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INTERNATIONAL LEGAL APPROACH TO CORRUPTION IN KURDISTAN

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ABSTRACT

This paper represents a legal study on the corruption in Kurdistan Region of Iraq (KRI), using a collection of a significant number of data and reports, which have been composed from numerous International and domestic institutions, just as the United Nations, Transparency International organisation, U4 websites publications and different source of mass media. This study attempts to approach the corruption in KRI via critical discussions on the actions of corruption in the region and the anti-corruption laws. The research covers some main issues, such as the prevalent forms of corruption and the level of corruption in Kurdistan region compared to the level of corruption in other sections of Iraq. It also considers how the international anti-corruption instruments may be useful standards to implement in Kurdistan region. The beginning sections of this paper discuss the forms of corruption in KRI. It also estimates the level of corruption in Kurdistan region through a comparison study with the corruption in other parts of Iraq. However, finding corruption is only one part of the solution; the other part is finding ways to fight against corruption. The remaining sections, therefore, are dedicated to evaluate the anti-corruption policies and legal frameworks of KRI in accordance to international standards against corruption.

KeyWords

Corruption Crimes and anti-corruption measures, International attempts against corruption, Kurdistan Region of Iraq (KRI), promoting transparency in KRI, United Nations Convention Against Corruption (UNCAC).

1. Introduction

Corruption is a serious problem facing humanity at all levels and every society. There are numerous definitions on corruption. Corruption is defined as the abuse of entrusted power for private gain,¹ also it is known as a disease that attacks the hopes of the poor for a better future for themselves and their children which drains revenues that might otherwise go to projects that would bring education to poor children or offer civil services and health care programs.² Corruption can also lead to violations of human rights, such as the right to education, the right to health and food or the right to live. The Secretary-General of the United Nations, Ban Ki-moon, states that corruption erodes democracy and the rule of law, and also that corruption can violate human rights and even sometimes kill when corrupt officials allow medicines to be tampered with or they accept bribes that enable terrorist acts.³

The ways that corruption occurs and the factors that contribute the growth of corruption are various which may take any form.⁴ There is no an absolute or an agreed definition on corruption. A definition may cover the whole actions of corruption. It remains a challenge for academics to draw the lines of corruption,⁵ due to the vast expansion of the disease which reveals in every territory and it is chronological that has been living among humanity through the history.⁶ States though, reorganized and defined some common acts of corruption, such as bribery, embezzlement, illicit enrichment and abuse of power or function. These actions of corruption have been criminalized almost in every state and every jurisdiction. However, defining corruption and high lighting the types of corruption are only one part of the solution; the other part is finding ways to fight against corruption.

The United Nations High Commissioner for Human Rights, Navi Pillay, says that "nearly 870 million people go to bed hungry every night, yet the money stolen through corruption every year is enough to feed the world's hungry 80 times over".⁷ In other words, Pillay's statement showed the advantages that glob could get, if corruption has been curbed; in the way that if we eliminate corruption, we can eliminate poverty in the world at the same time.

Corruption does not stay within national borders or in a specific state; therefore, a global effort is needed to stop corruption worldwide.⁸ The current global system has formed a new environment which stimulates the transition of corruption from a state to another, due to the extension in economical relations and the occurrence of a great number of Transnational Corporations (TNCs). Thus, states needed to corporate and find mutual legal provisions to stand against corruption. At the international level, various attempts have been

¹ 'What Is Corruption' (TI) <<http://www.transparency.org/what-is-corruption/>> accessed 1 January 2016.

² Rick Stapenhurst, Naill Johnston and Riccardo Pellizo (eds), *The Role of Parliament in Curbing Corruption* (WBI Development Studies 2006) XI.

³ Office of the United Nations High Commissioner for Human Rights, 'The Human Rights Case Against Corruption' (informational pamphlet, 2013) <<http://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/HRCASEAGAINSTCORRUPTION.pdf>> accessed 1 January 2016 (OHCHR Pamphlet) 3.

⁴ Corruption can take any form. For example, the latest news from Transparency International exposes some recent attempts towards defining "Sextortion", as a form of corruption. Sextortion refers to the abuse of power to obtain a sexual benefit or advantage, which is sex, can be dealt with as a form of currency, rather than money, for bribe. *See also*, 'Sextortion: undermining gender equality' (TI, 7 March 2016) <http://www.transparency.org/news/feature/sextortion_undermining_gender_equality> accessed 7 March 2016.

⁵ Aram Khaghghordyan, 'International Anti-corruption Normative Framework: the State of the Art' (2014) Herti School of Governance Research Paper Research Paper <http://anticorpp.eu/wp-content/uploads/2014/12/D1.1_Part3_International-Anti-corruption-Normative-Framework.pdf> accessed 10 January 2016.

⁶ Vito Tanzi, 'Corruption Around the World: Cases, Consequences, Scope and Curses' (1998) International Monetary Fund (IMF) Working Paper WP/98/63, <<https://www.imf.org/external/pubs/ft/wp/wp9863.pdf>> accessed 10 January 2016 (4).

⁷ OHCHR Pamphlet (n. 3) 3.

⁸ 'International Conventions' (TI) <<http://www.transparency.org/topic/detail/internationalconventions>> accessed 10 January 2016.

made by certain states to harmonize anti-corruption efforts and take a stand against corruption. This harmonization has led to some uniform mechanisms between countries in the form of conventions, for example, the United Nations Convention against Corruption, the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention, and the African Union Convention on Preventing and Combating Corruption. These conventions, mainly, attempts to create a standard system between states that effectively prevent corruption and enhance the transparency.

Furthermore, international organizations and communities have been established to fight corruption, for example, Transparency International (TI), which is perhaps the best-known and the most active organization in the field of working against corruption.⁹ TI was established in 1993, and its aim is to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society.¹⁰ In addition, every year TI launches a survey in order to measure corruption levels in countries. Their surveys show that corruption is widespread all over the world, even the world's most developed and democratic countries have some level of corruption. For instance, the 2013 survey shows Germany was ranked 12th out of 177, the United Kingdom 14th out of 177 and the United States 19th out of 177.¹¹ In the same year the TI ranked Iraq, Libya, South Sudan, Sudan, Afghanistan, North Korea and Somalia as the most corrupt countries.¹²

Iraq, specifically, has repeatedly ranked among the worst-performing countries to stand against corruption. According to TI, Iraq does not hold a fair reputation, in respect to the level of corruption, which is scored among the worst corrupt countries worldwide.¹³ In the World Bank's 2011 Worldwide Governance Indicators, Iraq was ranked in the bottom 10th percentile in terms of controlling corruption.¹⁴ Scores on other dimensions are not as bleak, but Iraq remains in the bottom quintile of the ranked countries. The country suffers from severe corruption in various forms, such as bureaucratic corruption, political corruption, nepotism, and corruption in the oil and gas sector.¹⁵ Kurdistan Region of Iraq (KRI), which is a federal region located in northern Iraq, has not been excluded from the corruption like every other parts of the country, even though the region is autonomous and it hold independents government and parliament. Based on a report of the U.S. Department of State, which is launched in 2014, pervasive corruption and a lack of government transparency are major problems in Kurdistan¹⁶ According to the Kurdistan Commission on Public Integrity, corruption in Kurdistan is so widespread that the agency could not fight it effectively.¹⁷

The Kurdish elite, however, have established some legislative and administrative instruments to fight corruption and curb bribery in the region. For example, in 2008 the Kurdistan parliament legislated Act No. 2 for the Office of Financial Supervision in the Kurdistan Region – Iraq, which attempts to prevent corruption and curb bribery in Kurdistan. In 2011, Act No. 3 of Public Authority of Integrity in Kurdistan Region – Iraq was legislated. This law provided for the establishment of an anti-corruption commission under the name “The Public Authority of Integrity in Kurdistan” and specified its objectives, extent of competence, means,

⁹ Alan Doig and Robin Theobald (eds), *Corruption and Democratisation* (Frank Cass & Co. Ltd 2003) 2.

¹⁰ ‘Our Organisation – Mission, Vision and Values’ (TI) <http://www.transparency.org/whoweare/organisation/mission_vision_and_values> accessed 10 January 2016.

¹¹ ‘Corruption Perceptions Index 2013’ (TI) <<http://cpi.transparency.org/cpi2013/results/>> accessed 2 August 2014 (CPI 2013).

¹² *ibid.*

¹³ Maxime Agator, ‘Iraq: Overview of Corruption and Anti-Corruption’ (U4 Expert Answer, TI, April 2013) 1 <http://www.transparency.org/files/content/corruptionqas/374_Iraq_overview_of_corruption_and_anticorruption.pdf> accessed 12 January 2016.

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ Bureau of Democracy, Human Rights and Labor, ‘Country Reports on Human Rights Practices for 2013 - Iraq’ (U.S. Department of State, 27 February 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dclid=220355>> accessed 12 January 2016.

¹⁷ *ibid.*

formation, immunities and the rights to investigate in the cases of illicit enrichment.¹⁸ Moreover, on 12 July 2009, the Prime Minister of the Kurdistan Regional Government (KRG), Nechervan Barzani, launched a comprehensive anti-corruption and transparency strategy aimed at eliminating corruption in Kurdistan.¹⁹ Further, the criminalization of the acts of corruption in Kurdistan Region can be found in the Iraqi penal code, which includes a number of criminal offences including, bribery, embezzlement and the abuse of power.²⁰

Hence, KRI would be a good example for the purposes of this study because the region has many elements of corruption that require consideration. The region is an ideal case for the purpose of this study. Kurdistan region is located in northern Iraq, which the country has been ranked as one of the most corrupt countries, yet almost all international statistics and surveys about corruption are based on state sovereignty. They assess and analyze the corruption in countries as one unit. For example, TI lists Iraq as one country, and does not distinguish between Iraq and Kurdistan region (as an autonomous region in the northern part of the country). Therefore, this study is a good opportunity to discuss the corruption in KRI only, including the factors, types of corruption and anti-corruption measures.

A number of questions, therefore, arise in regard to the corruption in KRI. How corrupt is Kurdistan region, and is corruption in the region as prevalent as it is in the rest of Iraq? Furthermore, if the current conventions against corruption are to be considered appropriate standards, have Kurdish leaders and authorities established effective measures against corruption, and have they done so in accordance with international law? To answer these questions, this paper is organized into five chapters which primarily seek to explain the status of corruption in KRI and contribute the understanding of anti-corruption laws, through critical discussion and comparative analysis of the international legal framework against corruption.

The first chapter provides an introduction about the content of the study and overview. Later on, Chapter 2 uses a significant amount of publications of domestic and international studies on corruption in KRI and Iraq, in order to illustrate the image of corruption in Kurdistan region independently, including the most prevalent forms of corruption. A portion of Chapter 1 is relevant to comparative analysis between the Kurdistan region and the other provinces in Iraq, in regard to the level of corruption. Chapter 3 presents the international legal frameworks against corruption. This chapter also provides a comparative analysis of the conventions against corruption and bribery, in order to high light the most effective international legal remedies of anti-corruption. In Chapter 4, the Kurdistan's anti-corruption laws and governmental policies are discussed critically, in reference to international laws against corruption. Finally, Chapter 5 reads out a conclusion and some possible outcomes.

1.1 Materials and Method

Originally, this research paper was drafted from a dissertation, which I submitted for LLM Law degree in 2014, at the University of Portsmouth. Some of the main ideas and data were grasped from the dissertation, but further extension made within the structure, the language, the method and the main question of the dissertation. This research uses entirely different structure and method from that the previous, which are aimed to reach an explicit conclusion of corruption in KRI.

This research uses an analytic methodological framework, in order to demonstrate a clear and coherence view of the KRI's situation of corruption; with use of variety of documents and writing materials in which facts or ideas have been recorded. Items written or produced on paper, such as newspaper articles, government policies, statistics and surveys by governmental and non-governmental organizations and items in other media

¹⁸ UN Development Programme, 'Analytical Study: The Law of the Public Authority of Integrity (Kurdistan Region-Iraq) 3' <<http://www.undp.org/content/dam/undp/documents/projects/IRQ/KR%20Commission%20of%20Integrity%20%20Study.pdf>> accessed 12 January 2016.

¹⁹ Nisar Talabany, 'Kurdistan Launches Anti-Corruption Strategy' (Kurdistan Regional Government, Office of Governance and Integrity) <<http://ogi.krg.org/articles/detail.aspx?lngnr=12&anr=36317>> accessed 12 January 2016.

²⁰ The Amended Penal Code Act No. 111 of 1969 (Iraq).

sources are subject to this study. An additional method such doctrinal is also used in this research to discuss the anti-corruption law in KRI. The doctrinal method involves a systematic exposition, analysis and critical evaluation of legal rules, principles or doctrines and their interrelationship between the domestic laws of KRI and the international law against corruption. It also concerns with critical review of legislations and of decisional processes and their underlying policy.

The primary sources consulted for this dissertation are numerous, including international conventions, UN documents and statistics, local statistics, documents of other international organizations and some of Kurdistan's laws against bribery and corruption were also consulted for this dissertation. These secondary sources include journal articles, government websites, TI's website, reports, and official documents that are issued by KRG and UN. This research project also uses some tertiary data, like short articles and reports by scholars and journalists that have been published in the local Kurdistan media.

2. Corruption in Kurdistan and Iraq

2.1 Introduction

This Section attempts to illustrate the status of corruption in KRI, in accordance with some national and international studies on corruption by domestic and international non-institutions, also news from different mass media. Though, some studies like Corruption Perception Index (CPI)²¹, Global Corruption Barometer (GCB) are based on the principle of the state sovereignty; they do not disaggregate the results given to the states by regions. Thus, if the CPI and GCB to be considered as the measurements to show the range of corruption in KRI, then the level of corruption in the region should be regarded, the same as the level of corruption in the other parts of Iraq.

However, the level of corruption in KRI may differ than the other provinces in Iraq, because the region is deferent in its characteristic and administration. The region has been de facto autonomous from Baghdad since 1991.²² Given this specificity, the KRI has been independently governed itself until 2003. Later on, the Iraqi former regime was abolished by US troops and the new Iraqi regime established in 2005.²³ The KRI was identified as a federal entity within the Iraqi constitution and the region exercise legislative and executive authority in many areas, including allocating the Regional budget, police and security, education and health policies, natural resource management and infrastructural development.²⁴

The begging, therefore, section in this chapter seeks to illustrate the image of corruption and identify the most common types of corruption in KRI. It also attempts to identify the factors that contribute the growth of corruption in the region. The ending sections examine the level of corruption in Iraq generally, in a comparison to corruption in Kurdistan region.

2.2 Corruption in Kurdistan Region

This section attempts to synthesize an image of corruption in Kurdistan at several different angles and methods. First, disclosing the cases of corruption in Kurdistan according to the studies which has been

²¹ CPI is the statistics which is every year launched by TI. It includes more than 170 countries and was first started in 1995. In the CPI survey the more higher the ranking number of a country, the more corrupt the country. For example, A-country ranked 20th out of 170, and B-country ranked 25th out of 170. This means B-country is more corrupt than A-country. *See also*, 'Our Organisation – Mission, Vision and Values' (TI) <http://www.transparency.org/whoweare/organisation/mission_vision_and_values> accessed 15 January 2016. And, 'Corruption Perceptions Index – Overview' (TI) <<http://www.transparency.org/research/cpi/overview>> accessed 15 January 2016.

²² 'Kurdistan Regional Government' (Department of Foreign Relations) <<http://dfr.krg.org/p/p.aspx?p=88&l=12&s=030400&r=403>> accessed 15 January 2016.

²³ *ibid.*

²⁴ *ibid.*

launched by *U4 Expert answer*.²⁵ Second, various types of media reports and publications are used, as a technique to present the corruption in KRI. Finally, the emergence of TNCs and Kurdistan's reputation regarding human rights abuses may be considered as other ways to explain the corruption in Kurdistan.

2.2.1 Corruption in Kurdistan Using U4 Studies on Corruption.

U4 unanimously, has launched three different country profile analysis studies on corruption in Iraq; though only one of the studies is concerned about Kurdistan region specifically, while the other two researches show the overview of corruption and anti-corruption in Iraq generally.

Firstly, the latest study was published in March 24, 2015, which is only analysing the corruption and the measures against corruption in Kurdistan region.²⁶ It begins with a comprehensive analysis for corruption over the past two decades in the region.²⁷ Starting with an explanation for the background of the Kurdistan region that the region emerged after the first Gulf War and the establishment of a no-fly zone in the North of Iraq, ever after, the two main political parties the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) the two political parties have played a significant role in the development of the current political system in the region.²⁸ In 2005, KRG held parliamentary election that the KDP and PUK ran on a joint Democratic Patriotic Alliance of Kurdistan ballot for the 2005 elections and won 104 of 111 seats.²⁹

The two political parties, thus, may impose a risk on the creation of nepotism and clientelism based on their substantial role in the region. According to a number of statistics and surveys, a considerable amount of the civil servants alleged that they had received help from political parties, friends and family members during the recruitment process at the public sectors in Kurdistan.³⁰ For example, around a quarter of civil servants cited that they had been recruited upon political party affiliations, and another quarter of civil servant said, who they had used their family or friend connections to expedite the recruitment process.³¹ Moreover, it seems that some major business and investment firms have connection with the high political figures in the region, such as the two main cell phone companies belong to the relatives of the two main parties in the Kurdistan.³²

In addition, the *U4 Expert Answer* alleges that ensuring a transparent process for Procurement and oil revenue management and using the revenues of the oil and gas sector for the benefit of the public in Kurdistan remains a challenge for the region.³³ The contracts, which have been issued by the KRG Ministry of Natural Resources, are not transparent and the government does not disclose to public the key information about the licensing process or signature bonuses.³⁴ The exert pressure by politicians, bribery, nepotism and clientelism influence how oil contracts are granted in the region.³⁵ Moreover, the U4 clarifies that the KRG still lacks the

²⁵ U4 Expert answer is a study launches by U4 Anti-corruption Recourse Centre which is 'a web-based resource centre for development practitioners who wish to effectively address corruption challenges in their work. U4 also runs in-country workshops and online courses on anti-corruption measures and strategies for our partner agencies and their counterparts. Finally, a Helpdesk service providing expert answers to the most pressing questions faced by development practitioners in the field is also available through [its] website.' 'About U4' (U4 Anti-Corruption Resource Centre) <<http://www.u4.no/info/about-u4/>> 16 January 2016.

²⁶ Coralie Pring, 'Kurdistan Region of Iraq: Overview of corruption and anti-corruption' (U4 Expert Answer, TI, November 2015) <file:///C:/Users/daban/Downloads/2015-07%20(2).pdf> 16January 2016.

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*

³³ *ibid.*

³⁴ *ibid.*

³⁵ *ibid.*

transparency on how the revenues, from oil and gas, are spent.³⁶

Secondly, the two other country profile studies by U4 analyse the corruption in Iraq as one entity; they do not separate Kurdistan region of Iraq. The 2015 reports describe Iraq as a country continues to score among the worst countries on corruption and governance indicators.³⁷ It sheds the light on a number of fragilities in Iraq, which include lack of experience in the public administration, weak capacity to absorb the influx of aid money, sectarian issues and lack of political will for anti-corruption efforts.³⁸ Later on, the 2014 analysis of U4 illustrate a significant corruption in Iraq, such as massive embezzlement, procurement scams, money laundering, oil smuggling and widespread bureaucratic bribery, has resulted in the country being at the bottom of international corruption rankings because such corruption fuelled political violence and hampered effective state-building and delivery of social services.³⁹

Therefore, based on the aforementioned analysis, a serious corruption threats the Kurdistan Region of Iraq and the region like the most parts of Iraq deteriorate by various acts of corruption, just as nepotism, clientalism, political and grand corruption and lack of transparency. Likewise, the areas, where corruption emerges in Kurdistan, could be defined into the following, recruitment process in public sectors, public administration, procurement and oil and gas sectors.

2.2.2 Corruption in Kurdistan Using Media Reports and Other Types of Publications.

This section attempts to collect some significant data and information that have been published by different source of publications, in order to provide an understanding of the general view of the corruption in KRI. The collecting data could be articles, website articles, TV, statistics, and reports which published by some external and local delivering news from mass media, and local nongovernmental organisation.

NRT which is a well-known media centre in KRI, in January 2016, published an article on their website regarding Kurdish governance system.⁴⁰ The article is an abbreviation of some interview with a few political figure in the region.⁴¹ According to Barham Salih, who is Deputy Secretary-General of the PUK and the former KRG prime minister, the political parties in the region have influenced the market in their favour and established joint companies between them to control the market, especially the oil and gas in the region.⁴² Further, Ali Hama Salih, who is a MP of Kurdish Parlaiment, alleges that senior officials at Ministry of Natural Resources of KRG have been accused of corruption cases that are estimated to reach hundreds of millions US dollars.⁴³

Furthermore, According to *Kawa Jabary* and *Anil Hira*, nepotism and the abuse of power or position are widespread in Kurdistan, especially when it comes to public sector recruitment.⁴⁴ More than 50,000 new public sector employees were recruited in 2011, and approximately 20,000 new public sector employees were recruited in 2012.⁴⁵ The employees alleged that they have heard about the vacancies in the public media, and after that they started to apply for the positions. The application process required that potential candidates

³⁶ *ibid.*

³⁷ Coralie Pring, 'Iraq: Overview of Corruption and Anti-Corruption' (U4 Expert Answer, TI, March 2015) <<http://www.u4.no/publications/iraq-overview-of-corruption-and-anti-corruption-2/>> 16 January 2016.

³⁸ *ibid.*

³⁹ Agator (n 13).

⁴⁰ 'Leading Kurdish Figure Says it's Time for a New Governance System' (NRT) <<http://www.nrttv.com/EN/Details.aspx?Jimare=5069>> accessed 20 January 2016.

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ David Romano, 'Looking at South Kurdistan More Honestly' (Rudaw, 26 December 2013) <<http://rudaw.net/english/opinion/26122013>> accessed 20 January 2016.

⁴⁵ Kawa Jabary and Anil Hira, 'The Kurdish Mirage: A Success Story in Doubt' (2013) 10 Middle E Pol'y 2.

submit CVs, after which they would be called for an interview.⁴⁶ However, not all public sector employees have been employed through this process.⁴⁷ Many of them were appointed due to their relationships with high-ranking officials, regardless of merit, and the officials apparently engaged in nepotism.⁴⁸

Another type of corruption that takes place in Kurdistan is embezzlement by public officials. An article published by *The Guardian* alleges that on 8 April 2012, the mayor of Sulaymaniyah, Zana Hama Salih, was arrested by Kurdish security forces after being asked to provide evidence for a corruption case that first emerged more than six years earlier.⁴⁹ This case involved a deal for a piece of land that was worth half a billion dollars. Mayor Salih was detained, having been accused of taking a bribe as part of the property deal. His family and many supporters came to the detention centre to protest his arrest. Six days later, he committed suicide by hanging himself while in custody.

In addition, the *Kurdish Institute for Elections* (KIE) published a report in 2012 about the amount of coverage that Kurdish media outlets gave to corruption issues.⁵⁰ For this report, the KIE observed a considerable number of external and internal media outlets, such as TV channels, radio stations and electronic media outlets, to determine how much coverage the Kurdish media gave to cases involving corruption only in Kurdistan (i.e., corruption outside of Kurdistan was excluded).⁵¹ The report shows that nepotism, fraud, embezzlement and bribery were the most common types of corruption in the region.



NATURE, SCALE AND TYPES OF CORRUPTIONS IN THE COVERED MEDIA OUTLETS

Corruptions Media outlets' types	Corruption's nature				Corruption's scale			types of corruption						
	Administrative Corruption	Political Corruption	Purely private corruption	Total	Grand Corruption	Petty Corruption	Total	Bribery	Nepotism	Fraud	Embezzlement	Extortion	others	Total
Total of newspapers (cm2)	13912	16558	2369	32839	29865	2974	32839	1392	5061	5237	8535	826	11788	32839
Total of satellite's channels (seconds)	10782	15635	2915	29332	24801	4531	29332	1712	3645	4931	2106	70	16868	29332
Total of radio stations (seconds)	2642	90	185	2917	2139	778	2917	363	348	0	162	672	1372	2917
Total websites (Words)	13614	2955	1502	18071	15155	2916	18071	1914	162	412	4171	612	10800	18071
Total	40950	3523	6971	83159	71960	11199	83159	5381	9216	1058	14974	2180	40828	83159

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ Fazel Hawramy, 'Corruption Scandals Threaten to Destabilise Iraqi Kurdistan' *The Guardian* (London, 10 May 2012). See also John Chua, 'Two Cases of Corruption in a Nation Divided' (Global Information Society Watch, 2012) <<http://www.giswatch.org/ca/node/1017>> accessed 20 January 2016.

⁵⁰ 'The Monitoring of the Coverage of Corruption Issues in Kurdish Media Outlets' (KIE, September 2012) <<http://www.kie-ngo.org/Hawpichekan/KIE%20Final.pdf>> accessed 20 January 2014.

⁵¹ *ibid.*

The chart illustrates the concerns of media in respect to the corruption issues in KRI, during last July and August 2012. The KIE's monitor team has covered eight newspapers, three satellite channels, three radio stations, and four websites in the chart. The numbers in the schedule schemed onto centimetres for newspapers, whereas satellite and radio stations with seconds and websites with words.⁵² The outcome of the chart shows that embezzlement was the most argued topic in the Kurdish media, which are followed by fraud, nepotism and bribery.

In brief, the aforementioned publications by media and the KIE's chart display an awkward image of the corruption in Kurdistan. The coverage of corruption which was discussed by media can be categorised into, the unfair process of recruitment in the public sector, embezzlement fraud, nepotism and bribery.

2.2.3 Analysing Corruption in Kurdistan from Human Rights Prospective

Human rights violations in the Kurdistan region very often indicate a high level of corruption. Since, there is a correlation between the human rights violations and the growth of corruption. The former sometime maybe caused by an act of corruption, or some acts of corruption are indeed human rights violations. For example, when a corrupt government receives a bribe from a terrorist group to process their crimes against humanity, or when a bribery influence a decision form court, meanwhile, it is also a violation to human rights; the right to have a fair trial.

Hence, the occurrence of human rights violation in the region, overwhelmingly references corruption in Kurdistan. In 2012, the Human Rights Office of UN published an intensive study in a form of report on the human rights violations in Iraq during 2011.⁵³ The report alleged that the level of human right abuses in Iraq, except Kurdistan region, is very rising.⁵⁴ Violence was concentrated in the country and a significant number of civilian killed or injured, due to personal distinctions refer to political affiliation, ethnics and religions.⁵⁵ Further, the reported added the human rights situation in Kurdistan is continued to improve, and the violation is lower in the region than the rest parts of Iraq. However, challenges still remain for the region to enhance attitudes, towards the rule of law, freedom of assembly, freedom of expression and the protection of journalists.⁵⁶

Further, the latest report by the U.S. Department of State on human rights practices in Iraq and Kurdistan, declared that Kurdistan has a large number of human rights violations, such as the following:

“politically motivated sectarian and ethnic killings, including killings conducted by the resurgent terrorist network led by al-Qaida and its affiliate, the Islamic State of Iraq and the Levant (ISIL) (formerly known as al-Qaida in Iraq, or AQI); torture and abuses by government actors and illegal armed groups; and a lack of governmental transparency, exacerbated by widespread corruption at all levels of government and society”.⁵⁷

Thus, the reports clarify that KRI does not hold a veracious character in respect to human rights infringements. The region may have a superior respect to human rights protection than the other regions in Iraq. However, there is a weakness attitude towards rule of law, transparency in public sectors and freedom of journalism.

⁵² *ibid.*

⁵³ UNAMI Human Rights Office, OHCHR, ' Report on Human Rights in Iraq: 2011' (Baghdad, May 2012) <http://www.ohchr.org/Documents/Countries/IQ/IraqUNAMI-OHCHR_HR_Report2011_en..pdf> accessed 22 January 2016(Human Rights Report).

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ Bureau of Democracy, Human Rights and Labor, 'Country Reports on Human Rights Practices for 2013 - Iraq' (U.S. Department of State, 27 February 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220355>> accessed 22 January 2014 (US State Department Report).

2.2.4 Analysing Corruption in Kurdistan via TNCs Prospective

The existence of TNCs in KRI may impose the risk of the diffusion of corruption. A significant number of TNCs in Kurdistan region may suggest that a considerable amount of corruption in the region is because of TNCs spreading corruption and engaging in international bribery. TI alleges that countries rich in oil and gas are home to some of the world's poorest people because wealth stays in the hands of politicians and industry insiders.⁵⁸ TI also states that many oil companies participating in corrupt activities protect the identities of their equity holders and subsidiaries, and this practice allows corrupt leaders to hide stolen funds unnoticed. Inaccurate financial statements also make it easy to disguise corrupt business deals.⁵⁹ The populations of many oil-rich countries are still not benefiting.⁶⁰ In Nigeria over 90% of the population lives on less than \$2 a day, in Venezuela poverty has increased over the past 25 years despite \$600 billion in oil revenues during that period and over half of oil-rich Equatorial Guinea's citizens survive on less than \$1 per day.⁶¹

Moreover, the corruption in the cases of the oil-for-food programme,⁶² James McCormick's fake bomb detectors (*R v James McCormick*)⁶³ and the Statoil ASA case (*U.S. v. Statoil ASA*),⁶⁴ confirm the negative impact of TNCs and especially oil corporations in relation to transnational bribery. They are good example of how oil companies pay bribes to officials in host countries, in order to protect their interest and extend their business in an illicit way.

The economic of KRI began to boom in 2003, in respect to many aspects, just as property development, roads, urban planning and the investment in oil and gas in the region.⁶⁵ The region has started to work with a number of foreign companies to produce oil and oil revenue combine around %90 percent of region's economy⁶⁶ The suitable environment in Kurdistan, that is, the security and safety provided by Kurdish authorities, has attracted many investors from outside the region. In recent years, KRI has been more stable from a security perspective, than the rest sections of Iraq.⁶⁷ The region has experienced fewer terrorist attacks and much lower levels of

⁵⁸ 'Oil and Gas' (TI) <http://www.transparency.org/topic/detail/oil_and_gas> accessed 23 January 2016.

⁵⁹ *ibid.*

⁶⁰ Global Witness, *Oil Revenue Transparency: A Strategic Component of U.S. Energy Security and Anti-Corruption Policy* (Global Witness Publishing Inc. 2007) 4.

⁶¹ *ibid.*

⁶² Kenneth Katzman and Christopher M Blanchard, CRS Report for Congress, 'Iraq: Oil-For-Food Program, Illicit Trade, and Investigations' (14 June 2005) 2 <<http://fas.org/sgp/crs/mideast/RL30472.pdf>> <<http://fpc.state.gov/documents/organization/45455.pdf>> accessed 23 January 2016(CRS Report).

⁶³ *R v James McCormick* [2013] Central Criminal Court <<http://www.judiciary.gov.uk/judgments/r-v-mccormack/>> accessed 9 August 2014.

⁶⁴ In June 2001 and January 2003, The defendant (Statoil ASA) paid bribes to an official in the Iranian government, in order to persuade him to: first, help Statoil to obtain a contract to develop three phases of the South Pars oil and gas field in Iran; and second, pave the way to additional projects in the Iranian oil and gas exploration industry. The Iranian official, the bribe receiver, was the head of the Iranian Fuel Consumption Optimizing Organisation, which is a subsidiary of the National Iranian Oil Company. The bribes were paid through a consulting contract with an intermediary company. The intermediary was also a foreign company, located in London, England. According to the contract, Statoil must make an initial payment to the Iranian official of US\$502 million, and an annual payment of US\$1 million for ten years. The total would be US\$15 million over 11 years, and Statoil made the initial payment, but in June 2003, Statoil suspended payments under the contract. In September 2003, the consulting contract was disclosed in the Norwegian press, and this led to the Norwegian authorities opening an investigation. *See also*, United States of America v Statoil, ASA, No. 1:06-cr-00960-RJH-1 (SDNY 2006) <<http://www.justice.gov/criminal/fraud/fcpa/cases/statoil-asa-inc/10-09-06statoil-agree.pdf>>; 'U.S. v. Statoil ASA' (case index and summary, Shearman & Sterling LLP) <<http://fcpa.shearman.com/?s=matter&mode=form&id=40>> accessed 23 January 2016.

⁶⁵ Ararat News and Publishing, 'Kurdistan: A new democracy grows in the Middle East' (KRG, 1 May 2011) <<http://cabinet.gov.krd/a/d.aspx?l=12&s=02010200&r=73&a=39803&s=010000>> accessed 23 January 2016.

⁶⁶ Agator (n 13). *See also*, Honar Hama Rasheed, 'As Iraqi Kurdistan Runs Out of Oil Money, Kurdish Turn Backs On Baghdad' (Niqash, 26 June 2015) <<http://www.niqash.org/en/articles/economy/5035/>> accessed 23 January 2016.

⁶⁷ Bureau of Democracy, Human Rights and Labor, 'Country Reports on Human Rights Practices for 2013 - Iraq' (U.S. Department of State, 27 February 2014) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220355>> accessed 23 January 2016. (US State Department Report).

violence compared to other parts of Iraq.⁶⁸ Because of this stability, a considerable number of TNCs and oil companies have started to operate in Kurdistan in recent years. For example, nearly 40 oil companies from countries such as the United States, Great Britain, Canada, Turkey, Russia and Norway currently operate in the region.⁶⁹

However, the emerging Kurdish economy and investments in oil revenue have had negative effects on corruption in Kurdistan. U4 cited that the oil corporations in Kurdistan region have been impacting on the extension of corruption and they have been participating in several unlawful acts, just bribery, nepotism and untransparent procurement process and oil revenue management.⁷⁰ Further, a media source alleges that DNO, a Norwegian exploration and production company, were suspended by the KRG due to a Norwegian regulatory investigation into the sale of DNO shares worth US\$30 million.⁷¹ DNO is one of many foreign oil companies that have signed development contracts with the KRG, and material published by the Oslo Stock Exchange suggested that the KRG Ministry of Natural Resources 'acted as a middleman for the transaction of those shares to Turkish oil firm Genel Enerji – another explorer operating in the region'.⁷²

Hence, it seems as though, the expansion of the TNCs in KRI has been participating in the in the growth of corruption, particularly in the oil and gas sectors; since most oil combines a significant amount of the Iraqi Kurdistan's revenue. The Oil firms impose the risk of disguise corrupt business deals in the region and the DNO's allegation is an evident example.

2.3 Corruptions in KRI in Accordance With Corruption in Iraq

This section shed the light on the corruption in Iraq and the size of the corruption in the country according to International standards and measurement for corruption. It uses a collection of country data retrieved from TI and global measurement of a number of publicly accessible tools to assess a country's level of corruption. Within this section, later on, attempts will be made to cortically discuss the level of corruption in Kurdistan compared to the level of corruption in Iraq.

2.3.1 Corruption in Iraq Upon the International Statistics for Measuring the Size of Corruption.

The statistics and the indexes of international organizations that are concerned about the size of corruption, such as CPI and GCB, are based on state sovereignty; therefore, they do not disaggregate the results given to Iraq by region. Since, Kurdistan region is a federal entity of Iraq, if both Kurdistan and Iraq assessed as one united entity, then Iraq has been identified as one of the most corrupt countries worldwide, nearly in every global study.

Iraq suffers from extensive heavy corruption. In the 2014 CPI Index, Iraq ranked 170 out of 175 countries.⁷³ It scored just 16 on a scale where 0 indicates that a country is perceived to be highly corrupt and 100 is where a country is perceived to be very clean.⁷⁴ Only Afghanistan, North Korea, South Sudan, Somalia and Sudan scored worse.⁷⁵ The CPI has consistently ranked Iraq as one of the countries with the highest levels of corruption. For example, in 2011 the CPI ranked Iraq 175th out of 182 countries; in 2012 the CPI ranked Iraq 169th out of 174 countries and in 2013 the CPI ranked Iraq 171st out of 175 countries.⁷⁶ Eventually, in the most recent index

⁶⁸ *ibid.*

⁶⁹ 'Oil Companies in Kurdistan Region' (PUK Media, 10 February 2013) <http://www.pukmedia.com/EN/EN_Direje.aspx?jmare=1969> accessed 23 January 2016.

⁷⁰ Pring (n 6).

⁷¹ Ranj Alaaldin, 'Kurdistan Rocked by Oil Revelation' *The Guardian* (London, 5 October 2009).

⁷² *ibid.*

⁷³ 'Corruption Perceptions Index – Overview' (TI) <<https://www.transparency.org/cpi2014/results>> accessed 25 January 2016.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ 'Corruption Perceptions Index – Overview' (TI) <<https://www.transparency.org/research/cpi/>> 25 January 2016.

2015, Iraq again is given the score of 16 on scale and ranked 161 out of 168 countries, which convey that Iraq, Libya and Sudan are ranked of the bottom 10 countries from the Middle East and North Africa region.⁷⁷

The 2011 GCB, furthermore, which is a public opinion survey,⁷⁸ shows 56% of respondents stated having paid a bribe in the 12 months preceding the survey. The Police, Customs and the Judiciary were the three institutions where the most bribes were paid; also the 77% of the Iraqi respondents perceive that corruption had increased over the past three years, while only 4% estimated that it had decreased.⁷⁹ Afterwards, the 2013 GCB represents for the respondents twelve major institutions, from the media or the police, to political parties or the judicial system where to be selected as the most corrupt institution in the country. Among the twelve institutions, political parties in Iraq were seen to be the most corrupt, with 47% rating them as either fairly corrupt or extremely corrupt.⁸⁰ On the other hand, the users of public services were also to be vulnerable for paying bribes when coming into friction with public officials, just as land services 39%, the police 35%, registry and permit services 27%, and the judiciary 22%.⁸¹

Thus, according the abovementioned statistics and studies, Iraq does not hold a fair reputation of corruption. The Iraqi level of corruption has been set at the bottom of countries. The country has been consistently identified among the worst corrupt country who suffers from heavy spoiled disease of poor public administration, weak capacity to issue anti-corruption efforts, dishonest behaviours by political parties.

2.3.2 Corruption in Kurdistan Compared to Corruption in Iraq

Kurdistan is regarded as having different corruption levels than the rest parts of Iraq, because the characteristics of corruption in Kurdistan may has developed differently than in the rest of Iraq, due to the fact that the region has been independently governed itself in several ways. The Kurdistan National Assembly was established in 1992,⁸² since then the laws, decisions, regulations and instructions issued by the central government until 9/4/2003, were not enforceable in this Region unless approved by the Kurdistan Parliament.⁸³ In 2005, the Iraqi constitution formally recognises the semi-autonomous status of the KRI and the region has been exercised the legislative and executive authority in many areas, including allocating the Regional budget, police and security, education and health policies, natural resource management and infrastructural development.⁸⁴

Thus, a 2013 study by the United Nations Office on Drugs and Crime (UNODC) shows the difference between corruption in Kurdistan and corruption in other parts of Iraq because the study separately analyses corruption in Iraq and in Kurdistan.⁸⁵ According to this study during 2011, 29.3% of citizens reported paying bribes in Baghdad, and the average in the other provinces is 10.2% of citizens. However, the percentage in Kurdistan was very different, in 2011 as only 3.7% of citizens in Kurdistan reported paying bribes.⁸⁶ Thus, it is possible that Kurdistan has a more effective system against corruption than any other part of the country.

⁷⁷ 'Corruption Perceptions Index – Overview' (TI) <<https://www.transparency.org/cpi2015>> 25 January 2016.

⁷⁸ Sofia Wickberg, 'How-to Guide For Corruption Assessment Tools' (U4 Expert Answer, TI, February 2013) <<http://www.u4.no/publications/how-to-guide-for-corruption-assessment-tools/>> 25 January 2016.

⁷⁹ 'Global Corruption barometer' (TI) <<http://www.transparency.org/gcb201011/results>> 25 January 2016.

⁸⁰ 'Global Corruption barometer' (TI) <<http://www.transparency.org/gcb2013/results>> 27 January 2016.

⁸¹ Ibid.

⁸² Department of Foreign Relations (n 22).

⁸³ MENAFATF, 'Anti-Money Laundering and Combating the Financing of Terrorism' (Iraq, 28 November 2012) <http://www.menafatf.org/images/UploadFiles/Final_Iraq_MER_En_31_12.pdf> accessed 25 January 2016. (Mutual Evaluation Report).

⁸⁴ *ibid.* See also, The Constitution of the Republic of Iraq of 2005, art 117.

⁸⁵ UNODC, 'Corruption and Integrity Challenges in the Public Sector of Iraq: An Evidence-Based Study' (January 2013) 5 <http://www.unodc.org/documents/publications/2013_Report_on_Corruption_and_Integrity_Iraq.pdf> 28 January 2016. (UNODC Corruption Challenge in Iraq).

⁸⁶ *ibid.*

A further studies by the U4 on the corruption in Kurdistan and Iraq, declares that the level of corruption in Kurdistan is lower than the rest parts of Iraq. The 2014 study reported that Kurdistan has experienced different corruption dynamics from the rest of Iraq.⁸⁷ It emphasizes that Iraq has been experiencing enormous amount of corruption increasingly, since the Iraq's new cabinet, after the abolishing the former Iraqi regime of Saddam Al Husain.⁸⁸ The study also, displays a difference between the both the Iraqi government and Kurdish government in providing their public service. For instant, the Iraqi officials in Baghdad have spent US\$ 27 billion in the electricity sector since 2003, supply only increased by 1.000 Megawatts. To offer a term of comparison, Kurdistan increased its generation capacity by 2.000 Megawatts with only US\$ 1 billion investment.⁸⁹ Later on, the 2015 study by U4, cited;

" Levels of corruption in the Kurdistan Region of Iraq, while lower than in Iraq as a whole, are relatively high compared to other countries in the region."⁹⁰

Thence, according to studies and reports, Kurdistan may has a lower level of corruption than the other provinces in Iraq, such as Baghdad which was informed to have nearly seven times bigger than Kurdistan, based on the UN statistics in 2011. However, the corruption in Kurdistan still exists and imposes a serious threat on the region.

2.4 Conclusion

Even though the amount of corruption recorded in Kurdistan is less than in any other part in Iraq, corruption still exists in KRI, and it causes a serious threat to the Kurdish society. The previous discussions show the region has recorded a number cases of corruption which could be categorised to grand and political corruption, lack of transparency in public administration, corruption in recruitment process, nepotism and clientalism, embezzlement, abuse of power, bribery in both public and private sectors and corruption caused by TNCs who operate in the region.

The region also may hold a superior reputation than the other section of Iraq, in respect to human rights violations. However, reports from states and non-governmental organisation clarify that KRI still need to enhance their attitudes to protect human rights, the rule of law, freedom of assembly, freedom of expression and the protection of journalists.

The two political parties PUK and KDP, due to their substantial role in the history of the KRI and the development of the current political system, have been using the power to their benefits. News from U4 and different national mass media confirm that the region suffers from high level of political and grand corruption, which created the risk on the expansion of nepotism and clientelism in KRI, based on political party affiliation.

Additionally, ensuring a transparent managing process in the oil and gas sector remains a challenge for KRI. High officials and senior civil servant of KRG have been accused several times in several unlawful acts, just bribery, nepotism and untransparent procurement process and oil revenue management.

3. The Global Harmonisation of Anti-corruption

3.1 Introduction

Corruption has become a worldwide concern. It does not stay within a national or a state border. This phenomenon has been exiting among humanity through the history. At international level a significant number of efforts have been made to stand against corruption and find solutions to eliminate this disease. The UN and other continental union, such as the AU and the OECD have come with some legal standards of anti-corruption

⁸⁷ Agator (n 13).

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ Pring (n 26).

measures. These standards attempt to create mutual legal systems and policies between states members for the purpose of fighting corruption.

The previous chapters of this study illustrate the negative impacts of corruption that have affected our lives and violated basic human rights such as the rights to food, water and health care. They also highlighted the most prevalent types of corruption in KRI. However, recognizing corruption is only one part of the solution; the other part is finding ways to tackle the problem of corruption. Hence, the following sections attempt to set out certain policies and solutions found in international legal frameworks against corruption.

This chapter aims to present some solutions for bribery and corruption inside the territory of a state or region, in accordance with international legal frameworks and conventions. For this purpose, this chapter will mainly focus on the UNCAC, because Iraq is one of the countries that ratified this convention and Kurdistan region is therefore also bound by the UNCAC.⁹¹

First, this chapter discusses the emergence of international legal frameworks against corruption. Second, it examines the UNCAC and the measures that this Convention requires from States Parties. Finally, the main features of the AU Convention and the OECD Convention are compared with the UNCAC in order to evaluate the UNCAC's effectiveness at fighting corruption. Finally, a conclusion and some possible outcomes are presented.

3.2 The Need of Conventions against Corruption.

At a global level, corruption has become a major concern of states and societies. In the last few decades, a significant number of anti-corruption efforts were made to address international legal uniform standards between states, including the most common and famous conventions, just as, the United Nations Convention against Corruption (UNCAC), the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention, and the African Union (AU) Convention on Preventing and Combating Corruption(AUCPCC).

The current global environment needed some joint standards of anti-corruption policy and law, in order to respond to the external factors that stimulate the expansion of corruption overseas, and create mutual legal standards between states. The economic system that has shaped the current form of globalization in the past decades requires further scrutiny for governments to protect their system from bribery and corruption.⁹² The growth of international trade and the vast expansion of international business transactions emerges many status where the payment of bribes maybe highly beneficial to the firms who pay them by giving them access to profitable contracts over other competitors.⁹³ A great number of bribes have been paid to public officials by large corporations in hosted countries, in order to get a foreign contract, an access to market or a reduction in tax.⁹⁴ It has been reported that the bribes paid abroad by French companies in 1994 is FF10 billion; the bribe paid abroad by German companies in 1993 is \$3 billion.⁹⁵ Further, the World Bank estimates that more than 1 trillion is paid in bribes every year.⁹⁶

Corruption also attacks the fundamental rights of human at all societies and all levels. It does not stay within a

⁹¹ 'UNCAC Signature and Ratification Status as of 2 April 2014' (UNODC) <<https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>> accessed 1 February 2016.

⁹² 'Prosecuting Grand Corruption as an International Crime' (GOPAC, November 2013) <http://gopacnetwork.org/Docs/DiscussionPaper_ProsecutingGrandCorruption_EN.pdf> accessed 1 February.

⁹³ Vito Tanzi, 'Corruption Around the World: Cases, Consequences, Scope and Curses' (1998) International Monetary Fund (IMF) Working Paper WP/98/63, <<https://www.imf.org/external/pubs/ft/wp/wp9863.pdf>> 'Corruption Around the World (Tanzi Corruption Around the World) 7 .

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Prosecuting Grand Corruption (n 92).

territory or a state which become a global phenomenon. It imposes a threat to the protection of human rights and the rule of law. International organizations and UN have shown a great concern about the effects of corruption and released a number of statements acknowledging the negative impact of corruption causing human rights violations. For example, the Secretary-General of the United Nations states that corruption can kill when corrupt officials allow medicines to be tampered with or they accept bribes that enable terrorist acts.⁹⁷ In addition, TI states that corruption could also go to the root of human rights violations where corrupt government officials violate the basic rights of their citizens and increase poverty by abusing their power for their own private gain.⁹⁸ In 2013, TI release a report to examines how corruption features in people's lives around the world.⁹⁹ The report shows that 27% of people around the world reported that they had paid a bribe in the previous 12 months to one of the eight services asked about. In other words, corruption directly impacted more than one in four people in the countries surveyed around the world.¹⁰⁰

Thus, the matter of corruption is no longer the concern of a territory or a state. It required a global reaction against eliminate corruption. The UNCAC in its preamble states; "Corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential".¹⁰¹

At international level, states have been unified to create some international legal mechanism to fight corruption more effectively and prosecute the perpetrator of the illicit wealth. In the past few decades, several conventions of anti-corruption came into force, which is the most well-known are the UNCAC, AU Convention Against Corruption and OECD Anti-bribery Convention.

3.3 The United Nations Convention Against Corruption

Adopted by the UN General Assembly in October 2003, the UNCAC was the first international anti-corruption treaty.¹⁰² It was first opened for signature during a signing conference in Merida, Mexico, in December 2003. Currently, there are 171 parties and 140 signatories to the UNCAC, including Iraq, which signed the Convention on 17 May 2008.¹⁰³ This ratification also bound KRI to the UNCAC.

The UNCAC is a legally binding, universal anti-corruption instrument that requires each State Party to take the necessary legislative and administrative measures, in accordance with fundamental principles of its domestic law, to implement its obligations under the Convention.¹⁰⁴ States Parties to the UNCAC must undertake appropriate actions aimed at enhancing criminal justice responses to corruption.¹⁰⁵ In addition, the Convention contains detailed provisions about preventing corruption in both the public and private sectors, preventing the

⁹⁷ Office of the United Nations High Commissioner for Human Rights, 'The Human Rights Case Against Corruption' (informational pamphlet, 2013) <<http://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/HRCASEAGAINSTCORRUPTION.pdf>> 1 February 2016 (OHCHR Pamphlet) 3.

⁹⁸ TI defines corruption as "the abuse of entrusted power for private gain". 'FAQS on Corruption' (TI) <http://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/> accessed 4 August 2014.

⁹⁹ Deborah Hardoon and Finn Heinrich, *Global Corruption Barometer 2013* (Transparency International 2013) 9.

¹⁰⁰ *ibid.*

¹⁰¹ United Nations Convention Against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41, Preamble (UNCAC).

¹⁰² 'UNCAC in a Nutshell' (U4 Anti-Corruption Resource Centre, 2010) <<http://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf>> accessed 16 August 2014. See also, 'Our Work On Conventions' (TI) <http://www.transparency.org/whatwedo/activity/our_work_on_conventions> accessed 2 February 2016.

¹⁰³ *ibid.*

¹⁰⁴ UNCAC (n 101), art 65.

¹⁰⁵ Demostenes Chryssikos, 'The United Nations Convention Against Corruption: An Overview With Special Focus on The Provision Relevant to Criminal Justice Authorities' (UNAFEI) <http://www.unafei.or.jp/english/pdf/RS_No83/No83_19VE_Demostenes1.pdf> accessed 2 February 2016.

application of corrupt policies and practices, and establishing bodies to fight corruption.¹⁰⁶

The aims of the UNCAC are as follows:

- A. To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- B. To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- C. To promote integrity, accountability and proper management of public affairs and public property.¹⁰⁷

The structure of the UNCAC has five main pillars: prevention, criminalization and law enforcement measures, international cooperation, asset recovery, technical assistance and information exchange.¹⁰⁸ Each pillar is addressed by Chapters that outline the most important principles and core arguments of the UNCAC. The major requirements of the UNCAC from the governments of the countries that they join to achieve at least the following:

- The adaptation of measures which include the organization of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties; a merit-based civil service, including clear conflict of interest regimes, effective access to public information, auditing and other standards for private companies; the involvement of non-governmental and community-based organizations, as well as other elements of civil society; and raising public awareness of corruption and what can be done about it.
- The criminalisation of certain offences just as, bribery, embezzlement, abuse of functions, illicit enrichment, concealment, money laundering, trading in influence and obstruction of justice.¹⁰⁹ Furthermore, the establishment for jurisdiction to prosecute the seizing, freezing and confiscation of proceeds or other property; to protect witnesses, experts and victims and cooperating persons; and to address other matters relating to investigations and prosecutions.¹¹⁰
- UNCAC signatories are bound to cooperate with one another in every aspect of standing against corruption. This concerns prevention, extradition of offenders, mutual legal assistance and cooperation in respect to investigations and other law enforcement activities.¹¹¹
- Mutual legal assistance among the signatories.¹¹² The principle of asset recovery in the UNCAC obligates States Parties to aid each other in the investigation and prosecution of offences described in the Convention. For example, in the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it.¹¹³
- The development or improvement for specific items like training programmes aimed at preventing and combating corruption, and contains provisions about material and human resources, research,

¹⁰⁶ 'United Nations Convention Against Corruption' (Europa Summaries of EU Legislation) <http://europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/l33300_en.htm> accessed 2 February 2016.

¹⁰⁷ UNCAC (n 11), art 1. *See also*, Ophelie Brunelle-Quraishi, 'Assessing The Relevancy and Efficacy of The United Nations Convention Against Corruption: A Comparative Analysis' [2011] Notre Dame J Intl & Comparative L 101; Colin Nicholls QC, Timothy Daniel, Ian Bacarese and John Hatchard, *Corruption and Misuse of Public Office* (OUP 2011) 390.

¹⁰⁸ 'UNODC's Action Against Corruption and Economic Crime' (UNODC) <<http://www.unodc.org/unodc/en/corruption/>> accessed 3 February 2016.

¹⁰⁹ Dimitri Vlassis, 'The United Nations Convention Against Corruption Overview of its Contents and Future Action' [2011] UNAFEI 118.

¹¹⁰ *ibid.*

¹¹¹ Simeon Obidario, *Transnational Corruption and Corporations: Regulating Bribery Through Corporate Liability* (Ashgate Publishing 2013).

¹¹² UNCAC Highlights (n 101).

¹¹³ *ibid.*

and information sharing.¹¹⁴ States should consider proving aid one another, in order to fight corruption.¹¹⁵

Mainly, the UN convention could be divided into two dimensions; the external dimension of the UNCAC and the internal dimension of the UNCAC. The latter refers to the chapters about prevention and criminalization establishes standards to fight corruption inside the territories of States Parties and suggests policies aimed at standing against corruption at national and local level. The other UNCAC Chapters discussed above, namely, asset recovery, international cooperation, and technical assistance and information exchange between countries are related to the international dimension of the UNCAC; in those Chapters, the UNCAC describes mechanisms to aid cooperation between States Parties in fighting against corruption outside their own territories.

The UNCAC is described as the most significant international legal framework against corruption.¹¹⁶ The convention is very detailed and contains a various policies for eliminating corruption. The UNCAC attempts to create global anti-corruption standards and obligations both inside and outside the territory of States Parties. With 8 Chapters and 71 Articles, the UNCAC obliges States Parties to implement a wide and detailed range of anti-corruption measures.¹¹⁷ TI also describes the UNCAC as the most comprehensive of all the anti-corruption conventions that covers almost every aspect of corruption.¹¹⁸ A further resource by the Research and Technological Development of the European Union suggests, the UNCAC is the most powerful anti-corruption normative framework which marked a new era in the history of fight against international corruption, that in a short term, when the implementation of the convention reaches its standard, it will strengthen governance systems, accountability and public integrity.¹¹⁹

Part of why the UNCAC is significant is that the Convention is concentrated, organized and detailed. For example, Chapter III outlines various corrupt activities that must be criminalized under domestic law, such as a considerable number of the acts of corruption, including the three types of bribery: bribery of national officials, bribery of international officials and bribery in private sectors. However, a drawback of the UNCAC is that the Convention did not clearly recognize nepotism as a corrupt activity. Instead, some of the UNCAC's explanations about abuse of function,¹²⁰ which involves abusing your function or position for your or another person's advantage, might be considered to cover nepotism in occasions. For example, it might be considered an abuse of function if a director of a governmental institution uses his position to employ one of his relatives, but this type of nepotism is not always attached with the cases of abuse of function.

Another drawback of the UNCAC, which is also it is the critic that pointed by a number of scholars, is that the convention does not hold a clear comprehensive definition for corruption.¹²¹ Instead, the UNCAC defines certain acts of corruption and requires from member states to adopt legislative measures against them.

¹¹⁴ 'UNCAC in a Nutshell' (U4 Anti-Corruption Resource Centre, 2010) <<http://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf>> accessed 4 February 2016.

¹¹⁵ *ibid.*

¹¹⁶ Alice de Jonge, *Transnational Corporations and International Law: Accountability in the Global Business Environment* (Edward Elgar Publishing 2011).

¹¹⁷ TI, 'UN Convention Against Corruption (UNCAC) – Summary' (Multatqa) <<http://www.multatqa.org/pdfs/UNCACSummary.pdf>> accessed 4 February 2016.

¹¹⁸ Gillian Dell and Marie Terracol, 'Using the UN Convention against Corruption to advance anti-corruption efforts: A guide' (Transparency International and the UNCAC Coalition, January 2014) <<https://www.unodc.org/documents/NGO/uncac-advance-anti-corruption-efforts-guide-en.pdf>> accessed 4 February 2016 (9).

¹¹⁹ Aram Khaghaghordyan, 'International Anti-corruption Normative Framework: the State of the Art' (2014) Herti School of Governance Research Paper Research Paper <http://anticorpp.eu/wp-content/uploads/2014/12/D1.1_Part3_International-Anti-corruption-Normative-Framework.pdf> accessed 10 January 2016.

¹²⁰ UNCAC (n 101) art 19.

¹²¹ UNCAC in a Nutshell (n 114). *See also*, Dell and Terracol (n 118) 8.

Although, the lack of this definition by UNCAC, may refer to several purpose. First, states may do not agree on a single uniform definition for corruption.¹²² Second, is to leave space for future for including future forms of corruption.¹²³ Third and the final, is due to the complex expansion of corruption in the societies that corruption, nowadays, goes to the root of the many aspects of our daily life and this makes corruption hard to define, detect, select and put it in one border of definition.

Although, the UNCAC may not be a perfect tool to fight corruption, the convention is very detailed and it covers both internal and international policies to fight corruption. The convention attempts to fill the gaps of national domestic laws and strengthen the role of civil societies and anti-corruption bodies. It also endeavours to create an international standards and uniform among the worldwide states for their governance systems, accountability and public integrity.

3.4 A Comparative Analysis between The UNCAC and Other Conventions Against Corruption and Bribery

The UNCAC, the AU Convention and the OECD Convention are currently the most prominent conventions aimed at fighting corruption and bribery around the world.

The AUCPCC was adopted by the African Union on 11 July 2003, and it came into force on 5 August 2006.¹²⁴ The Convention, among 53 state members to African union, has 43 signatories and 27 ratified states.¹²⁵

The AUCPCC shares many features of the UNCAC. First, the AU Convention is similar to the UN convention in that both require member states to undertake preventative measures, criminalization of corruption and cooperation with the international community.¹²⁶ Both conventions are aimed at promoting and strengthening the development of mechanisms and policies that would prevent, detect and punish corruption.¹²⁷ Furthermore, the AUCPCC is also similar to the UNCAC in that both have two dimensions, namely, an international dimension and an internal dimension. The international dimension requires States Parties to cooperate with each other; for example, to support the tracing, freezing, seizure and confiscation of the proceeds of corruption across state borders.¹²⁸ The internal dimension obligates member states to criminalize such corrupt actions as bribery, embezzlement, illicit enrichment and money laundering, in accordance with the applicable convention. Also, member states must protect victims of corruption, and establish, maintain and strengthen independent national anti-corruption authorities.

One difference between the AUCPCC and the UNCAC is that the AU Convention is less detailed than the UN convention. The UNCAC consists of 71 Articles, while the AUCPCC has 28 Articles in total.¹²⁹ In addition, some parts of the UNCAC are more detailed than the AUCPCC. For example, Chapter III of the UNCAC requires that states establish criminal penalties for various corrupt activities. Such activities include bribing foreign public officials, bribery in private sectors, concealment, and obstruction of justice, while the AUCPCC does not require member states to recognize those activities as criminal offences.

The other prominent anti-corruption convention is the OECD Convention (also known as the OECD Convention

¹²² Khaghaghordyan (n 119).

¹²³ Ibid

¹²⁴ 'The African Union Convention on Preventing and Combating Corruption' (convention summary, TI Archive Site) <http://archive.transparency.org/global_priorities/international_conventions/conventions_instruments/au_convention> accessed 6 February 2016.

¹²⁵ *ibid.*

¹²⁶ Brian P Loughman and Richard A Sibery, *Bribery and Corruption: Navigating the Global Risks* (John Wiley & Sons 2012) 39.

¹²⁷ *ibid.*

¹²⁸ African Union Convention on Preventing and Combating Corruption (adopted 11 July 2003, entered into force 5 August 2006) 43 ILM 5, arts 18, 19 (AU Convention).

on Combating Bribery of Foreign Public Officials in International Business Transactions).¹³⁰ It was signed on 17 December 1997, and it came into effect on 15 February 1999.¹³¹ Currently, the OECD Convention has 41 signatories.¹³² All States Parties to the OECD Convention must ensure that their national parliaments approve the Convention and pass legislation necessary for its ratification and implementation into their domestic law.¹³³

Similar to the UNCAC, the OECD Convention sets legally binding principles for the criminalization of bribing foreign public officials¹³⁴ in international business transactions,¹³⁵ and outlines related measures for a host¹³⁶ to be able to make such criminalization effective.¹³⁷ One difference between the UNCAC and the OECD Convention is that the OECD Convention is the only international anti-corruption instrument that concentrates on the 'supply side' of the bribery transaction.¹³⁸ The OECD Convention obligates States Parties to combat the supply of bribes made by their citizens to foreign public officials, such as those in a host country, in order to limit unfair competition in transnational business transactions and support development.¹³⁹ In other words, the goal of this mechanism is to protect the free market and avoid manipulation by TNCs.

The OECD Convention differs from other anti-corruption conventions in two other ways. First, the OECD Convention focuses on only certain forms of corruption, namely, bribery in international transactions and money laundering.¹⁴⁰ Second, the OECD Convention, unlike the UNCAC and the AU Convention on Preventing and Combating Corruption, does not provide sanction against 'passive bribery'.¹⁴¹ In contrast, the OECD Convention only addresses 'active bribery'.¹⁴²

Despite certain differences from other anti-corruption conventions, the OECD Convention is nevertheless a powerful mechanism when it comes to prosecuting international bribe payers such TNCs. In addition, the OECD Convention, unlike the UNCAC and the AUCPCC, requires that member states establish territorial jurisdiction to prosecute perpetrators of the offences recognized in the Convention.¹⁴³ The principle of territorial jurisdiction means that regardless of citizenship, the member state has authority to prosecute any individual or entity that

¹²⁹ UNCAC (n 101); AU Convention (n 38).

¹³⁰ 'OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions' (OECD) <<http://www.oecd.org/corruption/oecdantibriberyconvention.htm>> accessed 6 February 2016 (OECD Convention Summary).

¹³¹ 'OECD Anti-Bribery Convention: Entry into Force of the Convention' (OECD) <<http://www.oecd.org/daf/anti-bribery/anti>>

¹³² *ibid.*

¹³³ *ibid.*

¹³⁴ "foreign public official, means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation". OECD Anti-Bribery Convention (adopted 17 December 1997, entered into force 15 February 1999) 37 ILM 1, arts 1, 4 (OECD Convention).

¹³⁵ "An international business transaction is any type of deal between parties from at least two different countries. These transactions include sales, leases, licenses, and investments; the parties to international business deals include individuals, small and large multinational corporations, and even countries". Kenneth C. Randall, 'A New Paradigm for International Business Transactions' (1993) 71 Wash. U. L. Q. 599, 599.

¹³⁶ 'Host' refers to a state that's hosting the operations of TNCs via international business transactions.

¹³⁷ UNCAC (n 101) art 16. *See also*, OECD Convention Summary (n 130).

¹³⁸ *ibid.*

¹³⁹ Nicola Ehlermann-Cache, 'The Impact of the OECD Anti-Bribery Convention' (OECD) <<http://www.oecd.org/mena/investment/39997682.pdf>> accessed 7 February 2016.

¹⁴⁰ OECD Anti-Bribery Convention (adopted 17 December 1997, entered into force 15 February 1999) 37 ILM 1, arts 3, 7 (OECD Convention).

¹⁴¹ 'Passive bribery' is the offence committed by an official who receives a bribe. 'Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: and Related Documents' (OECD Publication) 14 <http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf> accessed 8 February 2016.

¹⁴² 'Active bribery' is the offence committed by a person who promises or gives a bribe. *ibid.*, 14.

¹⁴³ ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, 'The Criminalisation of Bribery in Asia and the Pacific: Frameworks and Practices in 28 Jurisdictions' (OECD 2011) 41.

engages in bribery.¹⁴⁴

Overall, the anti-corruption conventions discussed above appear to be good anti-corruption instruments. However, the UNCAC appears to be the most developed and most detailed convention in this field, because it has more chapters than the two other conventions, and it also holds the most famous features of the two other conventions.

3.5 Conclusion

The UNCAC is a significant anti-corruption convention. It includes a significant number of measures and policies for a member state to use in the fight against domestic corruption, and it also provides for mutual legal assistance and cooperation among states to aid each other in curbing corruption. The policies aimed at fighting domestic corruption are found in two of the main pillars of the UNCAC. The first such pillar is prevention, and the other pillar is criminalization. The UNCAC Chapters that address these two pillars include effective recommendations and requirements for member states to apply in their regions, and these recommendations and requirements are widely considered to be international norms in fighting corruption.

When compared to the AUCPCC and the OECD Convention, the UNCAC seems to be the most developed international legal framework in the fight against corruption. The UN Convention includes almost every aspect of the other conventions, and it sometimes even goes into further detail or provides additional obligations. For example, both the UNCAC and the AU Convention require that member states criminalize such actions as bribery, embezzlement, illicit enrichment and money laundering, in accordance with the principles of the convention. However, the UNCAC also obligates states to establish various other criminal offences related to corruption, including bribery of foreign public officials, bribery in private sectors, concealment, and obstruction of justice, while the AUCPCC does not require that member states recognize these actions as criminal offences. Moreover, the OECD Convention, unlike the UNCAC, only deals with active bribery of international public officials, and does not include sanctions against passive bribery.

4. Anti-Corruption Law and Policies in Kurdistan

4.1 Introduction

In the last two decades, fighting corruption has become a serious matter. Many attempts have been made at the international level to stand against corruption and curb bribery through certain mechanisms and guidelines to establish anti-corruption policies around the world. Such policies must be based on certain standards so that a country can rely on them as effective ways to fight corruption and curb bribery in its public and private sectors. Those standards include prevention, criminalization, international cooperation and mutual legal assistance, which were discussed in the preceding chapter as international legal approaches to fighting corruption.

This chapter seeks to critically discuss the anti-corruption policies and criminalisation in the KRI. Criminal offence in Kurdistan region is found in the amended Iraqi Penal Code, which was passed as Act No. 111 of 1969 and is still in force in Kurdistan. On the other hand, the administrative and legislative policies may include, the establishment of the Office of Governance and Integrity (which is a branch of the KRG) and launching the KRG's Good Governance and Transparency Strategy (Governance Strategy) in July 2009. In addition, certain legal frameworks have been legislated in order to fight corruption in the region. For example, the Law of the Office of Financial Supervision in the Kurdistan Region – Iraq was passed as Act No. 2 of 2008, and the Law of the Public Integrity Authority in the Kurdistan Region – Iraq was passed as Act No. 3 of 2011.

First, this chapter critically discusses the preventative anti-corruption policies and the criminalization of anti-corruption measures in KRI, in accordance with the principles and requirements of the UNCAC, because Iraq is one of the signatories to the UNCAC, and therefore both the Iraqi Federal Government in Baghdad and the KRG

¹⁴⁴ Stuart H Deming, *The Foreign Corrupt Practices Act and the New International Norms* (American Bar Association, 2010) 310

are bound by the UNCAC. Later on, a conclusion is presented about whether the anti-corruption measures in Kurdistan fulfil the international standards of anti-corruption, specifically those standards found in the UNCAC.

4.2 Preventative Measures and policies of Anti-corruption

According to the UNCAC, preventative measures against corruption consist of various measures: effective access to public information, the establishment of anti-corruption bodies, enhanced transparency in public funds and access to public information. encouraging and promoting the involvement of non-governmental organizations to raise public awareness of corruption and what can be done about it, and recruitment based on merit.¹⁴⁵ The following sections present a critical discussion of certain examples of administrative and legislative anti-corruption strategies in Kurdistan.

4.2.1 KRGs' Practice Against Corruption and Enhancing Transparency

Article 5 of the UNCAC requires from state members to take effective measures and anti corruption policies that promote the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.¹⁴⁶ Similar principles can be found in the following policies by KRG. On 12 July 2009, the Governance Strategy was launched by KRG Prime Minister Nechirvan Barzani.¹⁴⁷ In his words, the aim of this strategy is 'to improve international and domestic confidence and increase investment and job development, while helping to raise living standards in [Kurdistan].'¹⁴⁸ Furthermore, "the Governance Strategy is based on four principles concerning the elimination of corruption: (1) the rule of law, (2) public service is a public trust, (3) governmental functions are to be open and transparent and (4) public funds must always be used for their intended purposes".¹⁴⁹

The Governance Strategy was launched in order to adopt some key elements of the UNCAC,¹⁵⁰ The anti-corruption policies in the Governance Strategy are detailed and cover many UNCAC principles, such as creating an office of governance and integrity, providing governance and integrity training, establishing codes of conduct for public officials, increasing transparency in government operations (including procurement and public finances), preventing corruption in the private sector, strengthening civil society, and implementing robust audit and enforcement mechanisms.¹⁵¹

Another example that shows the commitment of the KRG to its Governance Strategy is that after adopting the strategy, the KRG established certain bodies concerned with upholding integrity and organized inspections to observe the working systems within its governmental institutions and fight corruption. For instance, the Office of Governance and Integrity was established in 2011 for the purpose of 'working towards a more efficient and transparent government to deliver a better quality of public service'.¹⁵² The Directorate of General Inspection at the Ministry of Municipality and Tourism was also established to curb corruption in the institutions related to the ministry and the Directorate of Inspection and Quality Assurance at the Ministry of Higher Education and

¹⁴⁵ 'United Nations Convention Against Corruption: Convention Highlights' (UNODC) <<http://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html>> accessed 15 February 2016 (UNCAC Highlights).

¹⁴⁶ *ibid* art 5.

¹⁴⁷ Nisar Talabany, 'Interview: Good Governance & Transparency' (Invest In Group) <<http://www.investingroup.org/interview/61/>> accessed 15 February 2016.

¹⁴⁸ *ibid*.

¹⁴⁹ Nisar Talabany, 'Kurdistan Launches Anti-Corruption Strategy' (Kurdistan Regional Government, Office of Governance and Integrity) <<http://ogi.krg.org/articles/detail.aspx?Inqnr=12&nr=36317>> accessed 15 February 2016.

¹⁵⁰ 'KRG Supports International Transparency Efforts at Anti-Corruption Global Forum' (Kurdistan Regional Government, 11 N ber2009)<<http://www.krg.org/a/d.aspx?s=02010100&l=12&r=223&a=32382&s=010000>> accessed 15 February 2016.

¹⁵¹ KRG, 'Good Governance and Transparency Strategy' (KRG, 2009) <http://ogi.krg.org/download/documents/ogi/KRG_Good_Governance_and_Transparency_Strategy_2009_English.pdf> accessed 15 February 2016.

¹⁵² 'Mission Statement' (Office of Governance and Integrity) <<http://ogi.krg.org/?Inqnr=12>> accessed 20 August 2014. See also, Mwafaq al-Hamawaendi, 'Kurdish region establishes governance and integrity office' (Al-Shorfa, 4 May 2011) <http://mawtani.al-shorfa.com/en_GB/articles/iii/features/iraqtoday/2011/05/04/feature-05> accessed 15 February 2016.

Scientific Research.¹⁵³

4.2.2 The Establishment of Anti-corruption Bodies within KRG

Article 6 of the UNCAC obligates state parties to institute anti-corruption bodies that carry out their functions effectively and free from any undue influence.¹⁵⁴ Likewise, KRI has taken some significant administrative and legislative steps towards the establishment of the anti-corruption bodies, just as the establishment of authorities for auditing and Integrity.

The Kurdish Parliament enacted the law No. 2 of 2008, which provides for the establishment of an authority in Kurdistan named the Board of Supreme Audit (BSA), and this Board is tasked with protecting public finances by applying the supervision and observation powers found in the provisions of the Act.¹⁵⁵

The Law consists of 25 Articles divided into seven chapters that address the following: the formation of the BSA, the functions of the Board, the recognition of financial offences and the extension or the limitation of the powers given to the Office.¹⁵⁶

The positive aspects of the Law No. 2 of 2008 are first found in the purpose of the law. The Act establishes an independent Board that is directly linked to the Kurdish general assembly, the Parliament of Kurdistan.¹⁵⁷ The BSA attempts to ensure the legality of accounting and administration in accordance with the laws and regulations of Kurdistan,¹⁵⁸ cooperation with the administration,¹⁵⁹ and the revealing of any corrupt activities found during inspection.¹⁶⁰

However, the law does not give authority to the BSA of KRI to supervise and observe finances and corruption in the private sector, meaning that domestic companies and TNCs are not subject to the Boards' jurisdiction. The Board only has the power to deal with the national public sector. In contrast, the UNCAC in chapter II, as discussed in the earlier chapters, requires that states take measures to prevent corruption involving the private sector, and those measures include the establishment of supervisory entities.¹⁶¹

Furthermore, a 2013 report by UNDP alleges that the BSA of Iraqi Kurdistan is underdeveloped, is underperforming and lacks a clear and coherent vision for its future development, and the absence of a Chairman and Deputy Chairman for more than a year means that the BSA is essentially inactive. The report criticizes the auditing methods of the Board and high lights a number of defectives within the legal framework of the board. For example, the act no 2 of 2008 is unclear about defining the power of the board regarding performing its duty and following up the result of their reports.¹⁶² Moreover, the law does not give the full independency for the board, in issues where related to full control over the budget, management of its human resources including initial recruitment, training, promotion, salaries and retirement policies.¹⁶³ Thus, this may restrict the power of BSA and put limitation on the freedom of the Auditing works.

¹⁵³ Formation of the Ministry of Municipality & Tourism in Kurdistan (KRG) <<http://momt-krq.org/pdf-files/MSKurdish.png>> accessed 21 August 2014 (translated by the author). ' Ministry of Higher Education and Scientific Research' <<http://mhe-krq.org/?q=ar/node/47>> accessed 15 February 2016.

¹⁵⁴ UNCAC (n 101) art 6.

¹⁵⁵ The Office of Financial Supervision in Kurdistan Act No.2 of 2008 (Kurdistan Region—Iraq), arts 2, 4 (Office of Financial Supervision Act).

¹⁵⁶ *ibid* chs 1–6.

¹⁵⁷ *ibid* arts 2, 3.

¹⁵⁸ *ibid* art 8(1).

¹⁵⁹ *ibid* art 8(3).

¹⁶⁰ *ibid* art 8(6).

¹⁶¹ United Nations Convention Against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41, art 12 (UNCAC).

¹⁶² Bill Burnett and Frank Grogan, 'Needs Assessment Kurdistan Region Board of Supreme Audit Report' (UNDP, 18 April 2013) <<http://www.undp.org/content/dam/undp/documents/projects/IRQ/Needs%20Assessment%20Kurdistan%20Region%20Board%20of%20Supreme%20Audit%20Report%202013.pdf>> accessed 17 February 2016.

¹⁶³ *ibid*.

Later on, the Law of the Public Authority of Integrity in the Kurdistan Region – Iraq, which was passed by the President of Kurdistan as Act No. 3 of 2011 and entered into force via publication in the official newspaper of Kurdistan, *Mojkurdistan*, in its issue No. 129 dated 30 June 2011.¹⁶⁴

The Public Authority of Integrity in Kurdistan Region (PAIKR) aims to establish an effective mechanism for corroborating the principle of the rule of law, combat the phenomenon of corruption and promote the principle of transparency, take the necessary legal action to prevent corruption, adopt objective criteria for the evaluation of job performance and eradication of bureaucracy, establish and evaluate job conduct, and bear responsibility during the performance of public service in accordance with the laws and procedures incriminating corruption.¹⁶⁵

One significance of the Law of the No. 3 of 2011 is found in Article 5(7), which sets out restrictions in respect to illicit enrichment, which is also reflects article . By virtue of this Article, employees in Kurdistan, as well as their wives and any minor children, must disclose their financial interests, including detailed data on any real estate and movable properties, financial income, bank balances, shares, bonds and moral rights within KRI and abroad.¹⁶⁶ Mass media shows that as a result of Article 5, the President of Kurdistan has disclosed his fortune,¹⁶⁷ and the Minister of Health from the recently established government cabinet has also disclosed his fortune to the Integrity Commission in Kurdistan.¹⁶⁸

However, the PAIKR seems to lack some developed characteristics. A report by the United Nations Development Programme criticizes the provisions of Article 2 and shed the light on several defects.¹⁶⁹ The report states that Article 2 does not properly attribute independence to the PAIKR, because the provision does not provide for the administrative and financial independence of the commission and the provision was not clear and decisive in establishing an independent budget for the PAIKR.¹⁷⁰

Therefore, from the efforts that I have covered on the establishment of anti-corruption bodies in KRI, it has become clear that the Kurdish elite has taken some useful attempts to fight corruption and observe the financial systems within KRGs', via creating the anti-corruption bodies, just as the establishment of the BSA and the PAIKR. However, there are several concerns that may limit the effectiveness of these anti-corruption bodies in KRI. For instant, the BSA cannot exercise their power on Private Sectors, due to the inconvenience in the Act No.2 of 2008, later on, it seems that both BSA and PAIKR do not hold independence characteristics, in regard to control over their budget, management of its human resources including initial recruitment.

4.2.3 Recruitment in public Sectors and Civil Servant in Kurdistan

Article 7 and article 8 of the UNCAC requires from state parties their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit, and also to address the code of conduct for their civil servant.¹⁷¹

Notably, the recruitment process in the public sectors at the KRG is rarely has been conducted through merit selection processes. More than a half of civil servant of the KRG alleged that they have not been recruited

¹⁶⁴ UN Development Programme, 'Analytical Study: The Law of the Public Authority of Integrity (Kurdistan Region–Iraq)' <<http://www.undp.org/content/dam/undp/documents/projects/IRQ/KR%20Commission%20of%20Integrity%20%20Study.pdf>>. accessed 17 February 2016.

¹⁶⁵ The Public Integrity Authority Act No. 3 of 2011 (Kurdistan Region – Iraq), art 3 (Public Integrity Authority Act).

¹⁶⁶ *ibid* art 5 (7).

¹⁶⁷ Shwan Barzinji, 'Barzani Reveal His Wealth' (BasNews, 22 May 2014) <<http://basnews.com/en/News/Details/Barzani-reveals-his-wealth/21107>> accessed 17 February 2016.

¹⁶⁸ 'The First Minister of The Eighth Cabinet Has Filed the Form of Revealing Fortunes' (Awena News) <<http://www.awene.com/article/2014/06/30/33644>> accessed 17 February 2016 (translated by the author).

¹⁶⁹ UN Development Programme, 'Analytical Study: The Law of the Public Authority of Integrity (Kurdistan Region–Iraq)' <<http://www.undp.org/content/dam/undp/documents/projects/IRQ/KR%20Commission%20of%20Integrity%20%20Study.pdf>>. accessed 17 February 2016

¹⁷⁰ *ibid*.

¹⁷¹ UNCAC (n 101) art 7, 8.

through a substantive recruitment procedure.¹⁷² Chapter 3 indicates a significant number of civil servants in KRI have been recruited upon their political affiliation or their personal connections or relative who are officials in government offices. Never the less, in recent years, the KRG has witnessed some reforms, in respect to the recruitment mode in their public institutions.

Post 2011, KRG has been adopting a better way for recruitment in civil servant, which the recruitment were based on the level of education and achievements in the CVs and interview. The Prime Minister, Barham Salih, in 2011 has implemented new system for recruitment at KRGs' institutions.¹⁷³ The system were based on competition that vacancies need to be published in the national media and the applicants should fill an application form for the vacancy they choose, which, later on, the applications go through a competition process.¹⁷⁴ Kawa Jabary alleges,¹⁷⁵ more than 70,000 new employees were recruited in the KRG during 2011 and 2012, they claimed that they heard about the positions in the public media then they applied for the position. They had to send in CVs and later they were called for interview.¹⁷⁶

On the other hand, the KRG in 2011, issued the Code of Conduct System for Employees of the KRG (Code of Conduct). Nisar Talabany¹⁷⁷ states that the Code of Conduct shows the KRG's commitment to governance, integrity and transparency; she also states that the KRG is working on the process of reviewing the Code of Conduct to make it more user friendly and easier to implement.¹⁷⁸

One advantage of the Code of Conduct is that it applies to even the highest employees of the KRG, such as the Prime Minister, his Deputy, Ministers and all others holding similar rank; in the event of violations, they will be held responsible according to the Code of Conduct and applicable law.¹⁷⁹ Moreover, the Code of Conduct requires that public employees obey the principles of transparency in public duty, minimizing administrative bureaucracy, public service being solely for public interest, observing the highest degree of integrity and ensuring that their official duties are free from conflicts of interest.¹⁸⁰

In sum, high public officials at the KRG have shown several veracious attempts to enhance the administration system within public sectors, in regard to recruitment process and the conduct of the civil servants. The KRG still may lack an efficient mechanism for recruitment in public sectors, though the previous discussions indicate adequate endeavours by high public officials to enhance the process of recruitments that rely on competition and merit.

4.2.4 Public Reporting and The Access to Information in Kurdistan

The provisions of the Law of the Right to Access to Information fulfils the principles of Article 10 of the UNCAC , which requires that members take necessary measures in order to enhance transparency in their public administrations, including publishing information about, and decisions of, their governmental organizations.¹⁸¹ Accordingly, the Law of the Right to Access to Information in Kurdistan was passed as Act No. 11 of 2013, and it

¹⁷² Pring (n 26).

¹⁷³ 'Initiative' (Barham Salih Official Website) <http://www.barhamsalih.net/elections> accessed 18 February 2016.

¹⁷⁴ *ibid.*

¹⁷⁵ Kawa Jabary, 'The Politics of Low Capacity: The Case of Kurdistan' (MA Political Science thesis, Simon Fraser University 2010) 46.

¹⁷⁶ *ibid.*

¹⁷⁷ Nisar Talabany is a Senior Advisor to the KRG Prime Minister. She is also the Head of the Office of Governance and Integrity. 'Nisar Talabany' (Brookings Doha Center) <<http://www.brookings.edu/about/centers/doha/nisar-talabany>> accessed 18 February 2016.

¹⁷⁸ Sofia Barbarani, 'Advisor to PM: We are Trying to Embed a Culture of Integrity' (BasNews, 20 February 2014) <<http://basnews.com/en/News/Details/Advisor-to-PM--we-are-trying-to-embed-a-culture-of-integrity/13302>> accessed 18 February 2016.

¹⁷⁹ 'Code of Conduct for employees of the Kurdistan Regional Government / Iraq' (KRG, Council of Ministers, 2011) art IV(1) <http://ogj.krg.org/uploads/documents/2012/KRG_Code_of_Conduct_May_2011_English_2012_05_07_h9m38s27.pdf> accessed 18 February 2016.

¹⁸⁰ *ibid* art III.

¹⁸¹ UNCAC (n 101) art 10.

aims to spread the principles of transparency in the region, as well as to establish mechanisms for people to exercise their right to receive correct information.¹⁸²

This law represents a significant step towards spreading the principles of transparency in Kurdistan, and it outlines numerous rights regarding access to information in both the public and private sectors.¹⁸³ The Act requires that public officials provide specific information on their websites, including information about finances, projects, services and the number of claims for information that have been received, as well as their solutions and responses to such claims.¹⁸⁴

Moreover, the Law of the Right to Access to Information provides that every person in Kurdistan has the right to make a claim for information, if the requested information is at the governmental organization at which he or she made the claim; the organization cannot reject the demand for information unless the demand relates to national security or if the revealing of the information would lead to an obstruction of legal process.¹⁸⁵

Another important aspect of the Law of the Right to Access to Information is that it establishes methods for the Independent Board for Human Rights¹⁸⁶ to apply certain provisions of the Act.¹⁸⁷ The Board can issue directives to governmental organizations in case of any obstruction in applying the Act, and it can receive and process claims.¹⁸⁸ The Board also cooperates with governmental organizations and citizens in order to guide them into the right direction.¹⁸⁹

4.3 Criminalization measures

The UNCAC requires that States Parties criminalize certain corrupt activities under their domestic law, including activities such as bribery, embezzlement, abuse of function, illicit enrichment, obstruction of justice and concealment. The following paragraphs critically discuss whether such criminalization has occurred under Kurdish law in accordance with international law. Almost every criminal offence in Kurdistan is found in the amended Iraqi Penal Code, which was passed as Act No. 111 of 1969 and is still in force in Kurdistan.¹⁹⁰

4.3.1 Bribery

In KRI, the criminalization of bribery is found in the amended Iraqi Penal Code and in the amended State & Public Sector Employee Disciplinary Act, which was passed as Act No.14 of 1991. These two acts penalize the perpetrators of bribery in various ways, such by as imprisonment, fine, salary deduction, demotion, suspension and dismissal.¹⁹¹

In accordance with Chapter III of the UNCAC, the offence of bribery covers a wide range of activities, including both active bribery (the offering or giving of a bribe to a public official) and passive bribery (the request for or the acceptance of a good or any monetary amount as a bribe in exchange for an official act or refraining from

¹⁸² The Right to Access to Information in Kurdistan Act No. 11 of 2013 (Kurdistan Region–Iraq) (Access to Information Act) (translated by the author).

¹⁸³ Organization in both the private and public sectors must respond to claims for information within ten days of the day the claim was received. Access to Information Act (n 38) art 7(5).

¹⁸⁴ Access to Information Act (n 182) art 6.

¹⁸⁵ *ibid* arts 5, 14(1), 14(2).

¹⁸⁶ The Independent Board for Human Rights was established by Act No. 4 of 2010 in Kurdistan. The Board aims to protect and raise the public awareness of human rights in Kurdistan. The Independent Board for Human Rights in Kurdistan Act No.4 of 2010, art 3.

¹⁸⁷ Access to Information Act (n 182) art 3.

¹⁸⁸ *ibid* art 3(3).

¹⁸⁹ *ibid* arts 3(2), 3(5).

¹⁹⁰ The laws, decisions, regulations and instructions issued by the Federal Authority prior to the withdrawal of the governmental directorates from the Kurdistan Region on 23 October 1991 are directly enforceable in Kurdistan. Middle East & North Africa Financial Action Task Force (MENAFATF), 'Mutual Evolution Report: Anti-Money Laundering and Combating the Financing of Terrorism' (Iraq, 28 November 2012) 26.

¹⁹¹ The Amended Penal Code Act No. 111 of 1969 (Iraq), art 307 (Iraq Penal Code). *See also*, The Amended State & Public Sector Employee Disciplinary Act No. 14 of 1991 (Iraq), art 8 (Employee Discipline Act).

acting in the exercise of an official duty).¹⁹² In addition, the State & Public Sector Employee Disciplinary Act requires that employees of public officials not accept rewards, presents or any other goods from an applicant, contractor or any other person in connection with their official duties.¹⁹³

The Iraqi Penal Code has two significant ways of addressing the offence of bribery. First, the Code does not provide sanctions against only the bribe payer or the bribe receiver – it goes further than that. The Code penalizes the middleman¹⁹⁴ as well, and each of the bribe payer, the bribe receiver and the middleman are subject to the sanctions equally.¹⁹⁵ Second, the law provides for an immunity policy for the bribe payers and the middleman, in order to encourage the disclosing of bribery and aid the prosecution of the alleged crime. Article 311 states:

A person who offers a bribe as well as the intermediary is exempt from the penalty if he undertakes to notify the legal or administrative authorities or confesses to the offence before an action is brought. It is considered a mitigating excuse if such notification or confession occurs after an action is brought but before the end of the proceedings.¹⁹⁶

However, the anti-bribery laws in Kurdistan region differ from some aspects of the UNCAC. Neither the Iraqi Penal Code nor the State & Public Sector Employee Disciplinary Act imposes sanctions against the bribery of foreign public officials or bribery in the private sector, even though criminalization of these acts is required by the UNCAC.¹⁹⁷ Both Kurdish laws only deal with the bribery of national public officials. The bribe receiver under the Iraqi Penal Code must work as a national public official or be carrying out a duty that in some way relates to a public official.¹⁹⁸ The State & Public Sector Employee Disciplinary Act prohibits only the employees of national public officials from receiving bribes.¹⁹⁹

4.3.2 Trading in Influence

Trading Influence, From a legal point of view, means a person selling his/her influence over the decision making process to benefit a third party.²⁰⁰ The difference between Trading influence & Bribery is that the former is a tri-lateral relation, while bribery is a bi-lateral relation. In Trading in influence cases the recipient of the bribe is not in position to make decisions but can possibly influence such persons.²⁰¹ This can lead to a situation where the person making the decision does not even know that he or she is being a part of a corrupt act.²⁰²

At present, Iraq within the Kurdistan region does not have legislation in place to address active and passive trading in influence, according to the language of article 18 of the UNCAC.²⁰³ The UN convention requires from member states to criminalise the offence of trading influence when committed by public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.²⁰⁴

4.3.3 Embezzlement

¹⁹² Iraq Penal Code (n 20) arts 310, 307.

¹⁹³ Employee Discipline Act (n 191) art 5(11).

¹⁹⁴ A middleman is defined under the Amended Iraqi Penal Code as the 'person who mediates.' A middleman is the person who aids the negotiation between a bribe payer and a bribe receiver. Faghri Abdulrazaq, *The Interpretation of The Penal Code* (Zaman 1996) 76 (translated by the author).

¹⁹⁵ Iraq Penal Code (n 20) art 3010. *See also*, African Union Convention on Preventing and Combating Corruption (adopted 11 July 2003, entered into force 5 August 2006) 43 ILM 5, art 4(1)(a), 4(1)(b); UNCAC (n 1) art 15(a).

¹⁹⁶ Iraq Penal Code (n 20) art 3011.

¹⁹⁷ UNCAC (n 101), arts 16, 21.

¹⁹⁸ Abdulrazaq (n 194) 71.

¹⁹⁹ Employee Discipline Act (n 191) art 5(11).

²⁰⁰ 'Criminal Law Convention on Corruption' (Wrold LII, 27 January 1999) <<http://www.worldlii.org/int/other/COETSER/1999/1.html>> accessed 24 February 2016.

²⁰¹ *ibid*

²⁰² *ibid*

²⁰³ UN Developing Programme (Implementation Review Group), 'Conference of the States Parties to the United Nations Convention against Corruption' (19 November 2012) CAC/COSP/IRG/I/2/1/Add.10.

²⁰⁴ UNCAC (n 101), arts 18.

The criminalization of embezzlement in Kurdistan is also found in the Iraqi Penal Code and the State & Public Sector Employee Disciplinary Act.

The Iraqi Penal Code penalizes embezzlement in Articles 315 to 321. Under these provisions, any employee of a public official will go to prison if he or she commits embezzlement or concealment of money or goods.²⁰⁵ Moreover, the State & Public Sector Employee Disciplinary Act obligates the official employee to preserve state resources and make the best use of them.²⁰⁶

There are common features between international anti-corruption laws and the law in Kurdistan regarding embezzlement. Similar to the UNCAC, Kurdish law requires that embezzlement by public officials be considered a criminal offence.²⁰⁷ The Iraqi Penal Code covers embezzlement by employees of public officials or a person who has official government duties.²⁰⁸

One difference between the law in Kurdistan and international anti-corruption laws is that unlike the international laws, Kurdish law does not penalize a person who commits a corruption crime while working in the private sector. The UNCAC requires that State Parties establish a criminal offence in respect to embezzlement even when the crime is committed by a person who works in the private sector.²⁰⁹

4.3.2 Abuse of Function

The Iraqi Penal Code and the State & Public Sector Employee Disciplinary Act are currently the most effective Kurdish legal instruments against the abuse of function.²¹⁰

In accordance with UNCAC, both the Iraqi Penal Code and the State & Public Sector Employee Disciplinary Act criminalize the abuse of function committed only by public officials. The UNCAC does not require that States Parties criminalize abuse of function offences in the private sector, as the Convention only emphasizes the deterrence of abuse of function by public officials.²¹¹

The State & Public Sector Employee Disciplinary Act provides more detail than the Iraqi Penal Code regarding the abuse of function. For example, Article 5 of the State & Public Sector Employee Disciplinary Act prohibits employees of public officials from participating in auctions and public sales that are connected to his or her function, and also prevents an employee from using the materials, machinery and means of transportation belonging to public offices for personal purposes.²¹² The Act provides sanctions against perpetrators of both these crimes, as stated in Article 8.²¹³

4.3.5 Illicit Enrichment

The UNCAC requires that States Parties recognize illicit enrichment as a criminal offence in their jurisdictions.²¹⁴ Similarly, a definition of the crime of illicit enrichment, and the penalties for committing it, are included in the provisions of the Law of the Public Integrity Authority in KRI.²¹⁵ The Act considers an enrichment to be illicit when it is earned through the abuse of public office or through the violation of a legal provision.²¹⁶ Furthermore, the Act provides that if any increase in wealth appears after acquiring a public office or a public

²⁰⁵ Iraq Penal Code (n 20) art 3015.

²⁰⁶ Employee Discipline Act (n 191) art 4(6).

²⁰⁷ UNCAC (n 101) art 17.

²⁰⁸ Abdulrazaq (n 194) 84.

²⁰⁹ UNCAC (n 101) art 22.

²¹⁰ Iraq Penal Code (n 20) arts 329, 332, 334. *See also*, The Sale and Lease of State Property Act No. 32 of 1986 (Iraq), art 4; Employee Discipline Act (n 91) art 4(9).

²¹¹ UNCAC (n 27) art 19.

²¹² Employee Discipline Act (n 191) arts 5(4), 5(5).

²¹³ *ibid* art 8.

²¹⁴ UNCAC (n 101) art 20.

²¹⁵ Public Integrity Authority Act (n 165)

²¹⁶ *ibid* art 14(1)

mandate, such increase is deemed to be illicit enrichment.²¹⁷

Other provisions of the Law of the Public Integrity Authority give permission to the courts to investigate cases of illicit enrichment and impose sanctions if such cases are proven.²¹⁸ Such sanctions may include imprisonment and recovery of the amount of illicit enrichment, and in the case of a perpetrator's death, the court will recover the value of the illicit enrichment from the person who has benefited from his or her wealth, such as a child or a wife.²¹⁹

In the event of mutual perpetrators of the crime of illicit enrichment, the Law of the Public Integrity Authority contains a clever policy for encouraging reporting of the crime to the Commission of Public Integrity or to court representatives. For example, a person who commits the crime of illicit enrichment will be pardoned from the penalty of imprisonment if he or she reports the crime to the authorities or if he or she collaborates during the investigation of the act.²²⁰

4.3.6 Money Laundering

Iraq has criminalized money laundering under its Anti-Money Laundering Act, which was passed as Act No. 93 of 2004. The purposes of the Act are to govern financial bodies that are involved with money laundering, financing crime and financing terrorism, and to outline the vigilance required of financial institutions in regard to financial transactions. The Act makes it a crime to launder money, finance crime, finance terrorism, and improperly structure transactions.²²¹

However, the Anti-Money Laundering Act is not enforced in KRI.²²² The Kurdish Parliament has not approved the law, and therefore the provisions of the Act are not in force in Kurdistan region.²²³ The law against money laundering that is currently in force in Kurdistan is Article 3(5) of the Anti-Terrorism Act, which was passed as Act No. 3 of 2006. Under this Article, a person who cooperates with or sends financial support to any terrorist group or terrorist organization will be sentenced to life imprisonment.²²⁴

Hence, the reorganization of money laundering offences has not been established in Kurdistan. Although Article 3(5) of the Anti-Terrorism Act criminalizes the action of transferring money to terrorist groups, this Article addresses only money laundering crimes related to terrorist activities, and the types of money laundering crimes are broader. For example, the UNCAC requires that States Parties establish criminal offences in respect of the conversion or transfer of property, knowing that such property is the proceeds of crime, and the concealment or disguise of the true nature, source, location, disposition, movement or ownership of property or rights with respect to property.²²⁵

4.3.7 Protection of Witnesses and Whistleblowers

Chapter III of the UNCAC calls upon each State Party to take appropriate measures, in accordance with its domestic legal system, for the protection of witnesses, experts and victims against retaliation or intimidation for their testimony. Such measures may include ensuring the physical and psychological protection of witnesses, as well as establishing evidentiary rules allowing a witness to testify in a manner that ensures his or her safety.²²⁶

²¹⁷ *ibid* art 14(2).

²¹⁸ *ibid* art 16.

²¹⁹ *ibid* art 17.

²²⁰ *ibid* art 18.

²²¹ The Anti-Money Laundering Act No. 93 of 2004 (Iraq), art 1.

²²² MENAFATF (n 83) 27.

²²³ *ibid*.

²²⁴ The Anti-Terrorism Act No. 3 of 2006 (Kurdistan Region—Iraq), art 3(5).

²²⁵ UNCAC (n 101) art 23(1)(a).

²²⁶ UNCAC (n 101) arts 16, 21. See also Marie Cheene, 'Good Practice in Witness Protection Legislation' (TI, 8 November 2012)

The Canada's Witness Protection Programme Act of 1996 is one of the examples of the protection of witness and whistleblowers, under the requirements of the UNCAC.²²⁷ The concept of "witness" is defined as a person and/or their families who are at risk and need protection as a result of his/her testimonies or participation in an inquiry, investigation or prosecution of an offence.²²⁸ Protection measures can include relocation, accommodation and change of identity as well as counselling and financial support in order to ensure the security of the protected witness or to facilitate his/her re-establishment.²²⁹

However, Kurdistan region lacks sufficient protection for witnesses and whistleblowers. The legal provision for protection of whistleblowers and witness in KRI does not fulfil the criteria of the UNCAC.²³⁰ The Law of the Iraqi Supreme Criminal Court, which was passed as Act No.10 of 2005, is the only legislation that provides protection to witnesses in Kurdistan and Iraq.²³¹ Though, the protection only applies to proceedings of the Iraqi Supreme Criminal Court. According to Article 21 of the Act, the Supreme Criminal Court must provide protection to witnesses and victims that seek to participate in a trial, and their identities must not be revealed.²³²

4.4 Conclusion

This study recognizes that the anti-corruption policies and preventive measures in the Kurdish region is still in the process of development. Kurdistan has done well in establishing anti-corruption policies in accordance with the UNCAC. The legislative and administrative measures were taken to fight corruption in the region show significant steps by Kurdish leaders. Examples of these measures include the KRG's Governance Strategy, code of conduct and recruitment process based on merit, as well as the establishment of anti-corruption bodies, such as BSA and PAIKR. These measures confirm a good start for Kurdistan's fight against corruption. Although they may lack some aspects of developing characteristics, such as their control over budget and BSA do not exercise their power on private sectors in KRI.

Kurdistan has also criminalized certain types of bribery. However, in some ways Kurdish law does not fulfil the requirements of the UNCAC, because there is a gap between the criminalization of corruption in Kurdistan and the criminalization required by the UNCAC. The UNCAC requires that States Parties criminalize bribery when it is committed with foreign public officials or in the private sector. However, the law in KRI only deals with the bribery of national public officials and organizations. Moreover, the law in KIR also shows a significant gap when it comes to the areas of protecting witnesses, criminalizing money laundering and trading influence. The Iraqi Parliament passed an act in 2004 aimed at anti-money laundering, this statute will not be in force in Kurdistan region until the Kurdish Parliament approves it.

²²⁷ Marie Chêne and Transparency International, 'Good Practice in Witness Protection Legislation' (TI, 8 November 2012) <<http://www.sia.eurosocial-ii.eu/files/docs/1386926957-102%20Good%20practice%20in%20witness%20protection%20legislation.pdf>>

²²⁸ *ibid.*

²²⁹ *ibid.*

²³⁰ Agator (n 13).

²³¹ Nasir Khalifa, 'Legal Awareness / Protection for the Witness in Iraqi Law' *Al Mutmar* (Baghdad, 14 March 1993).

²³² The Iraqi Supreme Criminal Court Act No. 10 of 2005 (Iraq), art 21.

5. Conclusion and Outcome

This paper has examined the KRG's attitude of corruption and anti-corruption policies in the region, in order to illustrate an understanding of the natures of the corruption in KRI, as separate body from other parts of Iraq. There, to reach a conclusion for the purpose of this study firstly, I reviewed a considerable number of studies and reports, which have been written by international and local institutions, on corruption in KRI. Later on, this study assessed the anti-corruption measures in KRI in accordance international legal standards of corruption just the UNCAC.

Firstly, some of the statistics and reports suggest that the level of corruption in KRI lower than the other sections of Iraq, though corruption still exists in the region, and this is a major concern. According to the CPI, Iraq as a whole is considered to be as one of the most corrupt countries in the world. The high level of corruption within the KRG's institutions, low performance of its civil servants, and political parties' intervention into public institutions impose a series threat to the region. The media in Kurdistan also confirm the prevalence of corruption, as news reports show that Kurdistan suffers from serious corruption, such as the abuse of power, nepotism, embezzlement, grand political corruption and corruption in the private sector (such as corrupt actions by oil companies). Meanwhile, the existence of a number of TNCs also threatens to increase corruption in the region, and Kurdistan needs to establish effective anti-corruption policies against this phenomenon.

On the other side, this dissertation has discussed the anti-corruption policies and laws in Kurdistan with regard to two pillars found in international anti-corruption law. The first pillar is prevention, and the second pillar is criminalization. As part of the prevention measures, KRI has done well establishing anti-corruption organizations, including the KRG's Governance Strategy, code of conduct, recruitment process based on fair completion, legalising access to public information and the establishment of anti-corruption bodies. However, the preventative measures in Kurdistan have some deficiencies in certain areas. For example, both of BSA and PAIKR have no authority to supervise private companies in the region.

Furthermore, the efforts aimed at the criminalization of corruption in KRI also do not fulfil the criteria and principles of the UNCAC. The anti-bribery laws in Kurdistan address only the bribery of national public officials; these laws do not criminalize bribery that is committed with foreign public officials or bribery in the private sector. Moreover, the Kurdish law shows a significant gap in the areas and does not provide a legal definition for certain offences, just as trading in influence, anti-money laundering and providing protection for witnesses and victims of corruption.

In summation, it seems that corruption in Kurdistan region is less series than in the rest of Iraq. However, KRI still suffers from numerous types of corruption, and this problem requires serious consideration by its authorities. Although the Kurdish elite have taken some good measures and created policies against corruption, those attempts still have weaknesses, especially in the private sector; those measures and policies are also not in accordance with the principles of the international legal frameworks. Therefore, KRI should consider the suitable implementation of the UNCAC as the best solution to prevent corruption in both the private and public sectors of the region.

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