Constitution.
- b) Penal Code. (Law No. 111 of 1969, as amended, see MoJ STS 251/88.)
- c) Order on Penal Code. (CPA Order 7 of 2003, amending 1969 Penal Code.)
- d) Law on Criminal Procedure. (Law 23 of 1971, as amended.)
- e) Order on Criminal Procedures. (CPA Order 3 (Revised) of 2003, amending Law on Criminal Procedure.)
- f) Delegation of Authority Regarding the Iraq Commission on Public Integrity. (CPA Order 55 of 2004)
- g) New 2008 Draft Law for the Commission of Integrity.
- h) Board of Supreme Audit Law. (Law No. 6 of 1990.)
- i) Order on Board of Supreme Audit. (CPA Order 77 of 2004)
- j) New 2008 Draft Law for the Board of Supreme Audit.
- k) Order on Iraqi Inspectors General. (CPA Order 57 of 2004.)
- l) New 2008 Draft Law for Iraqi Inspectors General.
- m) Anti-Money Laundering Act of 2004. (CPA Order 93 of 2004)
- n) Central Bank Law. (CPA Order 56 of 2004.)
- o) Banking Law of 2004. (CPA Order 94 of 2004.)
- p) Anti-Terrorism Act. (Law No. 13 of 2005.)
- q) Law of the Public Prosecutor. (Law No. 159 of 1979.)
- r) Order on Re-Establishment of the Council of Judges. (CPA Order 35 of 2003.)
- s) Law on Disciplining Government Employees. (Law No. 14 of 1991.)
- t) Civil Procedure Code. (Law No. 83 of 1969.)

In addition, discussions were also held with relevant international stakeholders and extensive information was collected from these Iraqi and international counterparts.

Based on this methodological process, the information presented below was collected and analyzed. However, it should be noted that this report should not be considered a detailed gap analysis of existing laws and regulations, nor should it be considered the final word on Iraq's compliance with the UNCAC. Instead, it is a preliminary document that may serve as a vehicle for more detailed analyses conducted as part of a comprehensive package of technical assistance to Iraq. This report is designed as a working tool for Iraq to use to preliminarily engage in its commitments under the UNCAC, including its own independent completion of a self-assessment check-list.

## **2. Legislation Regarding the Iraqi Commission of Integrity, Board of Supreme Audit, and Inspectors General**

### **a. Relevant UNCAC Articles**

<i>Article 6. Preventive anti-corruption body or bodies</i>
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“1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:  
 (a) Implementing the policies referred to in Article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;  
 (b) Increasing and disseminating knowledge about the prevention of corruption.  
 “2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this Article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.  
 “3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.”

***Article 36. Specialized authorities***

“Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.”

**b. Summary of the main requirements**

Article 6 requires States Parties: (a) To have an anti-corruption body or bodies in charge of preventive measures and policies (para. 1); (b) To grant that body independence to ensure that it can do its job unimpeded by undue influences and provide it with adequate resources and training.

Similarly, Article 36 requires States Parties, in accordance with the fundamental principles of their legal system: (a) To ensure they have a body or persons specializing in combating corruption through law enforcement; (b) To grant the body or persons the necessary independence to carry out its or their functions effectively without undue influence; and (c) To provide sufficient training and resources to such body or persons.

The UNCAC does not require that these preventive and law enforcement anti-corruption body or bodies be separate institutions.

**c. The Iraqi Approach**

Iraq has a comprehensive institutional approach primarily grounded on the work of three anti-corruption bodies: (a) the Commission of Integrity; (b) the Board of Supreme Audit; and (c)

the Inspectors Generals. Summarizing, and perhaps oversimplifying the structure, it can be said that the Inspectors Generals serve as the Iraqi government's "internal audit" agency, the Board of Supreme Audit serves as its "external audit" agency, and the Commission of Integrity serves as its "investigative law enforcement" agency. However, as will be discussed in more detail *infra*, each of these three primary anti-corruption agencies also has additional functions.

Beyond these three bodies, there are also executive and legislative coordinating institutions that oversee the work of the three anti-corruption agencies and other facets of Iraq's anti-corruption strategy. These are the Joint Anti-Corruption Council (JACC) within the Office of the Prime Minister and the Parliamentary Committee on Integrity.

## **2.1 Commission of Integrity (former Commission on Public Integrity)**

### **a. Current Legal Framework**

The Commission on Public Integrity (CPI) was established in 2004 by Order 55 of the Coalition Provisional Authority then governing Iraq. It provided the CPI with a lead role in Iraq's anti-corruption efforts, both preventive within the meaning of Article 6 of the UNCAC and law enforcement within the meaning of Article 36 of the UNCAC.

Per section 5 of the law, the CPI was initially headed by a Commissioner appointed by the CPA pursuant to the nomination of the Governing Council. Upon the return of sovereignty to Iraq, the law provided that the Commissioner be appointed by the Chief Executive of Iraq from a pool of three nominees of the Council of Judges, subject to confirmation by a majority vote of the Legislature. The CPI was divided into six departments, each headed by a Director, including the (a) Department for Investigations, (b) Department of Legal Affairs, (c) Department for Prevention; (d) Department of Education and Public Relations, (e) Department for Relations with Non-Governmental Agencies, and (f) Department of Administration.

Consistent with Chapter II of the UNCAC, which requires States Parties to have preventive anti-corruption programs, Section 4(6) through 4(9) of CPA Order 55 granted the COI broad powers to conduct preventive anti-corruption activities. These included the development and implementation of a financial disclosure system for public officials, the development of codes of conduct for government officials, the preparation of preventive anti-corruption legislation and its submission to the legislature, the conduct of anti-corruption education and public awareness campaigns, and the development of anti-corruption preventive programs for inclusion in the national school curriculum. These activities were implemented by the Department of Prevention, Department of Education and Public Relations, and Department of Relations with Non-Governmental Agencies. However, many commentators noted that these mandates have not been fully implemented by the COI and further development in implementation of these functions is required.

More specifically, the Department of Prevention was tasked with operating the financial disclosure system and the development of codes of conduct. The Department of Education and Public Relations was tasked with developing public awareness and education campaigns for public officials, government employees, and the general public regarding ethical public services, codes of conduct, and the financial disclosure system. Somewhat overlapping these responsibilities, the Department of Relations with Non-Governmental Organizations was tasked with working with NGOs to promote a culture of ethics in both the public and private sector through the dissemination of training materials, the conduct of training programs and media outreach activities, and any necessary other related activities.

Consistent with Chapter III of the UNCAC, on criminalization and law enforcement, Section 4(1) through 4(6) of CPA Order 55 granted the CPI broad investigative and law enforcement functions. These powers were exercised by the Department of Investigations during the investigative stage and the Department of Legal Affairs during legal proceedings before specialized Iraqi investigative judges tasked with anti-corruption proceedings. The COI also established an internal investigative training capacity within its Department of Education and Public Relations.

CPA Order 55 also implemented various anti-corruption amendments to the Penal Code, which enhanced penalties and sanctions for corruption related offenses. In addition, the CPA also issued a separate CPA Order 3 of 2003 which modified various provisions of the Law on Criminal Procedures. In particular, it suspended the implementation of Article 136(b), which had previously required the permission of government ministers to allow the arrest and prosecution of their staff for both corruption and non-corruption related offenses. This was viewed by many as inconsistent with Article 36 of the UNCAC, which mandates that anti-corruption agencies “shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence.”

#### **b. Recent Legal Developments**

Upon the return of sovereignty to Iraq in 2004, the new government reinstated Article 136(b) of the Law on Criminal Procedures, again requiring the permission of government ministers to arrest or prosecute members of their staff for corruption. In 2007, the Prime Minister of Iraq also issued a second decision giving him the authority to bar the investigation of government ministers for corruption and other offenses, a new development. It has been suggested by many commentators, including the U.S. Special Investigator General for Iraq Reconstruction, in his 2007 “Assessing the State of Iraqi Corruption” report, that these changes of law radically reduced the independence of the COI. In that respect, some have argued that these two provisions of law are inconsistent with the UNCAC Article 36 requirement of “necessary independence” for anti-corruption bodies such as the COI.

In 2008, a new draft law for the Commission of Integrity (the new name for the former Commission on Public Integrity introduced by the 2005 Iraqi Constitution) was submitted to Parliament. While it neither significantly expands nor diminishes the functions of the COI, the draft law does contain several key revisions of the legal and institutional framework of the COI. First, it clarifies the operational independence of the COI. In Article 2, the new law stresses that the COI reports directly to the Parliamentary Council of Representatives, and not the Government. This is consistent with Article 99 of the 2005 Iraqi Constitution which makes the same linkage. (This new provision of law may impact the applicability of the current order from the Prime Minister requiring his approval for the COI to investigate cases involving government ministers.)

As with the previous CPA Order 55, Article 3(5) and 17 of the new law also grant the COI powers to regulate the financial disclosure system for public officials. Administratively, Articles 4 through 10 of the new law also revamp the organizational and personnel structure of the COI, and increase the qualifications to appointment for the Commissioner of COI and his two deputies. The first deputy Commissioner will be required to have a legal background and will manage the work of the Departments of Investigations, Legal Affairs, Prevention, and Finance and Administration, while the second Deputy Commissioner will have a media or education background and manage the Departments of Education, Public Relations, and Relations with Non-Governmental Organizations.

Article 12 of the new law also authorizes, without specifically defining them, the use of “updated technology and new devices” in the work of the Commission, i.e. wiretapping,



undercover surveillance operations, etc. This is a considerable strengthening of the resources of the COI, as until now evidence produced by such special investigative techniques was not admissible in court proceedings. In that sense, this provision of law enhances compliance with Article 50 of the UNCAC, which covers the use of such special investigative techniques in corruption cases.

In addition, Article 15 of the new draft law clarifies that all public entities have a duty to cooperate with the COI, something which has been an issue of concern in the past. However, some commentators have noted that because this same law also requires the COI to respect the competencies of the various ministries, this provision could be misconstrued to allow public entities to limit their cooperation with the COI even more than under the current legal structure.

Other key provisions of the new draft law include the addition of a new chapter (Chapter Four, Articles 16-20) which cover sanctions for unjust enrichment of public officials through corruption. These provisions would appear to enhance compliance with the optional requirements of Article 20 of the UNCAC, which requires States Parties to consider criminalizing “illicit enrichment” by public officials, i.e. possessing assets which cannot be explained or justified by their official or disclosed income and assets. Finally, Articles 21 to 25 of the new draft law significantly increase the salaries and benefits provided to COI staff in order to both enhance recruitment efforts and to seek to increase the independence of its staff from undue influence.

Finally, it was noted by the UNDP and UNODC team in Iraq in June 2008 that the regulations implementing the new draft law on the Commission of Integrity might serve as a vehicle for clarifying the scope of the new law. In particular, (a) the regulations implementing the preventive powers provided to the COI Prevention Department by Article 3 of the new draft law could clarify the scope and extent of the preventive activities to be conducted by the COI; (b) the regulations implementing the Article 17 powers of the COI to control the public official asset disclosure system could make clear that the COI’s Prevention Department has the right to obtain relevant information from banks and public entities to verify the information contained in the disclosure forms; (c) the regulations covering COI’s Article 13 power to withhold information on a case from the investigating anti-corruption judges could require the COI to inform the investigating judge every six months when such information is withheld, as well as when a decision is made to close a case; (d) the regulations implementing the provisions of the Article 15 limitations on the COI powers, so that the Commission does not interfere in the legitimate work of the ministries, could clarify that the COI retains the full rights to conduct all necessary investigative actions; and (e) the regulations covering steps to be taken by the COI when a Minister utilizes his powers under Article 136(b) of the Law on Criminal Procedure to bar the arrest of an official under investigation for corruption could require the Commissioner of the COI to request that the relevant minister inform the Commissioner of the reasons for the decision, in writing, with a rationale for the decision.

## **2.2 Board of Supreme Audit**

### **a. Current Legal Framework**

The Board of Supreme Audit is Iraq’s oldest anti-corruption agency, having been established in 1927. Its structure and competencies are currently defined by both Law No. 6 of 1990, issued by the former regime, and by amendments to this Law No. 6 implemented by CPA Order 77 of 2004.

The BSA primarily functions as an external audit agency. In that sense, it can primarily be viewed as a preventive body within the meaning of Chapter II of the UNCAC, as its duties foremost relate to auditing compliance with preventive financial control systems for

government entities. (It should be noted, however, that Article 2(6) of Law No. 6 also provides the BSA with a limited investigative role on matters related to “the efficient disbursement and use of public funds,” but only on the specific request of the legislature, with any criminal findings to be reported to the COI.)

The BSA’s competencies are laid out in Article 2 of Amended Law No. 6, and are very broad in nature. Consistent with Article 9 of the UNCAC, which mandates that States Parties implement systems to effectively control “public procurement and management of public finances,” this law grants the BSA systemic powers covering virtually all aspects related to the audit of governmental finance and expenditures. Consistent with Article 12 of the UNCAC, covering private sector corruption, Article 2(4) of the new law also tasks the BSA to prepare accounting rules, principles, and standards for use by private auditors throughout Iraq.

Organizationally, the BSA is headed by a President and two Deputy Presidents, pursuant to Articles 5 and 6 of the current law. The BSA’s institutional structure consists of a Council of Financial Audit, headed by the BSA President, and an Office of the Board President and Office of Technical and Administrative Affairs. Operationally, the BSA is then divided into the Central Audit Department, which is subdivided into 6 different sectoral departments, and the Governates Audit Department, which has six geographical sub-departments.

#### **b. Recent Legal Developments**

While the original Law No. 6 of 1990 made plain that the BSA was operationally independent from the Government, reporting directly to Parliament, this provision was deleted by CPA Order 77. However, Articles 100 and 103 of the new 2005 Iraqi Constitution mandated that the BSA, as the federal agency responsible for auditing federal revenues, shall have administrative and operational independence. This granting of independence from the executive branch is now further strengthened by Article 2 of the new draft law that clarifies that the “BSA is administratively and financially independent” and directly “connects with Parliament.”

Beyond these measures, the new 2008 draft law makes significant changes to the legal mandate and framework of the BSA, both adding new powers and restoring old powers deleted by CPA Order 77 of 2004. Article 1(4) enhances the powers of the BSA, by making it a financial infraction, subject to discipline, any government entity’s failure, delay, or procrastination in responding to BSA requests for information. (The amended Law No. 6 only allowed the BSA to refer such matters to the COI, though the original text of the Law No. 6 of 1990 had granted such compliance powers to the BSA.)

Articles 12(2) and 4(6) of the draft law also significantly expand the investigative powers of the BSA, authorizing it to conduct administrative investigations of any financial irregularities involving certain designated high-ranking officials, and of ministries which do not have their own Inspectors Generals. (It has been suggested by many commentators that such an investigative role is inconsistent with the duties of an external audit agency such as the BSA, and better suited to an investigative agency, though such a determination is beyond the scope of the UNCAC and of this report.)

Article 13 of the new law also restores to the BSA rights, removed by CPA Order 77, to suspend from office any official found to have committed financial irregularities, and to initiate civil proceedings to recover government assets lost through such irregularities. This renewed focus on asset recovery is consistent with Chapter V of the UNCAC, which encourages such asset recovery actions.

Chapter three (Articles 16-24) of the new draft law also reorganizes the structure of the BSA. Specifically, it expands the number of deputy presidents from two to four. It also increases

the number of central audit offices to seven from six, and similarly expands the number of governorate offices to seven from six. As with the draft law for the COI, Articles 27 to 36 of the new draft law for the BSA significantly increases the salaries and benefits provided to BSA staff in order to both enhance recruitment efforts and to seek to increase the independence of its staff from undue influence.

## **2.3 Inspectors General**

### **a. Current Legal Framework**

The Inspectors General were established in 2004 by CPA Order 57. Pursuant to Section 1 of that Order, rather than being one agency, the IGs are instead several “independent Offices of the Inspectors General” placed within each Iraqi ministry in order “to conduct investigations, audits, evaluations, inspections and other reviews” of each particular ministry. Currently, there are reportedly 31 such Offices of the Inspectors General operating throughout Iraq, including 29 regular offices and two specialized IG Offices for the Ministries of Defense and Interior.

The IGs primarily function as internal audit agencies. In that sense, they can primarily be viewed as preventive bodies within the meaning of Chapter II of the UNCAC. However, they also have investigative functions. The IGs’ competencies for both types of functions are delineated in Section 5 of Order 57, and include 18 specialized powers.

Briefly, their preventive duties include, but are not limited to (a) engaging in activities designed to prevent fraud, waste and abuse and inefficiencies, including the review of legislation and regulations, and the conduct of training and education programs, (b) the promulgation of written policies and procedures for their respective ministries, (c) the training of ministry employees in the prevention and identification of corruption and other forms of waste and abuse, (d) the auditing of compliance with financial and other internal controls, and (e) the suggestion and monitoring of remedial actions to rectify systemic or individual risks within their ministries. (Order 57, Section (1)(3)(5)(8)(10) and (12)-(14).)

Their investigative duties include, but are not limited to (a) conducting administrative investigations, (b) investigating or otherwise processing received complaints of fraud, waste, and abuse, and (c) cooperating with law enforcement agencies such as the COI. (Order 57, Section (2)(4)(6)(7)(9)(15) and (16).) Pursuant to Section 6 of Order 57, the IGs are granted a broad range of powers to conduct such investigations, including unrestricted access to all information and records within a ministry, the power to subpoena witnesses under oath, access to the heads of agencies and ministries, and the power to require employees to report all instances of fraud, waste abuse, corruption, and other illegal acts.

Consistent with Article 6(2) and 36 of the UNCAC, Order 57 also implemented numerous provisions to ensure the independence of the IGs and their insulation from undue influence. In particular, section 3 of Order 57 bars anyone from attempting to prevent, impair, or deter an IG from his duties, with such attempts to be reported to the COI, and authorizes the IGs to report misconduct directly to the COI, where the integrity of their relevant minister has been brought into question. (Though normally, they report to their minister on the results of their audits and investigations.) Sections 2 and 4 also stipulate that IGs are appointed for 5-year terms and can only be removed from office for cause, and that when a minister makes such a removal he must report it to the legislature.

However, some commentators have noted, as a practical matter, that the independence of the IGs has been reduced under the current system by the fact that their respective ministers

(whose work they audit and investigate) are the ones who decide whether they should be removed for cause. It has also been noted that, under Section 7 of Order 57, IGs do not have an independent budget and must instead rely on resources from their ministers. Beyond reducing their independence, it has been argued that this has resulted in insufficient resources being provided to the IGs, in contravention of the UNCAC Article 6(2) and 36 requirements that anti-corruption agencies such as the IGs be provided sufficient resources for their work.

#### **b. Recent Legal Developments**

While the new draft 2008 law for the Inspectors General does not substantially change the mandate, power, and functions of the IGs, it does make several key changes. In particular, their independence from their ministries has been substantially strengthened, consistent with the requirements of UNCAC Article 6(2) and 36. Under Article 15 of the new draft law, they now have their own independent budgets and full control over their staff. Under Articles 1 and 4, IGs are also now to be appointed under a new system where they are nominated by an independent Nominations and Evaluation Committee and then approved by both Parliament and the Prime Minister. Per Article 27 of the new law, this Committee is to be headed by the Chief of the Parliamentary Committee on Integrity, with its other members consisting of the Secretary General of the Cabinet of the Prime Minister, the President of the BSA, the Commissioner of the COI, and a representative of the Supreme Judicial Council.

Pursuant to Article 7, IGs, after passing a one-year probationary period, can only be removed by the Prime Minister, as opposed to their Minister, as was the case under Order 57. Moreover, even the Prime Minister can only remove them for cause *and* on recommendation of the Nominations and Evaluation Committee. Providing further independence, ministers no longer have the right to punish, transfer, or send their IGs into retirement, such rights being reserved to the Prime Minister under Article 8. Under Articles 16-21 of the new draft law, the pay and benefits for the IGs and their staff have also been substantially raised in an attempt to increase their independence and enhance recruiting efforts. Article 23 of the new draft law also increases the criminal penalties for any interference with the work of the IGs, and grants the COI the right to investigate such interference.

Beyond these independence-strengthening provisions, there are also several significant adjustments to the IG law. Article 3 of the new draft authorizes the creation of IGs to cover non-ministerial government agencies, in order to ensure that all government entities are subject to such internal IG audit and oversight. This would appear to be consistent with the UNCAC Article 9(2) requirement to have systems to manage public finances. Under Article 11 of the new draft law, it is also clarified that all criminal acts must be reported directly to the COI, in addition to reporting such actions to the relevant minister, thereby providing protection to IGs who report such misconduct to law enforcement authorities. This is consistent with the optional provisions of UNCAC Article 33 which encourage the protection of such reporting parties.

## **2.4 Conclusion**

With a few exceptions, the institutional anti-corruption legal structure used in Iraq would therefore appear to be in compliance with Articles 6 and 36 of the UNCAC under both the current system and the proposed new draft laws. However, Iraq has failed to “inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption,” in contravention of the requirements of UNCAC Article 6(3).

Moreover, a remaining issue of concern is the power of government ministers, under Article 136(b) of Law on Criminal Procedures, to bar the arrest and prosecution of their ministry officials accused of corruption, and the right of the Prime Minister to bar corruption investigations against any government minister. These restrictions would not appear to be in compliance with the requirement of “necessary independence,” free of “undue influence” from the Government, mandated by UNCAC Articles 6(2) and 36.

Beyond these issues with the legislative framework for the three agencies, many commentators have noted that they have not yet received sufficient “training” and “resources” within the meaning of UNCAC Articles 6(2) and 36 to effectively accomplish their missions. Many commentators have also noted that these three agencies do not coordinate their activities. This has reportedly resulted in a duplication of efforts and working at cross-purposes. Due to these issues, each of the agencies faces severe challenges in effectively implementing their mandates.

In particular, the COI has not yet been accepted by some segments of the public sector and has often had its work undermined by other sectors of the Government of Iraq. It also faces recruitment challenges due to this lack of support, low pay, and the inherent dangers of working in the unique Iraqi security environment. (It has been reported that over a 100 staff members from COI, BSA, and the IGs have been killed.) Repeated changes in the leadership of the COI have also had an impact on its effectiveness. Many have commented that the COI lacks the necessary infrastructure to accomplish its mission, particularly in the area of modern IT systems, training capacity, and centralized record systems and institutional facilities. The COI also lacks a fully functioning witness protection program, something of key concern due to the security situation.

The IGs face similar challenges, particularly in the area of recruitment, with currently available staff reportedly not possessing the necessary professional skills and qualifications to fully and efficiently carry out their functions and tasks. Moreover, the IGs lack several basic technical and policy tools, such as (1) an agreed methodology to conduct management performance evaluation, including for measuring the efficiency, effectiveness, integrity and governance of the Ministries, (2) an up-to-date IT infrastructure, (3) a clear reporting format for internal audits, (4) an institutional strategy and work plan, and (5) performance indicators for IG staff.

Due to its many decades in existence as an established audit agency in Iraq, the BSA reportedly functions at a higher level of efficiency. Yet even the BSA continues to face a multitude of challenges hampering its effectiveness, including recruitment problems resulting in difficulties in the professional preparedness of its staff to deal with the rapidly increasing complexity of public sector and public resource management as well as public procurement and contracting.

Many of the provisions of the three proposed draft laws will at least partially address these issues. In particular, all three draft laws will dramatically increase the pay and benefits packages for the three anti-corruption agencies, in an attempt to recruit and retain staff members capable of fully implementing their functions. Coordination is also enhanced between the three agencies, with more plainly delineated methodologies of interaction and cooperation. However, increased levels of implementation of the requirements of the UNCAC will need significant international technical assistance if Iraq is to have the capability to fully exercise its anti-corruption strategies and policies.<sup>2</sup>

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<sup>2</sup> See Section 4.B of this report for further discussion of this issue of necessary technical assistance.

Iraq therefore appears to be in only partial compliance with UNCAC Articles 6 and 36.

### 3. Legislation Relevant to UNCAC Self-Assessment Checklist

The UNCAC self-assessment checklist does not cover all Articles of the UNCAC. Instead, it focuses on several key provisions, including Articles 5, 6, 9, 15, 16, 17, 23, 25, 44, 46, 52, 53, 54, 55 and 57. While Article 6 (and Article 36, which is not part of the self-assessment checklist process) have already been discussed above, the requirements, and an analysis of implementation by Iraq, of the remaining 14 Articles are discussed below.

#### 3.1. Article 5

##### ***Preventive anti-corruption policies and practices***

“1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

“2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

“3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

“4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this Article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.”

##### **a. Summary of the main requirements**

In accordance with Article 5, States Parties are required: (a) To develop and implement or maintain effective anti-corruption policies that encourage the participation of society, reflect the rule of law and promote sound and transparent administration of public affairs (para. 1); and (b) To collaborate with each other and relevant international and regional bodies for the pursuit of the above goals (para. 4). Article 5 does not introduce specific legislative requirements, but rather mandates the commitment of States Parties to develop and maintain a wide range of measures and policies for the prevention of corruption, in accordance with the fundamental principles of their legal system. Under Article 5, paragraph 1, the requirement is to develop, implement and maintain effective, coordinated measures that: (a) promote the participation of the wider society in anti-corruption activities; and (b) reflect the principles of: (i) the rule of law; (ii) proper management of public affairs and public property; (iii) integrity; (iv) transparency; and (v) accountability. These general aims are to be pursued through a range of mandatory and optional measures outlined in subsequent Articles of the Convention. Article 5, paragraph 4, requires that, in the pursuit of these aims, as well as of general prevention and evaluation of implemented anti-corruption measures, States Parties collaborate with each other as well as with relevant international and regional organizations, as appropriate and in accordance with their fundamental principles of law.

**b. Findings and observations of UNODC concerning Article 5**

Iraq currently has neither an overall national anti-corruption strategy nor a specific nationwide preventive anti-corruption policy. However, in paragraphs 2 and 4 of the *Baghdad Declaration* of 18 March 2008, Iraq agreed to prepare a “comprehensive anti-corruption strategy within the framework of the International Compact with Iraq with a view to effectively implement the requirements of the UNCAC, *including: prevention*,” as well as to “take preventive action, including reviewing and amending existing laws and regulations for the disclosure by public officials of their earnings and assets, ensuring compliance with relevant codes of conduct, establishing effective accounting and auditing standards, and supporting public education aimed to promote ethical conduct, transparency and accountability throughout the society.”

Moreover, the Institutional Strategy for the Commission of Integrity, created in 2008 with the support of the Governance and Civil Society Team of UNDP-Iraq, includes preventive objectives, with relevant preventive sub-goals. This Institutional Strategy might be considered as the basis for a national anti-corruption strategy, and already serves to guide the work of the COI, Iraq’s primary preventive agency. Relevant to this preventive work, the COI’s Institutional Strategy includes:

- “(2) promoting a national culture of integrity and transparency;
  - Goal 1: Develop and introduce curriculum at schools and universities
  - Goal 2: Form effective partnerships with civil society, including NGOs
  - Goal 3: Organize educational campaigns through the use of all forms of media
- (3) ensuring the full disclosure of the financial assets of designated public servants;
  - Goal 1: Formulate documentation for government officials to list their financial assets
  - Goal 2: Publicize and circulate the financial assets to all governmental agencies
  - Goal 3: Create and regularly update a database with information related to financial assets
  - Goal 4: Strengthen financial asset disclosure legislation
- (4) providing rules of conduct for all public servants;
  - Goal 1: Organize educational seminars and symposia that explain the implications of rules of conduct for public servants and encourages them to adhere to such rules voluntarily
  - Goal 2: Prepare and publicize specific codes of conduct to the relevant public servants
  - Goal 3: Encourage IG offices to monitor the adherence to the codes of conduct
- (5) providing inputs for the amendment of existing legislation or the creation of new legislation that minimizes the phenomenon of corruption.
  - Goal 1: Prepare recommendations to amend laws that prevent CoI fulfilling its mandate
  - Goal 2: Propose new bills that would combat corruption
  - Goal 3: Recruit qualified legal staff and train existing legal staff in legal drafting
  - Goal 4: Utilize legal expertise from universities and other entities
  - Goal 5: Provide access to all national and international legal experiences and laws.”

Relevant to the implementation of this strategy, the preventive powers of the COI contained in its governing law, CPA Order 55, include the development and implementation of a

financial disclosure system for public officials, the development of codes of conduct for government officials, the preparation of preventive anti-corruption legislation and its submission to the legislature, the conduct of anti-corruption education and public awareness campaigns, and the development of anti-corruption preventive programs for inclusion in the national school curriculum. As noted in more detail above, the BSA and IGs also have their own audit-based preventive strategies and activities, which will not be re-summarized here.

Beyond these COI, BSA, and IG strategies and competencies, Iraq has other preventive policies and programs in place. For example, while the COI's Department of Prevention is tasked with the development of codes of conduct, several other Iraqi ministries have independently adopted their own codes of conduct as part of the CSPI (Comprehensive Strategic Plan for Criminal Justice in Iraq) process supported by ISISC (International Institute for Higher Studies in Criminal Sciences) and UNODC. In December 2006, an Iraqi Code of Judicial Conduct was established based on the draft code developed through the CSPI process. In late 2006, the Iraqi Justice Minister also implemented a new Professional Code of Conduct for Prison Staff. To enhance accountability and transparency, the Iraqi Ministry of Interior adopted a Code of Conduct for Police Officers based on the United Nations Code of Conduct for Law Enforcement Officials in 2006. (See, e.g., G.A. Res. 34/1269 (1979).) It is believed that several other Iraqi ministries have also independently adopted other codes of conduct, but this information has not been centrally collected and was not available at the time of the drafting of this report.

Article 36 of Iraq's constitution also expressly recognizes the "freedom of expression, through all means" and the "freedom of press, printing, advertisement, media, and publication." In that regard, corruption has become a major topic of Iraq's media, with a strong interest by Iraq's populace in addressing the corruption issue.

Overall, however, Iraq is not yet in compliance with Article 5 of the UNCAC, and would benefit from the implementation of a comprehensive national preventive anti-corruption strategy, even though many individual components of such a strategy are already in existence. Pursuant to Iraq's firm commitment in the *Baghdad Declaration* to develop such a strategy, it is recommended that this UNCAC requirement be implemented in the near future.

### 3.2 Article 9

#### ***Public procurement and management of public finances***

"1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption.

Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

"(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

"(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

"(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

"(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;



“(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.  
 “2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:  
 “(a) Procedures for the adoption of the national budget;  
 “(b) Timely reporting on revenue and expenditure;  
 “(c) A system of accounting and auditing standards and related oversight;  
 “(d) Effective and efficient systems of risk management and internal control; and  
 “(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.”

**a. Summary of the main requirements**

In accordance with Article 9, paragraph 1, States Parties are required to establish systems of procurement based on transparency, competition and objective criteria in decision-making and which are also effective in preventing corruption, in accordance with the fundamental principles of their legal system.

Under paragraph 2, States Parties are required to take measures to promote transparency and accountability in the management of public finances, in accordance with the fundamental principles of their legal system.

**b. Findings and observations concerning Article 9**

The nature, scope, and methodology of UNODC’s assessment of Iraq’s compliance with the UNCAC focused on the three anti-corruption agencies and a desktop review of relevant legislation. It did not include a complete analysis of Iraq’s entire governmental structure, including its procurement and public finance expenditure systems. Accordingly, this portion of the report provides only a partial picture of the actual situation. A more thorough analysis will be required and is recommended as part of the overall assistance programme to be developed and implemented for Iraq.

Nevertheless, it is plain that Iraq does have some systems in place to deal with anti-corruption issues related to public procurement and management of public finances. Relevant to this report, the main anti-corruption agencies, in particular the BSA, have systems and powers in place to assist in the effective monitoring and auditing of public procurement and the management of public finance expenditure systems. Specifically, the BSA, in Article 2(1) of Law No. 6 of 1990, was empowered to examine and audit all public expenditure transactions, including procurement, and to audit the “suitability of the procedures adopted” to manage public procurement and expenditure operations.

Similarly, pursuant to Section 5(8) and (10) of CPA Order 57, the Inspectors General are empowered and directed to conduct a “review of legislation, rules, regulations, policies, procedures, and transactions” of all activities of their respective ministries, including public procurement and management of public expenditures, and to issue recommendations of “remedial actions” to rectify any deficiencies in such public procurement measures.

In October 2006, Iraq also created the Committee of Financial Experts (COFE) to exercise oversight over petroleum revenues, the Government of Iraq’s primary source of income. Overall, however, the UN’s International Advisory and Monitoring Board (IAMB) for Iraq,

established in 2003 as an external auditing agency for the Development Fund for Iraq, has concluded that Iraq's basic administrative procedures are outdated and ineffective and that the controls governing public finances require strengthening. (2008 Third IAMB Interim Report.)

However, there are positive developments anticipated in the future. Iraq has recognized that this area remains a weakness in its governmental structures and, in paragraph 9 of the *Baghdad Declaration*, Iraq pledged to "review existing legal powers of relevant institutions, with a view to ensuring that weaknesses in the governance structures, financial administrations, and performance management systems of public sector agencies are properly identified, respective improvements are recommended and related corrective actions are taken, including disciplinary sanctions, management reforms, and other remedies." Though not yet implemented the U.S. Government is also assisting Iraq in developing of a computerized financial management tool, the Iraqi Financial Information System (FMIS), which is hoped to significantly increase Iraq's ability to comply with the financial management requirements of UNCAC Article 9. However, taken together, and admittedly based on incomplete information, it appears that Iraq is only in partial compliance with Article 9 of the UNCAC.

### 3.3 Article 15

#### ***Bribery of national public officials***

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

"(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

"(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."

#### **a. Summary of the main requirements**

In accordance with Article 15, States Parties must establish two offences: active and passive bribery of national public officials:

States Parties must establish as a criminal offence, when committed intentionally, the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (art. 15, subparagraph (a))<sup>3</sup>. The required elements of this offence are those of promising, offering or actually giving something to a public official. The offence must cover instances where no gift or other tangible item is offered. Thus, an undue advantage may be something tangible or intangible, whether pecuniary or non-pecuniary. The undue advantage does not have to be given immediately or directly to a public official of the State. It may be promised, offered or given directly or indirectly. A gift, concession or other advantage may be given to some other person, such as a relative or political organization. Some national legislation might cover the

<sup>3</sup> It is reiterated that for the purposes of the Convention, with the exception of some measures under chapter II, "public official" is defined in Article 2, subparagraph (a). An interpretative note indicates that, for the purpose of defining "public official", each State Party shall determine who is a member of the categories mentioned in subparagraph (a) (i) of Article 2 and how each of those categories is applied (A/58/422/Add.1, para. 4).

promise and offer under provisions regarding the attempt to commit bribery. When this is not the case, it will be necessary to specifically cover promising (which implies an agreement between the bribe giver and the bribe taker) and offering (which does not imply the agreement of the prospective bribe taker). The undue advantage or bribe must be linked to the official's duties.

States Parties must also establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (art.15, sub-para. (b)). This offence is the passive version of the first offence. The required elements are soliciting or accepting the bribe. The link with the influence on official conduct must also be established. As with the previous offence, the undue advantage may be for the official or some other person or entity. The solicitation or acceptance must be by the public official or through an intermediary, that is, directly or indirectly. The mental or subjective element is only that of intending to solicit or accept the undue advantage for the purpose of altering one's conduct in the course of official duties<sup>4</sup>.

## **b. Findings and observations of UNODC concerning Article 15**

Preliminarily, it should be noted that, for all criminalization purposes, Iraq has a very broad definition of public officials that is in full compliance with the definitional requirements of UNCAC Article 2(a), and includes a broad range of officials performing public functions.

In Article 19(2) of its Penal Code, Iraq defines a public official as: "Any official, employee or worker who is entrusted with a public task in the service of the government or its official or semi-official agencies belonging to it or placed under its control. This includes the Prime Minister, his deputies and ministers and the members of representative, administrative and municipal councils. It also includes arbitrators, experts, creditors, agents (corporate representatives), official receivers, sequesters, members of boards of directors, directors and employees of foundations, companies, corporations, organizations and institutions in which the government or any of its official or semi-official agencies has a financial interest in any capacity whatsoever. In general, he is any person who works in the public service either paid or unpaid. When a criminal act is committed by a public official in any of the capacities set out in this sub-paragraph, then the fact that he is no longer carrying out his employment, service or work does not prevent the provision of this Code being applied in respect of that public official."

Relevant to UNCAC Article 15, this broad definition of a public official applies to bribery offenses.

### **1. Active Bribery**

Iraq fully criminalizes the active bribery of public officials, i.e. the offering of bribes. In particular, Article 310 of the Penal Code penalizes "any person who gives/offers or promises a public official or agent anything stipulated in Paragraph 308 [i.e. any "gift, benefit, privilege or promise"]

Iraq also has enhanced penalties for active bribery that damages the national interest or benefits enemy forces. These provisions are particularly relevant in the current environment in Iraq, where AOGs (Armed Opposition Groups) are heavily involved in public official

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<sup>4</sup> See art. 28, which provides that "Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances"

corruption. Specifically, Article 167(2)(a) criminalizes anyone “who gives, promises or offers money or some other gain with intent to commit an act that is harmful to the national interest . . .” (See also Article 167(2)(b) covering “intermediaries” in such acts.) Article 313 also covers failed attempts at bribes, criminalizing situations where a person “offers a bribe to a public official or agent and he does not accept it.”

## 2. *Passive Bribery*

Iraq fully criminalizes passive bribery of public officials, i.e. the acceptance of bribes. Article 307(1) covers “any public official or agent who seeks or accepts for himself or for another a gift, benefit, honour or promise thereof to carry out any duty of his employment or to refrain from doing so or to contravene such duty.” Pursuant to Article 308, Iraq also criminalizes the conduct of a public official who “seeks or receives for himself or for another a gift, benefit, privilege or promise thereof to carry out or refrain from carrying out an act that does not fall within the duties of his office but he claims or considers that such act was carried out in error.”

Article 309 also covers situations where the public official never “intended to carry out such act or refrain from doing so or contravene the duties of his office,” but nevertheless accepted the bribe. Similarly, Article 312 covers “any person who seeks or receives a gift, benefit or privilege believing it to be a bribe for a public official or agent with the intent to keep it for himself,” as well as “any person who receives or accepts such gift, benefit or privilege while being aware of its purposes even though the public official or agent has not already specified or become aware of it . . .”

Under Article 167, Iraq also imposes a “life sentence” for public officials “who seeks for himself or for another or receives or takes money or any other gain or a promise thereof even though it is through a foreign country or a person who works on its behalf with intent to commit an act, which he knows will, by its nature, damage the national interest.” Based on these provisions of law, it appears that Iraq fully criminalizes passive bribery of public officials.

## 3. *Conclusion*

Iraq appears to be fully compliant with UNCAC Article 15.

### 3.4 Article 16

#### ***Bribery of foreign public officials and officials of public international organizations***

“1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

“2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or

another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”

**a. Summary of the main requirements**

Under Article 16, paragraph 1, States must establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business. Article 16 does not require that bribery of foreign public officials constitute an offence under the domestic law of the concerned foreign country.<sup>5</sup>

Article 16, paragraph 2, requires that States Parties consider establishing as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. This is the mirror provision of Article 15, subparagraph (b), which mandates the criminalization of passive bribery of national public officials.

**b. Findings and observations of UNODC concerning Article 16**

Iraq does not criminalize the bribery of international and foreign public officials and is not in compliance with UNCAC Article 16.

**3.5 Article 17**

***Embezzlement, misappropriation or other diversion of property by a public official***

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.”

**a. Summary of the main requirements**

States Parties must establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or

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<sup>5</sup> As noted in chapter I of the Convention against Corruption, “foreign public official” is defined as “any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise” (art. 2, sub-para. (b)). The “foreign country” can be any other country, that is, it does not have to be a State Party. State parties’ domestic legislation must cover the definition of “foreign public official” given in Article 2, subparagraph (b) of the Convention, as it would not be adequate to consider that foreign public officials are public officials as defined under the legislation of the foreign country concerned. An official of a public international organization is defined as “an international civil servant or any person who is authorized by such an organization to act on behalf of that organization” (art. 2, subpara. (c)).

securities or any other thing of value entrusted to the public official by virtue of his or her position. The required elements of the offence are the embezzlement, misappropriation or other diversion<sup>6</sup> by public officials of items of value entrusted to them by virtue of their position. The offence must cover instances where these acts are for the benefit of the public officials or another person or entity. The items of value include any property, public or private funds or securities or any other thing of value. This Article does not “require the prosecution of de minimis offences” (A/58/422/Add.1, para. 29).

#### **b. Findings and observations of UNODC concerning Article 17**

Chapter Six, Section Two, of the Iraqi Penal Code has an extensive and comprehensive system in place that effectively covers embezzlement, misappropriation and diversion of property by public officials.

Specifically, Article 315 covers “any public official or agent who embezzles or conceals funds, goods, documents establishing legal rights or other things that come into his possession,” with life imprisonment for such actions by tax collectors and related financial officials. Similarly, Article 315 covers “any public official or agent who exploits his position in order to obtain funds, goods or documents establishing legal rights or other things in which he is not entitled and which belong to the State or to an establishment or organization in which the state has a financial interest.”

Article 318 covers “any public official or agent who is entrusted with the supervision of a department belonging to an authority in which he is working or a transaction or case and who then maliciously harms or causes harm to that department in order to obtain some benefit for himself or another,” while Article 319 covers “any public official or agent who benefits directly or through the mediation of another from a transaction, contract or agreement, the preparation, assignment, implementation or supervision of which is in the hands of such public official or agent.”

Finally, Article 320 covers “any public official or agent who employs others to carry out the activities relating to his position and who retains for himself in whole or in part the wages or other recompense due to his employees or who employs slave labour and takes their wages for himself or who enters in a government register the names of fictitious or genuine persons who have not been engaged in those activities and retains their wages for himself or who pays such employees their wages at the government’s expense.”

Taken together, these provisions of law would appear to show full compliance by Iraq with UNCAC Article 17.

### **3.6 Article 23**

#### ***Laundering of proceeds of crime***

“1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the

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<sup>6</sup> The term “diversion” is understood in some States to be distinct from “embezzlement” and “misappropriation”, while in others “diversion” is intended to be covered by or is synonymous with those terms (A/58/422/Add.1, para. 30).

commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

“(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this Article.

“2. For purposes of implementing or applying paragraph 1 of this Article:

“(a) Each State Party shall seek to apply paragraph 1 of this Article to the widest range of predicate offences;

“(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

“(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this Article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this Article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this Article do not apply to the persons who committed the predicate offence.

#### **a. Summary of the main requirements**

In accordance with Article 23, States Parties must establish the following offences as crimes:

(a) Conversion or transfer of proceeds of crime (para. 1 (a) (i)); (b) Concealment or disguise of the nature, source, location, disposition, movement or ownership of proceeds of crime (para. 1 (a) (ii)).

Subject to the basic concepts of their legal system, States must also criminalize: (a) Acquisition, possession or use of proceeds of crime (para. 1 (b) (i)); (b) Participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counseling the commission of any of the offences mandated by Article 23 (para. 1 (b) (ii)). States Parties must also apply these offences to proceeds generated by a wide range of predicate offences (para. 2 (a)-(c)).

#### **b. Findings and observations of UNODC concerning Article 23**

Iraq has a comprehensive money-laundering law in place: the Anti-Money Laundering Law of 2004 (CPA Order 93). While the bulk of this law involves the supervision and oversight of financial institutions, Section 2 criminalizes all acts of money-laundering, including the conversion, concealment, acquisition, possession, or use of the proceeds of crime. Specifically, Section 2, Article 3 criminalizes:

“Whoever conducts or attempts to conduct a financial transaction that involves the proceeds of some form of unlawful activity knowing that the property involved is the proceeds of some

form of unlawful activity knowing that the property involved is the proceeds of some form of unlawful activity, or whoever transports, transmits, or transfers a monetary instrument or funds that represent the proceeds of some form of unlawful activity knowing that the monetary instrument or funds represent the proceeds of some form of unlawful activity –

- (a) With the intent to promote the carrying on of unlawful activity, to benefit from unlawful activity, or to protect from prosecution those who have engaged in unlawful activity; and
- (b) Knowing that the transaction is designed in whole or in part—
  - i. To conceal or disguise the nature, location, source, ownership, or control the proceeds of unlawful activity; or
  - ii. To avoid a transaction or other reporting requirement.”

As made plain by this provision of law, it covers all possible criminal predicate offences, and is without limit, i.e. it covers any “unlawful activity.” Section 2, Article 4 of CPA Order 93 also imposes enhanced penalties for money-laundering linked to the financing of crime and terror. In addition, Iraq, unlike most other Arab states, separately punishes both money-laundering and the predicate offence that gave rise to the proceeds. (That is, punishment for self-laundering is allowed.)

Additional anti-money laundering legislation is also contained in Article 4(2) of the Central Bank Law (CPA Order 56 of 2003), which authorizes the Central Bank of Iraq to “take whatever action it deems necessary to: (i) counter money laundering and terrorist financing . . .” It should also be noted that even the 1969 Penal Code, still in effect, has a provision of law that could arguably be used to punish some forms of money-laundering. Article 460 criminalizes “any person who knowingly obtains, conceals or makes us of any goods [including money] acquired as a result of a felony or disposes of such goods in any way.”

While Iraq’s money-laundering legislative framework complies with the UNCAC, Iraq has not provided “copies of its laws that give effect to this Article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations,” as required by UNCAC Article 23(d).

Iraq appears to be in full compliance with UNCAC Article 23, with the exception of the legal notification requirement of Article 23(d).

### 3.7 Article 25

#### ***Obstruction of justice***

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

“(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

“(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.”

#### **a. Summary of the main requirements**



Under Article 25, States must criminalize the use of inducement, threats or force in order to interfere with witnesses and officials whose role would be to produce accurate evidence and testimony. The first offence relates to efforts to influence potential witnesses and others in a position to provide the authorities with relevant evidence. States Parties are required to criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in proceedings in relation to the commission of offences established in accordance with the Convention (art. 25(a)). The obligation is to criminalize the use both of corrupt means, such as bribery, and of coercive means, such as the use or threat of violence.

#### **b. Findings and observations of UNODC concerning Article 25(a) and (b)**

Article 254 covers threats to witnesses and criminalizes “any person who forces or induces by any means a witness not to testify or to give false testimony.” In turn, Article 253 covers inducements to witnesses to obstruct justice and criminalizes “any person, who seeks, takes or receives a gift or promise thereof to give false testimony.”

While Iraq has a broad range of criminal provisions regarding the use of physical force, threats or intimidation to interfere with the exercise of official duties by judges and law enforcement officials, its laws do not appear to directly cover the use of force upon judicial and law enforcement officials in order to obstruct justice, as required by UNCAC Article 25(b).

Generally, Article 229 criminalizes “any person who insults or threatens and official or other public employee or council or official body in the execution of their duties or as a consequence of those duties,” which would appear to cover threats of judicial and law enforcement officials. Similarly, Article 230 covers “any person who assaults an official or other public employee or who makes an attack upon a council or official body during the execution of their duties or as a consequence of their duties” and Article 231 covers “any person who willfully prevents an official or public employee from carrying out his duties.”

More specifically, Article 233 criminalizes “any official or public employee who intercedes with a judge, magistrate or court either on behalf of the accused or against him.” Relatedly, Article 234 criminalizes “any judge or magistrate who issues a judgement that is found to be unjust and the result of prior intercession” with him.” Article 235 criminalizes “any person who publishes any matter, which, by its nature, will influence a judge or magistrate entrusted with the judgement of cases.” (In interpreting this provision of law, it must be recalled that ‘publication’ has a broad meaning in Iraqi law, covering “acts, gestures, or movements,” “spoken or shouted remarks,” and most other forms of communication.) Article 365 also criminalizes “any person who infringes or attempts to infringe with the use of force, violence, intimidation or menaces or by any other illegal means the right of a public official or agent to carry out his employment.”

Overall, therefore, Iraq appears to be only in partial compliance with UNCAC Article 25.

### **3.8 Article 44**

#### ***Extradition***

“1. This Article shall apply to the offences established in accordance with this convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

“2. Notwithstanding the provisions of paragraph 1 of this Article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

“3. If the request for extradition includes several separate offences, at least one of which is extraditable under this Article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this Article also in respect of those offences.

“4. Each of the offences to which this Article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

“5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this Article applies.

“6. A State Party that makes extradition conditional on the existence of a treaty shall:

“(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

“(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this Article.

“7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this Article applies as extraditable offences between themselves.

“8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

“9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this Article applies.

“10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

“11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this Article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a

grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this Article.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this Article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

15. Nothing in this Convention shall be interpreted as imposing an obligation

to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

#### **a. Summary of main requirements**

States Parties must ensure that offences established in accordance with the Convention are deemed extraditable offences, provided dual criminality is fulfilled (art. 44, para. 1). If their domestic law allows it, States Parties may grant extradition for corruption offences even without dual criminality (art. 44, para. 2). If States Parties use the Convention as a basis for extradition, they will not consider corruption offences as political offences (art. 44, para. 4).

States Parties that require a treaty basis for extradition: (a) May consider the Convention as the legal basis for extradition to another State Party regarding corruption offences (art. 44, para. 5); (b) Must notify the Secretary-General of the United Nations on whether they will permit the Convention to be used as a basis for extradition to other States Parties (art. 44, para. 6 (a)); (c) Must seek to conclude treaties on extradition with other States Parties, if they do not use the Convention as the legal basis for extradition (art. 44, para. 6 (b)).

States Parties with a general statutory extradition scheme must ensure that the corruption offences are deemed extraditable (art. 44, para. 7). A State Party must endeavour to expedite extradition procedures and simplify evidentiary requirements relating to corruption offences (art. 44, para. 9). A State Party that denies an extradition request on the ground that the person is its national must submit the case for domestic prosecution. In doing so, it shall ensure that the decision to prosecute and any subsequent proceedings are conducted with the same diligence as a domestic offence of a grave nature and shall cooperate with the requesting State Party to ensure the efficiency of the prosecution (art. 44, para. 11). Legislation may be required if current law does not permit evidence obtained from foreign sources to be used in domestic proceedings.

States Parties can discharge their obligation to submit a case for prosecution pursuant to Article 44, paragraph 11, by temporary surrender (art. 44, para. 12). If States Parties deny extradition for enforcement of a sentence on grounds of nationality, they must consider enforcing the sentence imposed under the domestic law of the requesting State (art. 44, para. 13). States Parties must ensure fair treatment for persons facing extradition proceedings pursuant to Article 44, including enjoyment of all rights and guarantees provided by their domestic law (art. 44, para. 14). Legislation may be required if no specific domestic extradition procedures are provided for. States Parties may not refuse extradition on the ground that the offence also involves fiscal matters (art. 44, para. 16). Legislation may be required. Prior to refusing extradition, a requested State Party must, where appropriate, consult with the requesting State Party to provide it with the opportunity to present information and views on the matter (art. 44, para. 17).

#### **b. Findings and observations of UNODC concerning Article 44**

Relevant to UNCAC Article 44(2), Article 357(A)(1) of Iraq's Law on Criminal Procedure makes clear that dual criminality is required in order for Iraq to fulfil an extradition request, with such extraditions allowed only where the relevant offence carries "a prison sentence of not less than two years under the laws . . . of the Iraqi Republic." However, as noted elsewhere in this report, Iraq has criminalized the majority of the offences mandated by the UNCAC, making this dual criminality issue less of a burden to extraditing individuals on corruption-based offences.

Iraq is not yet in full compliance with UNCAC Article 44(4), as Iraq has not enacted legislation that allows for extradition of corruption offences when they are considered political offences. Instead, Article 358(1) of Iraq's Law on Criminal Procedure bars extradition of any offence viewed as a "political or military offence under Iraqi law" and Article 21(1) mandates that any criminal offence can be a political offence if "committed with a political motive."<sup>7</sup>

Iraq has not notified the Secretary-General of the United Nations whether or not it is willing to use the UNCAC as a basis for extradition, contrary to UNCAC Article 44(6)(a). (As a practical matter, it appears that no State Party has yet attempted to use the UNCAC as a basis for extraditing someone from Iraq.)

Article 358(4) of Iraq's Law on Criminal Procedure bars the extradition of anyone with "Iraqi nationality." However, Iraq has not implemented an express procedure which would, on

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<sup>7</sup> Iraqi law also mandates that "offences that are committed with a selfish or base motive," which would presumably include many corruption offences, are not considered political offences. However, as noted elsewhere in this report, much of the corruption in Iraq is politically motivated and tied to efforts to fund various Armed Opposition Groups (AOGs) and sectarian militias.

practical basis, ensure that Iraqi citizens could be prosecuted within Iraq using evidence obtained by foreign governments, when extradition is refused, as required by UNCAC Article 44(11). On the other hand, Article 353(c) mandates that foreign-obtained evidence that is received pursuant to a request to the foreign state by “Iraqi judicial officials” is given the “same legal effect” as if it had been obtained through “the judicial authorities in Iraq.” In this sense, it does appear possible to use foreign evidence to try an Iraqi national inside Iraq for corruption-related offences committed abroad.

Overall, Iraq appears to be in partial compliance with UNCAC Article 44.

### 3.9 Article 46

For the purposes of this report, the analysis will follow the approach of the pilot review programme and focus on implementation of Articles (9) and (13) of Article 46. However, a general discussion of mutual legal assistance efforts will also be included as an introduction.

#### *Mutual legal assistance*

“1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

“...”

“9. (a) A requested State Party, in responding to a request for assistance pursuant to this Article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in Article 1;

“(b) States Parties may decline to render assistance pursuant to this Article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

“(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this Article in the absence of dual criminality.

“...”

“13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central Authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

#### **a. Summary of the main requirements**

The Convention against Corruption requires States Parties: (a) To ensure the widest measure of mutual legal assistance for the purposes listed in Article 46, paragraph 3, in investigations, prosecutions, judicial proceedings and asset confiscation and recovery in relation to corruption offences (art. 46, para. 1); (b) To provide for mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences for which a legal entity may be held liable under Article 26 (art. 46, para. 2); (c) To ensure that mutual legal assistance is not refused by it on the grounds of bank secrecy (art. 46, para. 8); (d) To apply paragraphs 9 to 29 of Article 46 to govern the modalities of mutual legal assistance in the absence of a mutual legal assistance treaty with another State Party (art. 46, para. 7)

Article 46, paragraph 9, allows for the extension of mutual legal assistance in the absence of dual criminality, in pursuit of the goals of the Convention, including asset recovery. An important novelty is that States Parties are required to render assistance if non-coercive measures are involved, even when dual criminality is absent, where consistent with the basic concepts of their legal system (art. 46, para. 9 (b)). An example of such a measure even in the absence of dual criminality is the exchange of information regarding the offence of bribery of foreign officials or officials of international organizations, when such cooperation is essential to bring corrupt officials to justice (see the interpretative note contained in document A/58/422/Add.1, para. 26, relating to art. 16, para. 2, of the Convention). Further, the Convention invites States Parties to consider adopting measures as necessary to enable them to provide a wider scope of assistance pursuant to Article 46 even in the absence of dual criminality (art. 46, para. 9 (c)). States Parties need to review carefully existing laws, requirements and practice regarding dual criminality in mutual assistance. In some instances, new legislation may be required.

The UNCAC requires the designation of a central authority with the power to receive and execute or transmit mutual legal assistance requests to the competent authorities to handle it in each State Party. The competent authorities may be different at different stages of the proceedings for which mutual legal assistance is requested. Article 46, paras. 13 and 14 requires States Parties to notify the Secretary-General of the United Nations of their central authority designated for the purpose of Article 46, as well as of the language(s) acceptable to them in this regard.

#### **b. Findings and observations of UNODC concerning Article 46**

##### ***1. Introduction***

Beyond the UNCAC, Iraq has bilateral agreements with many regional countries, including, but not limited to: (a) Egypt: Agreement on Mutual Aid and Judicial Cooperation (enacted by Law No. 194 of 1964); (b) Yemen: Treaty on the Extradition of Criminals (Law No. 45 of 1947); (c) Turkey: Agreement on Judicial and Legal Cooperation (Law No. 41 of 1990); and (d) the “Arab Agreement of Riyadh on Judicial Cooperation,” a regional mutual legal assistance mechanism that covers most Arab countries and allows for extradition. More globally, Iraq has agreements with Britain, the U.S., Japan, Germany and Russia. Iraq is also a member of Interpol. Article 14 of the Anti-Money Laundering Act also has provisions authorizing the Money Laundering Reporting Office of the Central Bank to conduct mutual legal assistance activities on an administrative basis with regional Financial Intelligence Units and other similar bodies. However, many Iraqi commentators have voiced concern that neighbouring countries were not honouring their bilateral treaties, and that the level of

regional cooperation with Iraq for both corruption and non-corruption related matters was quite low.

## **2. *UNCAC Article 46(9)***

It is unclear whether Iraq allows non-coercive legal assistance without dual criminality. However, it would appear that it does not. Article 354(A) of the Law on Criminal Procedure authorizes mutual legal assistance only in cases where the cooperation “does not contravene the public regime in Iraq,” which would appear to require that the offence be a crime under Iraq’s criminal legislation.

## **3. *UNCAC Article 46(13)***

Iraq has not notified the Secretary-General of the United Nations of the “central authority” designated to receive mutual assistance requests related to the UNCAC. As a practical matter, many Iraqi commentators were also of the opinion that there *is* no current “central authority” functioning to coordinate international cooperation. While Article 353 of the Law on Criminal Procedure mandates that requests for mutual legal assistance must be sent “through diplomatic channels to the Ministry of Justice,” there is also a Bureau on International Criminal Cooperation within the State Shura Council. The CSPI (Comprehensive Strategic Plan for Criminal Justice in Iraq) process also determined that there is no current central authority, instead recommending that a multi-agency task force be formed for this purpose and placed within the Ministry of Justice. Many Iraqi and international commentators confirmed that cooperation requests are being performed on an ad hoc basis by individual Iraqi ministries making their own requests.

## **4. *Conclusion***

Iraq appears to not be in compliance with Article 46(9) and (13) of the UNCAC.

### **3.10 Article 52**

#### ***Prevention and detection of transfers of proceeds of crime***

“1. Without prejudice to Article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

“2. In order to facilitate implementation of the measures provided for in paragraph 1 of this Article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

“(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay

particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

“(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

“3. In the context of paragraph 2 (a) of this Article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this Article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

“4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

“5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

“6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.”

#### **a. Summary of the main requirements**

Without prejudice to Article 14, States Parties are required to take necessary measures, in accordance with their domestic law, to oblige financial institutions within their jurisdiction: (a) To verify the identity of customers; (b) To take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts; and (c) To conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. These provisions must be seen in the context of the more general regulatory and supervisory regime they must establish against money-laundering, in which customer identification, record-keeping and reporting requirements feature prominently

In order to facilitate implementation of these measures, States Parties, in accordance with their domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, are required: (a) To issue advisories



regarding the types of natural or legal person to whose accounts financial institutions within their jurisdiction will be expected to apply enhanced scrutiny; the types of accounts and transactions to which particular attention should be paid; and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; (b) Where appropriate, to notify financial institutions within their jurisdiction, at the request of another State Party or on their own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify; (c) Ensure that financial institutions maintain adequate records of accounts and transactions involving the persons mentioned in paragraph 1 of Article 52, including information on the identity of the customer and the beneficial owner; and (d) Prevent the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group.

States Parties are also required to consider: (a) Establishing financial disclosure systems for appropriate public officials and appropriate sanctions for non-compliance; (b) Permitting their competent authorities to share that information with authorities in other States Parties when necessary to investigate, claim and recover proceeds of corruption offences; (c) Requiring appropriate public officials with an interest in or control over a financial account in a foreign country: (i) To report that relationship to appropriate authorities; (ii) To maintain appropriate records related to such accounts; (iii) To provide for sanctions for non-compliance.

States Parties may also wish to consider requiring financial institutions to: (a) To refuse to enter into or continue a correspondent banking relationship with banks that have no physical presence and that are not affiliated with a regulated financial group; and (b) To guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

## **b. Findings and observations of UNODC concerning Article 52**

Iraq has a detailed legislative framework that covers the customer verification, advisory, and record-keeping requirements of UNCAC Article 52. The primary relevant laws are the Anti-Money Laundering Act (CPA Order 93 of 2004), the Central Bank Law (CPA Order 56 of 2004), and the Banking Law (CPA Order 94 of 2004).

Article 15 of the 2004 Anti-Money Laundering Act contains a detailed “know your customer” verification system and provisions. Specifically, Article 15 mandates that:

“1. Upon opening an account for a customer for any amount, or performing a transaction or series of potentially related transactions whose value is equal to or greater than 5 million Iraqi Dinars for a non account holder, whether an individual or legal person, the financial institution involved should obtain and record the customer’s: legal name and any other names used; correct permanent address including the full street address; telephone number, fax number, and e-mail address; date and place of birth; for a legal person, charter or other establishing document; nationality; occupation, public position held and/or name of employer; an official personal identification number or other unique identifier contained in an unexpired official document (e.g. passport, identification card, residence permit, driving license) that bears a photograph of the individual customer; type of account and nature of the banking relationship; and signature. The financial institution may determine the extent it uses these measures on a risk sensitive basis depending on the type of customer, business relationship or transaction, but shall verify all information collected.

2. Where a financial institution is performing a transaction for a non account holder and the total value of the transaction or series of possibly related transactions is less than 5 million Iraqi Dinars, the financial institution need only collect and verify the customer's name and address.
3. A financial institution that has reason to know of a suspicious transaction must collect the information described in paragraph 1 even if the amount involved does not exceed the threshold amount.
4. The institution shall check the name of the customer against the list compiled by the CBI under Article 7.1.b of this law of individuals and institutions designated by the CBI for reporting to the Government of Iraq, and shall immediately report any matches to the relevant government body.
5. A financial institution shall take the action required by this article in retrospect, regarding any account established prior to the effective date of this Act, unless the financial institution reasonably believes that it knows the true identity of the customer."

Article 16 of the Anti-Money Laundering Act also imposes detailed requirements for the identification of beneficial owners of funds, mandating that: "1. The financial institution shall require the customer to provide a written declaration of the owner of funds, if: a. the customer is clearly not the owner or, in the opinion of the financial institution and at its discretion, the ownership of funds is subject to doubt; or b. a cash transaction is effected for a sum greater than 10 million Iraqi Dinars. 2. The financial institution shall verify the identification information provided under this Article."

Beyond these measures, Article 17 and 18 imply still further verification requirements for high-risk specified transactions. (Article 24 of the separate CPA Order 94--Banking Law of 2004 also requires banks to form Audit Committees which must conduct further verification activities.)

In addition, Articles 19 and 20 of the Anti-Money Laundering Act require banks to issue Suspicious Transaction Reports (STRs) and Cash Transaction Reports, with Article 21 providing detailed requirements for cross-border currency transactions. Taken together, these requirements appear to be in compliance with the customer verification requirements of UNCAC Article 52(1).

Article 7(1)(b) also requires the Central Bank of Iraq to issue detailed advisories to financial institutions. While legally sufficient to comply with advisory requirements of UNCAC Article 52(2), as a practical matter, many commentators have noted that the CBI does a good job in issuing anti-money laundering and terrorist financing advisories, but does not currently issue sufficient levels of corruption-related advisories, especially in the area of politically exposed persons (PEPs).

It should also be noted that there are two separate entities implementing the provisions of the Anti-Money Laundering Act. First, the Money Laundering Report Office (MLRO) was established pursuant to Article 12 of the Anti-Money Laundering Act and serves as a sort of financial intelligence unit (FIU) within the Central Bank, though it has operational independence. (Beyond the Anti-Money Laundering Act, the Central Bank Law (CPA Order 56 of 2004) also grants the Central Bank and its MLRO additional AML/CTF powers.). There is also an Anti-Money Laundering Unit within the Ministry of Interior's Economic Crimes Bureau. As a practical matter, however, many commentators have noted that there is a lack of coordination between these two anti-money laundering agencies and anti-corruption bodies such as the CPI.

Beyond these measures, Article 22 of the Anti-Money Laundering Act imposes detailed obligations for banks and other financial institutions to make and retain transaction and banking records. These provisions of law appear to be consistent with UNCAC Article 52(3).

Iraq does not allow the operation of shell banks in Iraq, as the licensing requirements of Article 5(2) of the Banking Law impose duties that would bar the licensing and operation of shell banks. Iraq would therefore appear to comply with the provisions of UNCAC Article 52(4).

At least according to its legislation, Iraq also has a functioning asset disclosure system that, if implemented, would appear to comply with the provisions of UNCAC Article(5). As discussed in more detail above, these are implemented by the laws governing the COI, CPA Order 55. In particular, Sections 2(5), 4(6), 7, and Appendix A provide a detailed framework for such a system.

Pursuant to Article (2)(5), persons covered by the financial disclosure regime, include “(a) [the now defunct] Governing Council members and their deputies; (b) Ministers and deputy ministers; (c) Governors; (d) Judges; (e) the Commissioner, and Deputy Commissioner and investigators of the Commission [on Public Integrity]; (f) Members of the National Legislature after the Transition; and (g) the Chief Executive of Iraq after the transition.”

However, most commentators have indicated that this system is not fully implemented, and lacks a proper verification system, failing to fully meet the requirements of UNCAC Article 52(5). However, it is hoped that the new provisions of the proposed draft law on the COI, and the regulations to be implemented pursuant to that law, will rectify the inadequacies of the current law and its implementation.

Overall, Iraq is in partial compliance with UNCAC Article 52.

### **3.11 International cooperation in asset recovery: Articles 53, 54, 55, and 57**

#### ***Article 53. Measures for direct recovery of property***

“Each State Party shall, in accordance with its domestic law:

“(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

“(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

“(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party’s claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.”

#### ***Article 54. Mechanisms for recovery of property through international cooperation in confiscation***

“1. Each State Party, in order to provide mutual legal assistance pursuant to Article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

“(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

“(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such

property of foreign origin by adjudication of an offence of money laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

“(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

“2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of Article 55 of this Convention, shall, in accordance with its domestic law:

“(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this Article;

“(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this Article; and

“(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.”

***Article 55. International cooperation for purposes of confiscation***

“1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in Article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

“(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

“(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with Articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in Article 31, paragraph 1, situated in the territory of the requested State Party.

“2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in Article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this Article, by the requested State Party.

“3. The provisions of Article 46 of this Convention are applicable, *mutatis mutandis*, to this Article. In addition to the information specified in Article 46, paragraph 15, requests made pursuant to this Article shall contain:

“(a) In the case of a request pertaining to paragraph 1 (a) of this Article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

“(b) In the case of a request pertaining to paragraph 1 (b) of this Article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

“(c) In the case of a request pertaining to paragraph 2 of this Article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

“4. The decisions or actions provided for in paragraphs 1 and 2 of this Article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

“5. Each State Party shall furnish copies of its laws and regulations that give effect to this Article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

“6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this Article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

“7. Cooperation under this Article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

“8. Before lifting any provisional measure taken pursuant to this Article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favor of continuing the measure.

“9. The provisions of this Article shall not be construed as prejudicing the rights of bona fide third parties.”

***Article 57. Return and disposal of assets***

“1. Property confiscated by a State Party pursuant to Article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this Article, by that State Party in accordance with the provisions of this Convention and its domestic law.

“2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property,

when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

“3. In accordance with Articles 46 and 55 of this Convention and paragraphs 1 and 2 of this Article, the requested State Party shall:

“(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in Articles 17 and 23 of this Convention, when confiscation was executed in accordance with Article 55 and on the basis of a final judgment in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

“(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with Article 55 of this Convention and on the basis of a final judgment in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

“(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

“4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return of disposition of confiscated property pursuant to this Article.

“5. Where appropriate, States Parties may also give special consideration to concluding agreements on mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

**a. Summary of main requirements**

**1. Article 53**

Article 53 requires States Parties: (a) To permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through corruption offences (subpara. (a)); (b) To permit their courts to order corruption offenders to pay compensation or damages to another State Party that has been harmed by such offences (subpara. (b)); (c) To permit their courts or competent authorities, when having to decide on confiscation, to recognize another State Party’s claim as a legitimate owner of property acquired through the commission of a corruption offence (subpara. (c)). The implementation of these provisions may require legislation or amendments to civil procedures, or jurisdictional and administrative rules to ensure that there are no obstacles to these measures. Article 53 focuses on States Parties having a legal regime allowing another State Party to initiate civil litigation for asset recovery or to intervene or appear in domestic proceedings to enforce their claim for compensation.

**2. Article 54**

States parties must: (a) Permit their authorities to give effect to an order of confiscation issued by a court of another State Party (art. 54, para. 1 (a)); (b) Permit their authorities to order the confiscation of such property of foreign origin by adjudication of money-laundering or other offences within their jurisdiction or by other procedures under domestic law (art. 54, para. 1

(b)); (c) Permit their competent authorities to freeze or seize property upon a freezing or seizure order issued by a competent authority of a requesting State Party concerning property eventually subject to confiscation (art. 54, para. 2 (a)); (d) Permit their competent authorities to freeze or seize property upon request when there are sufficient grounds for taking such actions regarding property eventually subject to confiscation (art. 54, para. 2 (b)).

### **3. Article 55**

Article 55 mandates that States Parties that receive from another State Party requests for confiscation

over corruption offences must, to the greatest extent possible, submit to their competent authorities either:

(a) The request to obtain an order of confiscation and give effect to it (art. 55, para. 1 (a)); or  
(b) An order of confiscation issued by a court of the requesting State Party in accordance with Articles 31, paragraph 1, and 54, paragraph 1 (a), of the Convention insofar as it relates to proceeds of crime situated in their own territory, with a view to giving effect to it to the extent requested (art. 55, para. 1 (b)). Upon a request by another State Party with jurisdiction over a corruption offence, States Parties must take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities (see art. 31, para. 1) for confiscation by the requesting State or by themselves (art. 55, para. 2). States Parties must also apply the provisions of Article 46 of the Convention (Mutual legal assistance) to Article 55, *mutatis mutandis*. In the case of a request based on paragraphs 1 or 2 of Article 55, States Parties must provide for the modalities set out in paragraph 3 (a)-(c) of the Article in order to facilitate mutual legal assistance.

States Parties must also consider:

(a) Allowing confiscation of property of foreign origin by adjudication of money-laundering or other offences within their jurisdiction or by other procedures under domestic law without a criminal conviction, when the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases (art. 54, para. 1 (c)); and (b) Taking additional measures to permit their authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property (art. 54, para. 2 (c)).

### **4. Article 57**

Article 57 mandates that States Parties should be able:

(a) To dispose of property confiscated under Articles 31 or 55 as provided in paragraph 3 of the Article, including by return to prior legitimate owners (para. 1); (b) To enable their authorities to return confiscated property upon the request of another State Party, in accordance with their fundamental legal principles and taking into account bona fide third party rights (para. 2); (c) In accordance with paragraphs 1 and 2 of the Article and Articles 46 and 55 of the Convention, to: (i) Return confiscated property to a requesting State Party, in cases of public fund embezzlement or laundering of embezzled funds (see arts. 17 and 23), when confiscation was properly executed (see art. 55) and on the basis of a final judgment in the requesting State (this judgment may be waived by the requested State) (para. 3 (a)); (ii) Return confiscated property to a requesting State Party, in cases of other corruption offences covered by the Convention, when confiscation was properly executed (see art. 55), on the basis of a final judgment in the requesting State (which may be waived by the requested State) and upon reasonable establishment of prior ownership by the requesting State or recognition of damage by the requested State (para. 3 (b)); (iii) In all other cases, give priority consideration to: a. Return of confiscated property to the requesting State; b. Return such property to its prior legitimate owners; c. Compensation of victims (para. 3 (c)). States Parties may also consider the conclusion of agreements or arrangements for the final disposition of assets on a case-by-case basis (art. 57, para. 5).

**b. Findings and observations of UNODC concerning international asset recovery and Articles 53, 54, 55, and 57**

Iraq does not have a significant history of international cooperation in the area of asset recovery, and

this remains a much undeveloped area of law in practice, requiring revisions to Iraqi legislation, and technical assistance and other forms of support for implementation. Nevertheless, there are currently existing provisions of Iraqi law that could be used to at least partially implement UNCAC Articles 53, 54, 55 and 57.

**1. Domestic Asset Recovery Law**

In order to properly analyze Iraq's institutional and legal ability to cooperate on asset recovery operations on an international level, Iraq's domestic law on freezing, seizure, and confiscation must first be discussed to see what tools are available within Iraq's legal system to allow such international cooperation.<sup>8</sup> While some Iraqi commentators have argued that only the Anti-Money Laundering Act (CPA Order 93 of 2004) allows such freezing, seizure, and confiscation, this is incorrect. To be sure, many provisions of Iraqi law have been used sparingly in recent times, and have been largely dormant. Nevertheless, even if largely unimplemented, Iraq has a well-developed and reasonably comprehensive freezing, seizure, and confiscation legislative system, which can potentially be used in corruption cases subject to the UNCAC.

Part Three, Section Three (Seizure of Defendant's Assets) of the Iraqi Law on Criminal Procedure has a detailed series of provisions of asset freezing, seizure, confiscation. Specifically, Articles 183 to 186 hold that:

**"Paragraph 183**

- A. The examining magistrate and judge may seize the assets, whether movable or immovable, of the person accused of committing a felony. The seizure will include all assets transferred to him or which he has received as compensation.
- B. Items which may be seized in accordance with the law may be seized if it is proven that they were obtained as a consequence of an offence.
- C. The Court, when issuing a sentence *in absentia* against a person accused of an offence, must order seizure of assets if not previously seized previously.

**"Paragraph 184**

- A. The examining magistrate and judge must, based on a request from the public prosecutor or the appropriate administrative party, order precautionary seizure of assets immediately, if the action on which it is based forms an offence related to the external or internal security of the state or is an offence against the rights or property of the state, including assets considered to be public assets or those connected to public welfare. This will not be endorsed without a seizure order directly from the judicial authorities concerned, who will issue such an order if necessary even if a request has not been submitted to them.
- B. In the circumstances indicated in sub-paragraph 184.A, it is permissible to request seizure of assets before a case has been lodged, when it is lodged, or at any stage of the criminal case, up to the point where a definitive verdict has been given.
- C. All moveable and immovable assets of the defendant which are legally liable to seizure, are subject to seizure, whether in his possession and subject to his control or whether possession or control has been transferred to another party. The seizure

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<sup>8</sup> See also UNCAC Article 31, mandating domestic freezing, seizure, and confiscation laws.



includes all assets if the rights and damages resulting from the offence are unlimited. If they are, or subsequently become limited, a seizure order is issued, or amendment, which will guarantee that the state recovers the rights and damages to which it is entitled but no more.

“Paragraph 185

- A. If the seizure is put in place before the complaint is lodged, the person who requested the seizure must lodge his complaint within 3 months of the decision to make the seizure.
- B. The accused whose assets have been seized, the person who holds the seized assets, and the person who claims rights over the seized assets, may challenge the decision of seizure with the judicial authority which issued it, within 8 days from the date of notification of the seizure order or from the date on which they became aware of it.
- C. If the party requesting the seizure does not submit the complaint against the person whose assets have been seized within the period specified in sub-paragraph 185.A the seizure order is cancelled and all resulting legal effects are cancelled.
- D. If the complaint is submitted within the time limit specified in sub-paragraph 185.A the judicial authorities to whom the criminal case passes may decide to leave the seizure order in place or to amend it or to cancel it, depending on the facts of the case and the case which has been made against the seizure.

“Paragraph 186

- A. The seizure in progress is considered, under the terms of paragraphs 183, 184 and 185, a precautionary seizure and remains in place during procedures to contest it; the assets seized and claims over them are administered under civil law so long as it does not conflict with the provisions of the paragraphs above.
- B. If the criminal case ends for any legal reason, before a judgment has been issued, the seizure remains current in accordance with the provisions of paragraphs 184 and 185, and the administrative party concerned must establish a legal case on the rights and damages covered by the criminal case within 3 months of notification of the end of the criminal case. In the case of failure to comply with this, the seizure order is cancelled and the seized property returned to its owner.
- C. If a verdict of guilty is issued against the defendant, the assets remain seized and are transferred to a state of implementation seizure once the judgment is definitive.
- D. If a verdict of not guilty or diminished responsibility is reached, or if an order is issued to release the defendant or throw out the complaint, once this decision is final the seizure is cancelled and the assets restored to the owner even if this is not stipulated in the court's ruling.”

Part Six, Chapter 2 (The Handling of Impounded Goods) of the Iraqi Law on Criminal Procedure provides additional asset recovery tools. Specifically, Articles 308 to 312 mandate that:

“Paragraph 308

At any stage of the investigation or trial the examining magistrate or court judge has the right to issue a decision regarding documents, assets or impounded items, or items used to commit an offence or which were the object of an offence, in accordance with the provisions stipulated in the following paragraphs.

“Paragraph 309

- A. Weapons and other items subject to confiscation orders are to be handed over to the nearest police station, for the legal provisions to be applied, the value of any items sold being retained for the benefit of the Treasury.
- B. The provisions of sub-paragraph A apply to weapons and subject to confiscation orders before this law comes in force.

“Paragraph 310

Other impounded goods are to be handed over to the person holding them at the time they were impounded, unless they played a role in the offence, or were obtained as a result of the offence, in which case they are to be handed back the previous rightful owner.

“Paragraph 311

All assets transferred or exchanged and all assets acquired, either directly or indirectly through such transfers or exchanges are taken into account in the ruling.

“Paragraph 312

No decision to hand over goods can be implemented until it has become definitive, and no decision to destroy manuscript or printed materials can be implemented until the criminal proceedings are complete in respect of all the accused persons.”

Beyond the Law on Criminal Procedure, the Iraqi Penal Code separately authorizes confiscation. Paragraph 101 of the Penal Code expressly authorizes the “confiscation” of items “that were acquired as a result of the offence and that were subsequently seized or that were intended to be used in the commission of the offence,” upon conviction. Even prior to conviction, Article 117(1) authorizes limited non-conviction based forfeiture of “goods of which the manufacture, possession, acquisition, use, sale or advertisement for sale is considered an offence in itself.”

Moreover, in corruption cases involving assistance to terrorism, Article 6 of the Anti-Terrorism Act (Law No. 13 of 2005) mandates that “all funds, seized items, and accessories used in the criminal act or in preparation for its execution shall be confiscated.” This is particularly significant in that much of the diversion of Iraqi public funds through corruption is used to fund terrorism committed by sectarian militias and other forms of AOGs (Armed Opposition Groups).

Beyond these provisions of law, the Anti-Money Laundering Act imposes a detailed regime on offences related to both corruptions by the previous regime and money-laundering. Specifically, Article 6 mandates that:

“1. Criminal Finance. Any court, in imposing sentence on a person convicted of an offense in violation of Articles 3, 4, 5, Article 19.4, or Article 20.5 of this Act, if the violation was committed intending to, or knowing that the likely result would be to, aid another person in the commission of a crime, or aid another person in the evasion of prosecution for a crime already committed, shall order the person to be sentenced to forfeit to the Government of Iraq any property, real or personal, including but not limited to funds, involved in the offense, or any property traceable to the property, or any property gained as a result of the offense, without prejudicing the rights of bona fide third parties.

“2. Blocked Property.

a. Funds or other financial assets or economic resources (excluding real property, a claim for which falls within the jurisdiction of the Iraqi Property Claims Commission pursuant to CPA Regulation Number 8) that have been either removed from Iraq, or acquired, by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf (“Ba’ath Party persons”) or at their direction that are within or hereafter come within Iraq, are blocked. Property that is blocked may not be transferred, paid, exported, withdrawn, or otherwise dealt in. The Minister of Finance, with the approval of the Council of Ministers, is authorized to confiscate property that is blocked pursuant to this Article 6.2 subject to a prior judicial, administrative, or arbitral lien or judgment issued by a court of competent jurisdiction, and subject to such rights of appeal as may be provided by law. All right, title, and interest in such confiscated blocked property shall promptly be transferred to the Development Fund for Iraq (DFI) or the successor to the DFI, if any. Should there be no

successor to the DFI, such confiscated blocked property shall be transferred to the Ministry of Finance. Upon transfer to the DFI, its successor, or the Ministry of Finance (as appropriate), such confiscated blocked property shall be unblocked. Any transaction by an Iraqi or foreign person within Iraq that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions of this Article 6.2 is prohibited and shall constitute a money laundering violation under Article 3 of this Law. A person whose property is blocked pursuant to this Article 6.2 may appeal the action taken to the Financial Services Tribunal under Section 12 of the Central Bank of Iraq law.

b. For purposes of this Article, a person is considered to be “acting on behalf of” another to the extent that the person is authorized by formal or informal contract to take significant actions for the other or, whether there is an agreement or not, the person takes significant actions for the benefit of the other as if they were the agent of the other. This Article 6.2 applies to funds, financial assets, or other economic resources that between July 17, 1968 and April 16, 2003 were: (i) confiscated, seized, or expropriated by the Ba’athist Government of Iraq or Ba’ath Party persons for reasons other than legitimate governmental purposes such as taxation, customs, anti-narcotics activities or enforcement of criminal penalties; or (ii) expropriated as a result of opposition to the Ba’athist Government of Iraq, or as a result of ethnicity, religion, sect of the owners, or for purposes of ethnic cleansing. Property owned by the Government of Iraq and/or occupied by acting government ministers or other acting government officials pursuant to a transaction that is lawful and has a legitimate governmental purpose (including reasonable compensation of governmental officials) shall not be subject to this Article 6.2.”

Taken together, these laws provide a robust domestic legal framework for issuing freezing, seizure, and confiscation orders.

## **2. *International Cooperation***

There are also some provisions of Iraqi law that would at least arguably allow international cooperation in asset recovery within the meaning of Articles 53, 54, 55 and 57 of the UNCAC. However, such cooperation has not occurred on a practical level and it remains unclear whether the current legal regime allows for international asset recovery.

### **(a) *Article 53***

Article 10 of the Iraqi Law on Criminal Procedure expressly authorizes any “person who has suffered a direct material or ethical damage from any offence” with the “right to bring a civil case against the accused and the person responsible under civil law for the actions of the accused” as part of a criminal proceeding before the courts of Iraq. Article 313(A) also allows the victim of a crime, including a corruption crime, to seek recovery of goods impounded in criminal proceedings through a “referral to the civil court.” These laws could arguably be used to authorize international victims of corruption to seek civil asset recovery claims in Iraq’s criminal courts. In addition, there is apparently nothing within the Civil Procedure Code (Law No. 83 of 1969) that expressly bars States Parties to the UNCAC from pursuing asset recovery claims in civil courts, though the law does not expressly authorize such actions.

On the other hand, numerous Iraqi and international commentators have noted that this has not occurred on a practical level and that further legislation and technical assistance will be required to effectively implement the requirements of UNCAC Article 53.

It therefore does not appear that Iraq is in compliance with UNCAC Article 53.

### **(b) *Article 54***

There do not appear to be any mechanisms under Iraqi law to give effect to an order of freezing or confiscation issued by a court of another State Party, as required by UNCAC Article 54(1)(a) and 54(2). However, as noted above, Iraq does have an extensive domestic asset recovery scheme, which might arguably allow for the confiscation of such goods using “procedures under domestic law,” pursuant to UNCAC Article 54(1)(b). However, the state of the law in this regard is far from clear, and apparently has never been implemented on a practical basis.

It therefore does not appear that Iraq is in compliance with UNCAC Article 54.

*(c) Article 55*

Iraq also does not appear to have mechanisms to implement the international asset recovery cooperation provisions of UNCAC Article 55. Specifically, Article 353 of the Law on Criminal Procedure, covering international cooperation, is expressly limited to investigative assistance, and would not appear to allow assistance in the areas of asset recovery of any nature. As a practical matter, several Iraqi and international commentators have noted that this has not occurred in the past and will require additional legislation and technical assistance to implement. Arguably, the very provisions of the UNCAC itself could be used as a basis for such international cooperation in the field of asset recovery. (See UNCAC Article 46(3)(k).) However, this remains an open question.

Iraq has also failed to furnish copies of its laws and regulations regarding international cooperation for the purposes of confiscation and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations, as required by UNCAC Article 55(5).

It therefore does not appear that Iraq is in compliance with UNCAC Article 55.

*(d) Article 57*

However, assuming Iraq did have procedures to implement UNCAC Articles 53, 54, and 55, Iraqi law would appear to allow for the distribution of confiscated goods to the victims of the corruption offences, as opposed to their retention by the Iraqi state, as mandated by UNCAC Article 57.

Specifically, as noted above, Articles 10 and 313 of the Law on Criminal Procedure allow for the victims of crimes to gain access to goods confiscated by the Iraqi Government. However, this has not occurred on a practical matter on an international basis.

It therefore does not appear that Iraq is yet in compliance with UNCAC Article 57.

### **3. Conclusion**

Notwithstanding these current gaps, Iraq has recently committed to expanding its efforts in international cooperation in asset recovery, promising in Article 6 of the *Baghdad Declaration* to “take concrete action toward the identification and recovery of stolen assets which are the product of corruption and looting, including previous regimes and establish vigorous measures to prevent future holding of stolen assets by perpetrators of corruption.” Accordingly, positive efforts in this regard are expected in the future.

For now, however, Iraq does not yet appear to be in compliance with the international asset recovery provisions of UNCAC Articles 53, 54, 55 and 57.

## **4. Conclusions and Recommendations**

### **a. Conclusions**

#### **1. *Anti-Corruption Agencies***

Consistent with the provisions of Articles 6 and 36 of the UNCAC, Iraq carries out its preventive and law enforcement anti-corruption actions through three agencies: the Commission of Integrity, the Board of Supreme Audit, and the Inspectors General. Iraq's anti-corruption activities also receive additional oversight from the Joint Anti-Corruption Council (JACC) within the Office of the Prime Minister and the Committee on Integrity within the Iraqi Parliament.

Overall, the legislative framework supporting these institutions appears to be broadly consistent with the requirements of Articles 6 and 36 of the UNCAC. However, many commentators have voiced concern that the power of government ministers, under Article 136(b) of Law on Criminal Procedures, to bar the arrest and prosecution of their ministry officials accused of corruption, and the right of the Prime Minister to bar corruption investigations against any government minister, are not in compliance with the requirement of "necessary independence," free of "undue influence" from the Government, mandated by UNCAC Articles 6(2) and 36.

Most commentators have also noted that insufficient "training" and "resources," within the meaning of UNCAC Articles 6(2) and 36, have been provided to the Iraqi anti-corruption agencies, negatively impacting their abilities to effectively accomplish their missions. Iraq has also not yet informed "the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption," in contravention of the requirements of UNCAC Article 6(3).

Iraq therefore appears to be in only partial compliance with UNCAC Articles 6 and 36.

#### **2. *Preventive Activities***

As noted above, Iraq is in partial compliance with the provisions of UNCAC Article 6, in that it has established three anti-corruption agencies, each of whom has preventive responsibilities. UNCAC Article 5 also mandates that Iraq should develop and implement effective preventive anti-corruption policies and practices. Yet Iraq does not currently have a specific nationwide preventive anti-corruption policy. It has, however, begun to implement numerous preventive practices, such as a financial disclosure system for public officials, the development of codes of conduct for government officials, the conduct of anti-corruption educational and public awareness campaigns, and the development of preventive programs for inclusion in the national school curriculum. Many commentators have noted these activities have not been fully carried out and require additional technical assistance for their implementation.

Overall, Iraq is therefore only in partial compliance with UNCAC Article 5.

UNCAC Article 9 mandates the establishment of transparent procurement systems and management of public finances. While the scope of this report did not include a detailed analysis of Iraq's public finance system, several positive factors were noted, including a robust public auditing system for procurement and public finance matters in place via the work of the BSA and the IGs, and the recent establishment of a Committee of Finance Experts (COFE) to exercise oversight over petroleum revenues. However, it has been noted

by the United Nations International Advisory and Monitoring Board (IAMB) that Iraq's controls governing public finances are incomplete and require strengthening.

Iraq is therefore only in partial compliance with UNCAC Article 9.

### **3. *Criminalization and Law Enforcement***

UNCAC Article 15 mandates the criminalization of both active and passive bribery of national public officials. Articles 167, 307, 308, 309, 310 and 312 of Iraq's Penal Code contain a comprehensive anti-bribery scheme for both the active and passive bribery of such officials.

Iraq is in compliance with UNCAC Article 15.

However, Iraq has not yet criminalized either the active or the passive bribery of international and foreign public officials, as required by UNCAC Article 16. (Such criminalization is required for active bribery, and optional for passive bribery, of international and foreign public officials.)

Iraq is not in compliance with UNCAC Article 16.

UNCAC Article 17 requires States Parties such as Iraq to criminalize the embezzlement, misappropriation or other diversion by a public official of items of value entrusted to them by virtue of their position. Articles 315, 318, and 319 of Iraq's Penal Code fully criminalize such activities.

Iraq is in compliance with UNCAC Article 17.

UNCAC Article 23 requires the criminalization of money-laundering. Through Iraq's Anti-Money Laundering Act (CPA Order 93 of 2004), Article 2 of the Central Bank Law (CPA Order 56 of 2003), and Article 460 of the Penal Code, Iraq fully criminalizes all money-laundering activities.

Iraq is in compliance with UNCAC Article 23.

UNCAC Article 25 requires the criminalization of obstruction of justice through either corrupt means, such as bribery, and of coercive means, such as the use, or threat of, violence against witnesses. It also requires criminalization of the obstruction of justice through coercive means against judges and law enforcement officials. (The corruption of judges and law enforcement officials by bribery already being covered by the provisions of UNCAC Article 15.)

Iraq expressly criminalizes the obstruction of justice by corrupting or coercing witnesses through Articles 253 and 254 of its Penal Code. Iraq also generally criminalizes the use, or threatening of, violence against judges and law enforcement officials via Articles 229, 230, 233, 233, 234, 235, 253 and 265 of the Penal Code. However, Iraq does not specifically criminalize the use of coercion against such judges and law enforcement officials *for the purpose* of obstructing justice.

Iraq is therefore only in partial compliance with UNCAC Article 25.

(As noted above, Iraq has also established anti-corruption bodies to combat corruption through law enforcement, including the Commission of Integrity, Board of Supreme Audit, and Inspectors General, and that Iraq is in partial compliance with UNCAC Article 36.)

#### **4. *International Cooperation***

UNCAC Article 44 requires Iraq to cooperate in a variety of ways regarding extradition for corruption offences. Specifically, Articles 44(1) and 44(2) of the UNCAC requires a State Party to either allow extradition for corruption offences in an absence of dual criminality, or to fully criminalize all offences required by the UNCAC. Iraq has to date fulfilled neither requirement. (Instead, Article 357(A)(1) of Iraq's Law on Criminal Procedure makes clear that dual criminality is required in order for Iraq to fulfil an extradition request, and, as noted elsewhere in this report, Iraq has not yet criminalized all offences mandated by Chapter III of the UNCAC.) Nor has Iraq enacted legislation that allows for extradition of corruption offences even when they are considered political offences, as mandated by UNCAC Article 44(4). Instead, Article 358(1) of Iraq's Law on Criminal Procedure bars extradition for any "political" offence, including corruption offences.

Iraq has also not yet notified the Secretary-General of the United Nations whether or not it is willing to use the UNCAC as a basis for extradition, contrary to UNCAC Article 44(6)(a). Finally, while Article 358(4) of Iraq's Law on Criminal Procedure bars the extradition of anyone with "Iraqi nationality," Article 353(c) *does* allow for the use of foreign-obtained evidence, and in that sense it appears that Iraq complies with UNCAC Article 44(11)'s requirement that Iraq be capable of prosecuting individuals for corruption inside Iraq, if it refuses to extradite them.

Overall, therefore, Iraq appears to be only in partial compliance with UNCAC Article 44.

UNCAC Articles 46(9) and 46(13) requires Iraq to consider providing international cooperation even in the absence of dual criminality, as well as to notify the Secretary-General of the central authority to be contacted to seek international cooperation in corruption cases. Per Article 354(a) of the Iraqi Law on Criminal Procedure, it does not appear that Iraq allows international cooperation in the absence of dual criminality. Iraq has also not notified the Secretary-General of the central authority for such requests. (Moreover, it appears that Iraq does not currently have such a central authority for international criminal cooperation.)

Iraq is therefore not in compliance with UNCAC Articles 46(9) and 46(14).

#### **5. *Asset Recovery***

UNCAC Article 52 requires States Parties such as Iraq to, among other things, require its banks to take necessary measures to verify their customers and the source of their deposits, to issue advisories to its banks on those requiring additional scrutiny, ensure its banks keep adequate records, bar the operation of shell banks within Iraq, and to consider financial disclosure systems for its officials. Iraq has a detailed customer verification system implemented by Articles 15, 16, 17, 18, 19, and 20 of its 2004 Anti-Money Laundering Act. Pursuant to Article 7(1)(b) of this same Act, Iraq also issues detailed advisories to its banks. (Though many commentators have noted that the Central Bank of Iraq does an admirable job issuing advisories in money-laundering and counter-terrorism financing matters, but requires improvement in the area of anti-corruption advisories.)

Article 22 of the Anti-Money Laundering Act also implements a detailed records collection and retention regime for Iraq's banks. Article 5(2) of the Banking Law of 2004 (CPA Order 94) also bars the licensing of shell banks within Iraq. Finally, Articles 2(5), 4(6), 7, and Appendix A of the Delegation of Authority Regarding the Iraq Commission on Public Integrity (CPA Order 55) implement a detailed financial disclosure system for Iraqi public officials. (Though, as noted elsewhere in this report, many commentators have noted that this disclosure system has not been fully implemented and would benefit from improvement.)

Overall, Iraq is in compliance with UNCAC Article 52.

UNCAC Articles 53, 54, 55, and 57 contain a broad series of methodologies to be used to allow States Parties to cooperate in the area of international asset recovery. Commendably, Iraq does have a robust and comprehensive *domestic* asset freezing, seizure, and confiscation system implemented by Articles 183-186 and 308-312 of the Iraqi Law on Criminal Procedure, Articles 101 and 117 of the Iraqi Penal Code, Article 6 of the Anti-Terrorism Act, and Article 6 of the Anti-Money Laundering Act. (Though many commentators have noted that this domestic system is not implemented on a wide scale basis.) On the international level, however, it appears that Iraq has yet to implement the asset recovery provisions of the UNCAC.

Specifically, Iraq does not appear to allow other States Parties to initiate civil actions in Iraq's courts to recover stolen assets, in contravention of UNCAC Article 53. Nor does Iraq appear to allow its courts to give effect to a foreign order of confiscation, as envisaged by UNCAC Article 54. (However, it does appear that Iraq's domestic confiscation scheme could be used to allow such orders to be issued by Iraq's own courts, within the meaning of UNCAC Article 54(1)(b).)

Article 353 of the Iraqi Law on Criminal Procedure would also not appear to allow Iraq to cooperate internationally in the area of asset recovery, as mandated by UNCAC Articles 55 and 57, with such cooperation instead limited to investigative actions. (Iraq's own domestic confiscation system *would*, however, appear to allow the return of recovered stolen assets to victims, including victims from another State Party, pursuant to Articles 10 and 313 of the Iraqi Law on Criminal Proceedings.) Iraq has also not yet furnished copies of its laws and regulations regarding international cooperation to the Secretary-General of the United Nations, as envisaged by UNCAC Article 55(5).

Overall, therefore, Iraq is not in compliance with UNCAC Articles 53, 54, 55 and 57.

#### **b. Recommendations**

Iraq's accession to the UNCAC, combined with the firm commitments made pursuant to the *Baghdad Declaration*, are strong first steps in Iraq's fight against corruption and are to be commended as such. As can be expected for a country in Iraq's unique position, the way forward will nevertheless require substantial additional efforts and commitments by both Iraq and the international community.

To enhance the implementation necessary to accomplish Iraq's goals in the field of anti-corruption, Iraq and the international community should consider several steps.

- (1) As earlier noted in section 1.2 of this report, this is only a preliminary analysis that was intentionally limited to reviewing anti-corruption agency implementing legislation and Iraq's compliance with the fifteen articles covered in the UNCAC self-assessment checklist. It was not designed to be a detailed gap analysis of existing laws and regulations, nor is it the final word on Iraq's compliance with the UNCAC. With that in mind, it is recommended that a detailed gap analysis of Iraq's compliance with all of the UNCAC be undertaken as part of a comprehensive package of technical assistance to Iraq.
- (2) Iraq should enhance its cooperation with the Conference of States Parties to the UNCAC in order to institutionalize Iraq's compliance and cooperation with the requirements of the UNCAC on both a domestic and international level. In particular, Iraq should be strongly encouraged to participate in the Working Group on



Implementation, Working Group on Technical Assistance, and Working Group on Asset Recovery;

- (3) As part of the same effort which produced this report, UNDP-Iraq and UNODC, in direct consultation with relevant Iraqi officials, have prepared a detailed project proposal on technical assistance to Iraq in the areas of good governance, anti-corruption and implementation of the UNCAC. Upon approval and funding, these programs will also require substantial support from UNDP-Iraq and its Governance and Civil Society Team, as well as technical and operational support from UNODC and its Corruption and Economic Crime Section and Justice and Integrity Unit. In particular, it is recommended that Iraq receive assistance and support in the following areas:

Prevention

- a. The full adoption, monitoring and evaluation of the national anti-corruption strategy;
- b. Amending Iraqi legislation to fully comply with the provisions of the UNCAC;
- c. Strengthening the preventive activities implemented by the Commission of Integrity's Prevention Department, as well as their regulatory and institutional framework;
- d. Strengthening the oversight activities of the Board of Supreme Audit;
- e. Strengthening the oversight activities of the Inspectors General, including enhancing their auditing, inter-agency cooperation, auditing and IT capacities;
- f. Increasing public awareness and cooperation in the areas of anti-corruption through media outreach, public awareness, and other activities by the Commission of Integrity;

Criminalization and law enforcement

- g. Strengthening the law enforcement capacities of the Investigations Department of the Commission of Integrity;
- h. Enhancing the IT infrastructure and skills of the Commission of Integrity;
- i. Establishing a forensic infrastructure within the Commission of Integrity;
- j. Strengthening the investigative skills of the staff of the Inspectors General;
- k. Strengthening the capacity of the designated anti-corruption Investigative Judges;
- l. Strengthening the anti-money laundering capacities, as they relate to corruption offences, of the Commission of Integrity, the Central Bank's Money Laundering Reporting Office, the Ministry of Interior's Anti-Money Laundering Unit, the BSA, and the IGs;

- m. Increasing coordination and cooperation between relevant Iraqi anti-corruption institutions;
- n. Strengthening the internal training capacity of the Commission of Integrity;

*International Cooperation and Asset Recovery*

- o. Strengthening Iraq's participation in regional and international anti-corruption organizations such as the Arab Anti-Corruption Network, the International Association of Anti-Corruption Agencies, the Egmont Group, INTOSAI, and others; and
  - p. Strengthening the capacity of the Government of Iraq in effectively cooperating on criminal matters at the international level; and
- (4) In the short-term Iraq could also immediately enhance its compliance with the UNCAC by submitting the various documents and notifications to the Secretary-General of the United Nations and the Secretariat of the Conference of the States Parties required by the UNCAC.

In particular:

- a. Pursuant to Article 6(3), Iraq should inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption;
- b. Pursuant to Article 23(d), Iraq should furnish copies of its anti-money laundering laws and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;
- c. Pursuant to Article 44(6)(a), Iraq should inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention;
- d. Pursuant to Article 46(a), Iraq should designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution and notify the Secretary-General of the United Nations of the central authority designated for this purpose. (If Iraq has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory);
- e. Pursuant to Article 55(5), Iraq should furnish copies of its laws and regulations regarding international cooperation for the purposes of confiscation and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations; and
- f. Pursuant to resolution 1/2 of the COSP, Iraq should submit a self-assessment checklist on implementation of UNCAC to the Secretariat of the COSP in Vienna. (As noted in the introduction, this report is designed to assist in the preparation of Iraq's self-assessment checklist.)