

# Iraq Judicial System and Grand Corruption Cases The Central Anti-Corruption Criminal Court

Trial Monitoring Programme  
First Report (August 2022-July 2023)



Funded by the European Union  
بتمويل من الاتحاد الأوروبي



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This publication has been prepared within the framework of UNDP's Anti-Corruption and Arbitration Initiatives funded by the European Union. The content of this publication is the sole responsibility of UNDP and does not necessarily reflect the views of the European Union.

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- Penal Code No.111 of 1969 (amended)
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## LIST OF ABBREVIATIONS

GOI	Government of Iraq
KRI	Kurdistan Region of Iraq
SJC	Supreme Judicial Council
UNAMI HRO	United Nations Assistance Mission for Iraq - Human Rights Office
EU	European Union
UNDP	United Nations Development Programme
UN SCR	United Nations Security Council Resolution
UNCAC	United Nations Convention Against Corruption
CACC	Central Anti-Corruption Criminal Court
CC	Criminal Court
IMC	Integrity Misdemeanour Court
PPO	Public Prosecution Office
COI	Federal Commission of Integrity
FBSA	Federal Bureau of Supreme Audit
CSOs	Civil Society Organizations
AML	Anti-Money Laundering
IQD	Iraqi Dinar
ACAI	Anti-Corruption and Arbitration Initiatives
TM Programme	Trial Monitoring Programme
Monitored Cases	Cases attended by the TM Team commenced in August 2022
Reviewed Cases	Cases reviewed by the TM Team decided by the CACC in the period Oct 2022-July 2023.

## EXECUTIVE SUMMARY

### 1. BACKGROUND

Decades of conflict in Iraq have spawned profound humanitarian, security, and economic challenges. Despite security gains, citizens grapple with rising unemployment, inadequate public services, inflation, and pervasive corruption. The 2019 protests demanded improved opportunities, services, and robust anti-corruption measures. Public skepticism about the effectiveness of the Judiciary and anti-corruption bodies persists, fueled by perceived impunity among high-ranking figures. To address limited access and data gaps in corruption cases, United Nations Development Programme (UNDP) and the United Nations Assistance Mission's Human Rights Office (UNAMI-HRO) jointly operate a Trial Monitoring (TM) programme under the UNDP Anti-Corruption and Arbitration Initiatives' umbrella and in cooperation with the Supreme Judicial Council (SJC) in Iraq.

### 2. TRIAL MONITORING PROGRAMME

The TM programme focuses, *exclusively, on high-profile corruption cases* tried before the *Central Anti-Corruption Criminal Court (CACC)* as the primary judicial mechanism for reviewing cases of Grand Corruption across the region of Federal Iraq. Through comparison with the provision of the United Nation's Convention on Anti-Corruption (UNCAC) – which Iraq ratified in 2008 - the TM programme aims to provide insights into Iraq's broader judicial landscape, highlight strengths and challenges, and provide recommendations which can enhance the efficacy of the CACC as well as transparency and trust in Iraq's anti-corruption measures.

This report outlines the findings of the programme in the first year of monitoring. Utilizing a Trial Monitoring methodology,<sup>1</sup> this report monitors 184 grand corruption cases in the calendar year between August 2022 and July 2023 - including 150 underneath the CACC alongside 29 corruption-related cases from adjacent courts, while the remaining 5 cases were monitored at the pre-trial investigation stage. Additionally, TM Officers reviewed 173 casefiles exclusively from former CACC verdicts pre-August 2022. Through an analysis of these cases, quantitative findings highlighted areas for further investigation. The TM team also held a series of policy dialogue roundtables in 2022 and 2023, with representatives from the Supreme Judicial Council, the Public Prosecutors Office, the Bar Association, the Women Judge's Association, and numerous civil society groups. Additionally, the TM team held one-to-one meetings with the Judicial Oversight Authority, the head of the CACC, and the First Investigative Judges in Karkh and Rusafa. The findings from these activities guided the later qualitative analysis of case proceedings. All analysis is situated within a wider account of the judicial framework in which grand corruption cases are received. Ultimately, this report aims to offer actionable recommendations to fortify the anti-corruption system in general and strengthen investigation and adjudication of grand corruption offenses in particular.

### 3. KEY FINDINGS

- **Corruption Crimes and Applicable Provisions:** Articles 331 and 340 of the Penal Code, particularly addressing the abuse of office authority, alongside Order 160 (Bribery acts), dominate the corruption crimes landscape for cases tried before the CACC - constituting 70% of charges raised in monitored and reviewed cases. This indicates the minimal use of other corruption crimes as defined under the Commission of Integrity and Illicit Gains Act (hereafter "COI Act"). Notably, other corruption offenses outlined under UNCAC, such as concealing crimes or trading in influence, did not represent heavily in the cases monitored and reviewed. Instead,

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<sup>1</sup> See Chapter 22 of OHCHR | Manual on Human Rights Monitoring (Revised edition). For more detailed information on trial monitoring methodology, as developed by the OSCE, see also: Trial Monitoring: A Reference Manual for Practitioners, Revised edition 2012 | OSCE (both links last accessed 12 April 2022).

these cases feature more regularly in other cases tried under other courts. Additionally, the UNCAC places an emphasis on private sector bribery in a way which is not reflected in the Iraqi legislation – which predominantly targets corruption in the public sector. As there is no bespoke targeting of bribery in the private sector, judicial actors rely upon general provisions against bribery outlined in the Iraqi Penal Code.

- **Identification of Grand Corruption Cases:** Having Specialized Court for grand corruption cases, facilitates monitoring activities. However, out of 29 corruption cases tried before the criminal, and misdemeanor courts in Baghdad, it was noted that 19 cases met the criteria for ‘major corruption’ as per the Judicial Order No. 96, signaling the critical need for greater clarification in determining the threshold for major corruption cases.
- **Investigation Challenges:** a substantial 42 monitored cases (including 21 in trial and 21 in pre-trial investigation stages), coupled with a significant 69 casefiles from older verdicts, were redirected for re-investigation by either the CACC or the Court of Cassation. This underscores a demand to fortify investigative capabilities at the different levels for more thorough and effective proceedings. Furthermore, judges and prosecutors have raised concerns regarding the challenges in evidence collection and collaboration between government institutions.
- **Sectoral Strategies:** Corruption patterns across government sectors reveal a notable concentration within the governmental, financial, and industrial sectors. Findings indicate that most corruption cases concern those operating within the Governorate Council and Office, followed by the Ministry of Finance and Industry. This emphasizes the importance of both general and sector-specific strategies and tailored interventions.
- **Sentencing Policy:** The data indicated that the penalties issued in many cases are not proportional to the severity of the crimes committed. In some cases, the awarded penalties were reduced, or their implementation was suspended or completely abolished - particularly for cases involving specific mitigating factors as outlined in legislation. This includes humanitarian factors such as elderly age and first-time offenders. Additionally, as for fines, the sums outlined in the legislation were small and not commensurate with the damage resulting from the crime. The differences in the penalties applied were contingent on the circumstances of each case and defendant (according to article 182 of the Criminal Procedures Act 1971).
- **Amnesty Regime:** The data indicates that in 10 monitored cases there was use of a general amnesty. This raises concerns about the ability of existing laws to function as a deterrent if an amnesty is used to cancel the penalty instead of the courts referring to it as a mitigating factor.
- **Jurisdictional Implications:** Despite money laundering being constituted as corruption as per the COI Act, its adjudication is placed under the jurisdiction of a specialized anti-money laundering court. However, this project observed six money laundering cases being deliberated by the CACC. This suggests the need to revisit jurisdictional boundaries when specified criteria for grand corruption are met.
- **Claim of Damages and Recovery of Assets:** Declarations of 'No Damages' potentially weaken criminal cases as they limit the government's ability to retrieve funds. In 130 cases where a legal representative of the affected institution was present during trial sessions, claims for damages were made in only 53 cases. Additionally, of the 184 monitored cases, 94 cases produced a guilty verdict for the defendant. Of these guilty verdicts, in only 44 cases were claims for damages pursued by the affected institution (less than half).
- **Defense Counsel:** While legal aid is constitutionally guaranteed, findings reveal that in 32 monitored cases, court-appointed lawyers were assigned on the day of trial, potentially impacting the quality of their legal representation.
- **Torture Allegations:** In 16 cases referred to the CACC (12 monitored cases, 4 reviewed cases), allegations of torture during initial interrogation stages were raised by defendants. Though in many cases medical examinations ordered by the CACC did not confirm the allegations, stronger measures to guarantee protection during pre-judicial investigation are recommended.
- **Civil Society Impact:** Over the 12-month period of monitoring trials, the complete absence of civil society organizations was observed. This prompted an investigation into the reasons for

this with the organizations and a consideration of identifying barriers to access to trials, which are considered public under the constitution. Civil society participation is an integral part of promoting transparency, trust, and ensuring judicial accountability for corruption.

#### 4. RECOMMENDATIONS

##### To the Government of Iraq:

- **Penal Code:** Implement legislative reform in line with the United Nations Convention against Corruption. Specifically, amend the law to define and detail corruption offenses comprehensively and expand them to explicitly include trading in influence and bribery in the private sector, instead of current scattered provisions in different laws. In the long term, consider adopting a new Penal Code that includes all amendments and additions, with a dedicated chapter detailing corruption offenses in their various forms and the appropriate penalty for each.
- **Witness Protection Regime:** Establish a more robust protection regime under the Protection of Whistleblowers, Witnesses, Informants, Experts, and Victims Act (2016), by providing the required government with financial technical assistance.
- **Defense Lawyers and Legal Representation:** Reform the legal aid system to ensure full and effective representation, with clear criteria, ethical standards, and reasonable remuneration for defense lawyers.
- **General Amnesty Law:** Explicitly exclude corruption cases from the General Amnesty Act. Instead, repaying stolen funds should be considered as a mitigating factor, not a reason for acquittal.
- **Sector-based Reform:** Implement a comprehensive framework for integrating general and sector-specific strategies. This framework should promote robust internal controls, regular audits, and transparency in fund management across sectors. Additionally, the framework should seek to strengthen oversight in high-corruption sectors, and focus on establishing transparent, objective, and competitive criteria for public procurement.
- **'Claim of Damages' Declaration:** Review, by the legislature and executive branch, the authority granted to heads of institutions to withdraw claims for compensation for damages. This can be done while ensuring the professional and accounting independence of legal representatives of institutions to avoid indirect influence within institutions.

##### To the Supreme Judicial Council and Bar Association:

- **Evidence Rules and Procedures:** To address evidence collection challenges, undertake greater coordination between stakeholders within the judicial system. Clear legal strategies should be set out for actors involved in adjudication, investigation, and prosecution. In addition, the implementation of the Financial Crimes Guidelines, which was previously prepared in cooperation with concerned government stakeholders and with the participation of experts in the field, should be activated.<sup>2</sup> It should also be developed through practical experience, in addition to relying on the testimonies of experts, informants, and whistleblowers and ensuring their protection.
- **Grand Corruption Cases' Criteria:** Clarify criteria for identifying 'Grand corruption' cases. Introduce an addendum to Judicial Order 96 specifying clear thresholds for the level of officials and the amount of wasted assets. Consider the inclusion of grand money laundering crimes within the jurisdiction of the CACC.

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<sup>2</sup> Handbook of Financial Investigation Procedures) Baghdad, January 2023; Prepared with the participation of representatives of: The Supreme Judicial Council; The Judicial Council in the Kurdistan Region of Iraq; The Ministry of Justice in the Kurdistan Region of Iraq; The Public Prosecutor's Office; The Federal Integrity Commission; The Regional Integrity Commission; The Federal and Regional Financial Oversight Bureau; The Federal Ministry of Interior; The Regional Intelligence Service; The Anti-Money Laundering and Terrorist Financing Office in the Central Bank of Iraq; Experts from the United Nations Development Program. See: <https://www.undp.org/iraq/publications/story-hope?search=investigation+manule>



- **Capacity Building:** Improve judicial performance through the provision of strategic technical support – including through the introduction of advanced technologies, as well as providing case studies and digital forensics training for relevant personnel and prosecutors.
- **Judicial Oversight Authority:** Strengthen and activate the powers of the Judicial Oversight Board and increase and train its staff to enable it to supervise performance, efficiency, and effectiveness within the judiciary, including corruption cases.

#### **To Civil Society Organizations and International Community:**

- **Engagement of CSOs:** Support the establishment of a network for legal reform advocacy and public awareness campaigns for CSOs. Collaborate nationally and internationally to build CSOs' capacity for investigating, monitoring, and reporting on corruption cases, and assist the competent authorities through professional investigative journalism.
- **International Technical Assistance:** Strengthen international cooperation mechanisms - including the establishment of a joint information centre for stakeholders in the framework of recovering looted and smuggled assets, in line with the spirit of the United Nations Convention against Corruption and in response to the country's urgent needs.

## **PART I – PROGRAMME’S GENERAL FRAMEWORK AND METHODOLOGY**

### **1. Introduction**

Iraqi governments, both past and present, have consistently declared their commitment to combating corruption. Anti-corruption measures, coupled with administrative and economic reforms, have held a central position in previous administrations' agendas. Despite these declarations, tangible progress has been modest. The Transparency International Global Corruption Perceptions Index of 2022 ranks Iraq 157<sup>th</sup> out of 180 countries for perceived levels of public sector corruption.<sup>3</sup> Indeed, endemic and systemic corruption – particularly at the higher levels - is considered as the main protest grievance motivating nation-wide protests since 2019.<sup>4</sup>

Iraq has ratified several international anti-corruption agreements - including the United Nations Convention Against Corruption (UNCAC) in 2008 and the Arab Anti-Corruption Convention in 2010. In Kofi Annan's forward for the UNCAC, he writes that "*(The UNCAC) introduces a comprehensive set of standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption.*"<sup>5</sup> State obligations under the Convention apply explicitly to the "*investigation and prosecution of corruption*" (article 3(1)) and, indeed, the Convention sets out clear guidelines for states under its Chapter 3 on Criminalization and Law Enforcement on the development of legal standards and procedures. Furthermore, articles 5(3) and 5(4) obligate state parties to periodically evaluate their legal instruments and collaborate with international organizations in the promotion and development of Convention measures.

Implemented through an agreement between UNDP and UNAMI Human Rights Office (HRO) and UNDP's Anti-Corruption and Arbitration Initiatives (ACAI) project,<sup>6</sup> and in collaboration with the Supreme Judicial Council (SJC), the Trial Monitoring (TM) programme has spanned one calendar year from August 2022 to July 2023. The programme focuses primarily on the Central Anti-Corruption Criminal Court (CACC) as the key judicial mechanism for ensuring accountability for potential cases of corruption and fighting corruption more broadly – as per directives under the UNCAC's Article 5 'preventive anti-corruption policies and practices and Article 11 'Measures relating to the judiciary

<sup>3</sup> See <https://www.transparency.org/en/cpi>.

<sup>4</sup> <https://www.chathamhouse.org/2021/09/iraqis-protest-symptom-embedded-corruption>

<sup>5</sup> UNCAC pg. iii.

<sup>6</sup> ACAI, Support to Justice Initiatives Curbing Corruption and Promoting Commercial Dispute Resolution, is a UNDP project, funded by the EU, commenced in April 2021 and has 5 components, one of which is the TM Programme.

and prosecution services.’ The programme focuses specifically on grand corruption cases due to their significance within Iraq’s political sphere. Grand corruption – as outlined in Iraqi legislation - includes incidents involving either a high monetary threshold, the involvement of high-ranking defendants, or those understood to be of particular public interest.<sup>7</sup> It is a modest attempt to support the judicial efforts towards enhancing justice, transparency, integrity and human rights in Iraq.

Through the daily monitoring of cases, the TM Programme aims to compile empirical data on the review of grand corruption cases across Iraq – encompassing a qualitative analysis of the pre-trial investigative and administrative case stages. The programme will assess the impartiality and efficiency of the CACC against international standards set out by the UNCAC and other legal instruments. It also investigates the judicial system’s general functioning and application of human rights during the review of these cases – including the use of procedural safeguards, as well as potential reprisal cases against whistle-blowers and informants (relevant to UNCAC article 32).

The programme directly supports UNDP’s ACAI objectives, informing UNDP’s proposals for legislative reforms and capacity-building interventions. The ultimate aim of the TM programme is to support the identification of best practices and lessons learned, and lead to the formulation of evidence-based recommendations for the Government of Iraq to promote fair trial rights, support rule of law reform efforts generally, and strengthen the capacity of Iraq’s executive and judicial branches to contribute to the fight against corruption.

This report consists of three parts: Part I introduces the TM Programme and provides an overview of Iraq’s anti-corruption landscape. Part II delves into the legal and institutional framework of entities addressing corruption, and Part III outlines the key quantitative and qualitative findings from monitored and reviewed cases. These findings serve as the foundation for tailored recommendations, addressing the Iraqi government, civil society organizations, and the global community.

## 1.1 Iraqi Successive Governments and Corruption

In the aftermath of the fall of the Ba’athist regime in 2003, corruption has entrenched itself in Iraq’s political order, thriving within a rentier economy where resources meant for public welfare are diverted for personal or party patronage, perpetuating systemic corruption, undermining governance and hindering the nation’s recovery. As Iraq grapples with rejuvenation, the persistence of corruption poses a formidable obstacle, threatening to undo delicate progress and erode hopes for a better future.<sup>8</sup> Iraqi politicians, including those at the highest levels, have recognised corruption as a chronic problem, and express their concerns and committing to fighting it. Various Prime Ministers, including Nouri al-Maliki, Haider al-Abadi, and Mustafa Al-Kadhimi, initiated anti-corruption councils and committees.<sup>9</sup> The current Prime Minister, Mohammed Shi’a Al-Sudani, identifies corruption as the top government priority, emphasizing its detrimental impact on society.<sup>10</sup> In October 2022, as a significant display of transparency,<sup>11</sup> Al-Sudani submitted his financial statement to the Commission of Integrity (COI), the body entrusted with monitoring declarations of

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7 SJC Order 96 (Annex 2).

8 “Elite Capture and Corruption in Iraq: A Case Study of the Oil Sector,” Ali A. Allawi, Carnegie Endowment for International Peace, 2019, the abstract.

9 Ghazwan Rafiq Awaid, ‘The Supreme Council for Combating Corruption: A Future Vision’, Al-Bayan Centre for Planning and Studies, 2019. [www.bayancenter.org/en/wp-content/uploads/2019/03/8989898.pdf](http://www.bayancenter.org/en/wp-content/uploads/2019/03/8989898.pdf)

10 Mohammed Shia Al-Sudani said in his speech in the Council of Representatives in 27 October 2022, [Iraqi Parliament Approves New Government Headed by Mohammed Shia Al-Sudani \(voanews.com\)](https://www.voanews.com/news/iraqi-parliament-approves-new-government-headed-by-mohammed-shia-al-sudani-2022-10-27)

11 [Commission of Integrity: Al-Sudani submits his financial statement » Iraqi News Agency](https://www.iraqnewsagency.com/news/commission-of-integrity-al-sudani-submits-his-financial-statement-2022-10-27)

assets by high-ranking officials, and urged his Cabinet to follow suit within one-weeks' time.<sup>12</sup> Other measures taken by the new government include the replacement of some top officials and establishment of special committees to expedite the anti-corruption process.<sup>13</sup>

However, just days before Al-Sudani assumed office, information emerged on what would later be known as 'the Heist of the Century',<sup>14</sup> marking the most extensive corruption case in the nation's history. Discovered by the Iraqi Tax Authority, a staggering IQD 3.7 trillion (USD 2.5 billion) was uncovered as missing from tax deposits within the state-run Rafidain Bank between September 2021 and August 2022, having been channeled through five unchecked cheques issued to various companies with the approval of high-ranking officials. The Iraqi judiciary confirmed the involvement of five local companies in the theft of these public funds - announcing the summons of numerous government officials from the Ministry of Finance and former representatives.

The Col, Iraq's primary administrative anti-corruption body, revealed that the investigating judge in Baghdad had issued arrest warrants against four former high-ranking officials, including the former Minister of Finance and members of his team. The accused were charged with 'facilitating the seizure and embezzlement of a substantial sum of public funds, and 'orders have been issued to seize their assets, both movable and immovable.'<sup>15</sup> In a significant breakthrough, the Commission managed to recover two portions of the stolen funds, totalling IQD 317,000,535,536.525 (equivalent to USD 242,000,279.62). Amid the distrust of the public, the trial continues before the CACC, and summons to extradite the accused who fled to other countries have been ongoing.<sup>16</sup>

## 1.2 Mandate

The Programme operates within the framework of a MOU established between the UNDP and UNAMI HRO in Iraq on 18 February 2022. This collaboration focuses on the critical task of assessing the Judiciary's effectiveness in handling corruption-related cases across Iraq, through the observation of investigations and trials concerning grand corruption cases. Access to attend investigations and trials was granted to the UNDP/UNAMI HRO TM team by the SJC in May 2022, including full access to verdicts and case files handled by the CACC. The first year of the monitoring programme was successfully implemented with significant collaboration from the Central Anti-Corruption Criminal Court.

## 1.3 Methodology

The TM programme adopts internationally recognized methodologies developed by OHCHR and other international human rights organizations. The framework of the TM Programme adheres to the OHCHR human rights monitoring principles, with staff consulting the OHCHR human rights monitoring manual (chapter 22 on trial monitoring).<sup>17</sup> The objective of the programme is to offer empirical data and evidence-based insights into the investigation and adjudication of grand corruption cases – primarily by the CACC - and gather primary data about judicial administration and the application of human rights during Iraqi legal proceedings. The programme follows a thematic

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<sup>12</sup> Commission of Integrity and Illicit Gains Act as amended in 2019, has the power to investigate and refer officials to the investigative court in case of failure to justify gains.

<sup>13</sup>The immediate replacement of a few senior officials, including the head of Commission of Integrity and Undersecretary of Intelligence Bureau, few days after assumption of office (November 2022).

<sup>14</sup>'Heist of the century': how \$2.5bn was plundered from Iraqi state funds | Iraq | The Guardian

<sup>15</sup> Heist of the century | Iraq Business News ([iraq-businessnews.com](http://iraq-businessnews.com)), 'Heist of the century': how \$2.5bn was plundered from Iraqi state funds | Iraq | The Guardian,

<sup>16</sup> Dodge, T., & Mansour, R. (2021, June 17). Politically sanctioned corruption and barriers to reform in Iraq. Chatham House.

<sup>17</sup> See: [OHCHR | Manual on Human Rights Monitoring](#) (Revised edition). For more detailed information on trial monitoring methodology, as developed by the OSCE, see also: [Trial Monitoring: A Reference Manual for Practitioners](#), Revised edition 2012 | OSCE (both links last accessed 12 April 2022)

monitoring approach and seeks to assess the impartiality, competence, and efficiency of the judicial system through both qualitative and quantitative analyses. The outcomes will directly inform ongoing legislative reform and capacity-building initiatives under UNDP's ACAI project - initiated by UNDP in May 2021.

The original targets for the TM programme were the monitoring of 180 grand corruption trials before the CACC for the period ending December 2023,<sup>18</sup> as well as a select number of related cases before the Criminal Integrity Courts. Additionally, it includes a review of former CACC casefiles - spanning from 2019 to July 2022. As for the type of cases and monitoring priorities, the programme focuses on serious corruption cases – defined as ‘grand corruption’ cases - according to Iraqi legislation. This includes cases with either a high monetary threshold, the involvement of high-ranking defendants, or those understood to be of particular public interest. Where feasible, the programme also includes the monitoring of reprisal cases against whistleblowers and informants.<sup>19</sup>

The first phase of monitoring covers the period between August 2022 and December 2023, and the first annual report covering the 2023 calendar year was being scheduled for public issuance in Q1 2024. The Trial Monitoring team in Baghdad consists of two national officers primarily focusing on monitoring cases in local courts. Additionally, there is one international specialist who leads the programme, supervises the team, oversees the database, and consolidates reports, capturing key findings, and formulating recommendations. In their review, the TM team adhered to the principles of confidentiality, impartiality, non-intervention, objectivity, and informed observation during trial monitoring, and at all times remained guided by the principle of “do no harm”.

This report outlines the key findings of a total of 184 grand corruption cases, monitored before the CACC in the calendar year between August 2022 and July 2023 - including 155 underneath the CACC alongside 29 corruption-related cases from adjacent courts. Additionally, in addition to 173 casefiles reviewed by the TM team, exclusively from former CACC verdicts pre-August 2022. Through an analysis of these cases, quantitative findings highlighted areas for further investigation. The TM team also held a series of policy dialogue roundtables in 2022 and 2023, with representatives from the Supreme Judicial Council, the Public Prosecutors Office, the Bar Association, the Women Judge’s Association, and numerous civil society groups. Additionally, the TM team held one-to-one meetings with the Head of the Judicial Oversight Authority, the head of the CACC, and the First Investigative Judges in Karkh and Rusafa. The findings from these activities guided the later qualitative analysis of case proceedings. All analysis is situated within a wider account of the judicial framework in which grand corruption cases are received.

The Trial Monitoring (TM) Report was formally presented and thoroughly discussed on the 20th of January 2024, engaging senior representatives from the Supreme Judicial Council, including judges presiding over the monitored activities. Their invaluable insights were meticulously integrated to enrich the report's analysis, findings, conclusions, and recommendations, in anticipation of its forthcoming publication as a collaborative effort with the Supreme Judicial Council. Moreover, Roundtable Discussions were convened with the Federal Commission of Integrity on the 7th of February 2024, followed by a session with the Iraqi Bar Association on the 10th of January 2024. These pivotal events fostered deeper involvement from key stakeholders, aligning them closely with the objectives of the Trial Monitoring Programme.

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<sup>18</sup> The competent court established in accordance with SJC Order No 96 (2019) to deal with major corruption cases, which include cases that involve high-level officials and/or large amounts of money as per the Order. Annex 2.

<sup>19</sup> TM Officers only observed one case – with the judge ruling in favour of the defendant, a journalist.

## 1.4 Challenges And Opportunities

Trial Monitoring Officers obtained access to trial hearings and resources – such as casefiles and verdicts; the CACC facilitated the team's attendance at trial sessions without any restrictions, enabling them to review case files and responded to all inquiries through multiple meetings. However, limited access to pre-trial investigative hearings occurred due to the reported difficulty in navigating administrative obstacles arising from confidentiality concerns, legal constraints, and security issues. Pre-trial investigation is a critical factor in shaping trial outcomes and would have provided a more granular analysis of later trial proceedings and the final judgments. Nevertheless, relations with legal actors have strengthened over the course of the TM period - affording TM Officers greater access to the different stages of grand corruption cases. Ultimately, the TM Programme is optimistic about overcoming these limitations and proceeding with the programme's expansion to encompass the entire process cycle – including all elements of investigation, prosecution, adjudication, and asset recovery. Additionally, findings indicate that there is an opportunity to expand the monitoring into alternative jurisdictions and allocate more resources to into some corruption-prone governorates.

## PART II - INSTITUTIONAL AND LEGAL FRAMEWORK FOR PROCESSING GRAND CORRUPTION CASES

### 2.1 Anti-Corruption Architecture

Iraq's engagement in the global fight against corruption is demonstrated by its ratification of the UN Convention Against Corruption (UNCAC) in 2008. This instrument delineates specific guidance for states to address corruption abuses domestically. The following section outlines the national institutional and legal framework that is relevant to the review of grand corruption cases.

### 2.2 Legal Framework

Iraqi anti-corruption efforts employ a range of legislative measures - explicitly recognizing corruption in 51 laws.<sup>20</sup> The legal focus of the TM programme, however, remains primarily on specific laws within Iraq's Judicial System, the central role of the CACC, and a comparison against UNCAC guidance. The following is an outline of relevant domestic Iraqi legal instruments which arise in the adjudication of grand corruption cases.

#### **Penal Code, Law No. 111 (1969) (amended)<sup>21</sup>**

This comprehensive document comprises 506 articles categorized into four sections. These sections encompass (1) general principles, (2) crimes harmful to the public interest, (3) crimes against individuals, and (4) violations. Notably, the Commission of Integrity Act (Law No. 30/2011) specifically addresses corruption-related cases, including theft of state funds, bribery, embezzlement, illegal gain, and misuse of authority by government employees.<sup>22</sup>

The Penal Code addresses various aspects of corruption, including of several offenses listed under Chapter 3 of the UNCAC. However, other listed offenses, such as illicit enrichment, trade in influence, and private sector bribery, are not included under the Penal Code. Instead, these are covered by the Commission of Integrity and Illicit Gain Act (2011). Furthermore, money laundering,

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<sup>20</sup> Hussein Hassan, *The Legal Framework for Preventing and Combating Corruption in the State of Iraq: Analysis and recommendations in the light of international conventions, standards, and experiences*, a study conducted as part of UNDP ACAI Project, 2021.

<sup>21</sup> Penal Code, Law No. 111, 1969 (amendment 2009), see Annex 1.

<sup>22</sup> Articles 328, 329, 330, 331, 334, 335, 336, 338, 340, 341 of the Penal Code.

even if meeting the criteria for grand corruption, is not defined as a corruption crime in the Penal Code and falls outside the jurisdiction of the CACC.

### **Criminal Procedures Code, Law No 23 (1971)<sup>23</sup>**

This legislation, organized into six parts, addresses criminal investigations, trials, and appeals, covering the initiation of cases, investigative procedures, search and seizure protocols, as well as the interplay between criminal and civil proceedings. It guides the interrogation of suspects, witnesses, and parties involved, emphasizing rules, rights, and documentation. The Code also outlines procedures for evidence collection, preservation, and presentation, including of diverse types. Additionally, it establishes protocols for summons issuance, arrest conditions, and safeguards the rights of arrested individuals. The legislation guides hearings, ensuring the rights of defendants, witnesses, and victims, detailing judgments, appeals processes, timelines, and the hierarchy of higher courts. Finally, it elucidates the execution of sentences, covering the enforcement of penalties, fines, and imprisonment.

This Act speaks coherently to many of the procedural components referenced heavily across the UNCAC. However, despite the Act's comprehensiveness, judges and prosecutors highlight serious issues in its implementation. Reported gaps in the ability of investigative authorities to collect evidence (in particular with regards to outdated digital and technical tools to record digital evidence) and detain individuals,<sup>24</sup> weakens cases and leads to a greater number of appeals, prolonged legal battles, and the higher likelihood of miscarriages of justice. These problems impair investigations, increase the burden of proof, compromise credibility, and affect the availability of legal remedies and trial fairness. Promptly addressing these challenges and adhering to legal procedures remains crucial to maintaining case integrity.

### **Commission of Integrity and Illicit Gain Act, Law No 30 (2011)<sup>25</sup>**

This Act serves to empower the Commission of Integrity comprehensively, delineating its functions in preventing and investigating corruption and providing the Commission with the mandate to address major corruption-related crimes. Beyond outlining rules and procedures of the Commission, it defines corruption cases under Article 1(3-A and B), covering theft against state money, bribery, embezzlement, illicit gain, and exceeding authority by government employees per the Penal Code of 1969.<sup>26</sup> Article 1(3-b (2)) broadens the scope of corruption to include the breach of trust by unions, associations receiving state funds, or NGOs with public status. The broadened scope also covers the criminalisation of bribery in the private sector - restricted to acts that are connected to the public sector (with further limitations on coverage). Additionally, although it is a mechanism-specific law, the COI Act expanded the powers of adjudicators to combat illicit enrichment with provisions for stronger and more dissuasive penalties (as per article 20 UNCAC).

Penalties for violations of provisions under the COI Act include:

- One year for non-submission or falsification of asset declarations;
- A minimum of 7 years plus a fine equal to illicit gain for senior officials failing to provide a legitimate reason for the increased assets;
- A minimum of 3 years plus a fine equal to illicit gain fine for employees with proven illegal gains;
- Three months to 6 years imprisonment for asset information disclosure by an employee; and

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<sup>23</sup> Criminal Procedures Act, Law No. 23 (1971 (amendment 2012). Annex 1.

<sup>24</sup> In one case, a defendant was released on bail due to his disability – despite the seriousness of the crime.

<sup>25</sup> Commission of Integrity and Illicit Gain Act, Law No. 30 for 2011 (amended 2019), see Annex 1.

<sup>26</sup> Article 1(3) (a) defines corruption case as a criminal case investigated as a crime of theft against state money, bribery, embezzlement, illicit gain, exceeding authority of the position by government's employees in accordance with articles (328, 329, 330, 331, 334, 335, 336, 338, 340, 341) of the Penal Code of 1969.

- Imprisonment with dismissal for public servants for not addressing conflicts of interest with second-degree relatives under their supervision (article 19).

#### **Dissolved Revolutionary Command Council Order 160 of 1983 (II/1)<sup>27</sup>**

This Order modifies bribery provisions and associated penalties in the Penal Code. It stipulates that those governmental employees, or those entrusted with the provision of public services, seeking or accepting gifts to influence their work can face 10 years' imprisonment and a fine from between 500 IQD and 10,000 IQD.<sup>28</sup> While the UNCAC directs states to sanction offenders found responsible (see article 30(1)), the convention states that liable persons shall be "*subject to effective, proportionate, and dissuasive... monetary sanctions*" (article 26(4)). With this in mind, the specified fine range outlined in this Order can be seen as excessively low - which may run the risk of making it a poor deterrent effect for commission of bribery. It is important to note however that, during wartime, the penalty intensifies to life imprisonment with the of associated assets.

#### **Anti-Money Laundering and Counter-Terrorism Financing Act, Law No 39 (2015)**

This Act addresses significant corruption-related crimes involving large sums of money. Money Laundering (ML) complaints are initially dealt with the Anti-Money Laundering and Terrorism (AMLT) Financing Office at the Central Bank of Iraq. Guided by articles 8 and 9 of the Act, the AMLT Financing Office collects evidence and broader contextual information relating to the complaint and sends it to the Public Prosecutor's Office. The process continues with the submission of the case to the first investigative judge. Once the judicial investigation concludes, the cases are directed to specialized ML courts established pursuant to Article 54 - originally situated only in the Rusafa Appellate Court in Baghdad, but later extended to all governorates through the issuance of SJC Order No. 119 in 2017.<sup>29</sup> The prescribed punishment for ML, as outlined under Article 36, is imprisonment for a maximum of 15 years and a fine ranging from the amount being investigated to five times that amount.

In establishing specific legislation and mechanisms to deal with ML, Iraq goes beyond the recommendations outlined in UNCAC Article 14. However, it's noteworthy that ML crimes, as distinguished by Section 1(3) (a, b) of the COI Act, form a distinct category of corruption cases and are exclusively tried by the specialized courts. Consequently, they do not fall within the jurisdiction of the CACC. Instead, ML crimes are adjudicated within the framework of the Criminal and Misdemeanour Courts. Despite this distinction, TM Officers however observed that a limited number of ML cases had been referred to the CACC, originating from the initial investigations conducted by the previously dissolved Committee 29.<sup>30</sup>

#### **General Amnesty Act, Law No 27 (2016)**

This Act, while acknowledging civil, criminal, or disciplinary responsibility, extends amnesty to Iraqis in custody or facing death sentences and punishment for other crimes committed prior to 2016 (Article 1). The provision of an amnesty requires the claimant or victim-relative to withdraw their claim of damages before the investigating judge or competent court, with the accused individual(s) settling amounts owed for personal loss. Legal representatives of affected institutions need not withdraw claims for crimes related to public trust violation and abuse of public office (Article 3). Amnesties are revocable if the accused commits an intentional criminal act within 5 years of the

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<sup>27</sup> Order No 160, Addendum 2, Legislative Orders for the Amendments of the Penal Code, issued by the dismantled Revolutionary Command Council, p. 321. See Annex 1.

<sup>28</sup> The fine for penalties as listed in the Penal Code was later amended by the 'Amendment of Fines Contained in the Penal Code No. 111 of 1969 as amended and other special laws' (Law No 6/2008) to a higher threshold of not less than 200,001 and 1,000,000 for misdemeanours, and 1,000,001 to 10,000,000 dinars for felonies (as per Article 2).

<sup>29</sup> Judicial Order No 119, 2017 and its Addendum, dated 2/3/2022. See Annex 2 (SJC Judicial Orders).

<sup>30</sup> Committee 29 is discussed further underneath under the Judicial Bodies section. Analysis of the ML Cases are discussed in Part III, p. 38.

amnesty being granted, and in these circumstances the accused will face restoration of the punishment (Article 8).

While the UNCAC does not provide specific guidelines on the provision of amnesties, member states party to the Convention are directed to ensure that liable persons are subject to effective sanction (article 26(4)), with full consideration that any liability is subject to the legal rules of the state (Article 26(2) of the convention). In Iraq, the high threshold of corruption crimes under Iraqi jurisprudence is reflected in the explicit exemption of financial and administrative corruption crimes from the president's authority to grant special pardons, according to Article 73(1) of the Iraqi Constitution

The right to general amnesty under the General Amnesty Act is available to every defendant, irrespective of the stage of legal proceedings, court decision finality, or trial mode - except for crimes relating to undue influence on the Judiciary, harm to the economy, state security endangerment, terrorism, weapon offenses, kidnapping, narcotics, antiquities smuggling, and counterfeiting, as well as many corruption related offenses such as money laundering, embezzlement, theft of state money, and intentional waste of public funds. General amnesty, however, is contingent on the accused repaying stolen amounts before release (Article 4(2)). As such, Iraqi jurisprudence intrinsically ties amnesties to perpetrators' restitution of stolen funds. Further discussion on the impact of amnesties on anti-corruption measures is outlined in the qualitative discussion below.

#### **Protection of Witnesses, Experts, Informants and Victims Act, Law No 58 (2017)<sup>31</sup>**

This Act safeguards witnesses, experts, informants, and victims, along with their immediate and extended families, who provide information or testimony in criminal cases affecting state security and citizen safety. Protection requests must be approved by the investigative judge or the court hearing the case within 10 days. If rejected, an appeal can be submitted by the Public Prosecutor, COI, or the applicant to the competent court. Protection measures, tailored to each case, may involve changing personal information, tracking phone calls, the provision of electronic testimony, and the altering of vocal and/or facial features during testimonials. Coverage spans all proceedings stages, ensuring security during commutes, investigations, trials, post-judgment, and potential relocations. The Act facilitates communication with police and other security agencies, allowing for the concealment or alteration of case record information.

Article 2 of the Act stipulates that the Council of Ministers, based on SJC and COI proposals, will establish a criminal proceedings regime within six months of the Act's entry into force. A department in the Ministry of Interior shall also be established, titled 'Protection of witnesses, experts, informants, and victims.' This department shall be connected to the Directorate of Protection of Persons and Facilities, with sub-units at the governorates level and Kurdistan Region of Iraq (article 10). Based on these provisions and in 2019, the Chief Justice issued a directive to enable the implementation of the Act in pursuant to Article 17, detailing submission procedures, timelines, appeal rights, protection scope, involved institutions, and termination measures.<sup>32</sup> Ultimately, the Act does provide a coherent legal infrastructure to support Iraq's Convention obligations relating to UNCAC Article 32. However, despite critical needs for enhancing anti-corruption efforts by encouraging whistleblowers and witnesses, the Act remains unenforced, citing financial implications and identity withholding difficulties as primary concerns voiced by judges and prosecutors in a policy dialogue roundtable in September 2022.<sup>33</sup>

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<sup>31</sup> <https://archive3.parliament.iq/ar/2017/03/11/13073> & <https://moi.gov.iq/view.4075>

<sup>32</sup> Directive No 1 for the Year 2019 for the Facilitation of the Execution of the Protection of Witnesses, Experts, Informants and Victims Act 2017. See Annex 2 (SJC Orders and Directives).

<sup>33</sup> Policy Dialogue Roundtable on the Contribution of the Iraqi Judicial System to Accountability for Corruption: Policy Opportunities and Challenges, held in partnership between Supreme Judicial Council, UNAMI HRO and UNDP, Baghdad, September 10<sup>th</sup>, 2022.



## 2.3 Institutional Framework

Iraq first began to introduce specialized anti-corruption mechanisms in 2004, post-Saddam's regime. These mechanisms were authorized by the Coalition Provisional Authority and maintained independence from the government – being overseen solely by Council of Representatives and supported through the international and regional anti-corruption legal frameworks. These mechanisms aimed to strengthen Iraq's broader institutional capacity to combat corruption by adopting preventive measures, enacting codes of conduct for public employees and bestowing judicial and non-judicial institutions with the powers to enhance their role in combatting corruption.

The core of federal Iraq's ongoing anti-corruption response lies in the concurrent operations of key anti-corruption bodies. These bodies are listed as follows:

### a. Judicial Bodies

#### **Supreme Judicial Council (SJC)**

The independence of the Judiciary is enshrined as a fundamental principle of the Iraqi Constitution of 2005 (Article 19). According to the constitution, the judicial system comprises the Supreme Judicial Council, the Federal Supreme Court, the Federal Cassation Court, the Public Prosecution Office, the Judicial Supervision Authority, and courts with general and special jurisdiction (Article 89), each regulated by specific laws. The Supreme Judicial Council is responsible for managing the affairs of judicial bodies under Law No. 45 of 2017 and the Judicial Organization Law No. 160 of 1979. The Supreme Judicial Council deals with crimes related to public funds involving financial and administrative corruption, considering them sensitive and crucial cases. It appoints specialized investigative judges within the courts of integrity to handle such cases.

Additionally, the Council has the authority to establish specialized courts to handle specific cases if deemed necessary, as outlined in Article 3 (Law No. 45 of 2017), similar to what occurred in money laundering, terrorism financing, and major corruption crimes. The Judicial Supervision Authority, governed by its regulating law, has the authority to oversee all courts, judges, public prosecutors, and judicial employees, monitoring and supervising them. It also evaluates the legal and procedural aspects of the judicial procedures, serving as an additional supportive mechanism operating under the umbrella of the Supreme Judicial Council.<sup>34</sup>

#### **Central Anti-Corruption Criminal Court (CACC)**

The Central Anti-Corruption Criminal Court (CACC), established by the Supreme Judicial Order 96 (2019),<sup>35</sup> specializes in major corruption cases across federal Iraq. The CACC is the primary of these judicial bodies and the subject of the TM programme. Housed in the Federal Appellate Court of Baghdad-Karkh, it comprises a three-judge panel led by the most senior judge. It is mandated by Judicial Order 96 to receive grand corruption from across Federal Iraq's governorates. It receives three types of corruption cases: *“the major corruption cases, the corruption cases that involve high-level public officials, and those related to them in any capacity whatsoever”*, in addition case of public interest. Monitoring reprisal cases against journalists, informants, and whistle-blowers are unidentified under the last category by the TM programme.

These cases handled by the court are categorized based on the committed act and the corresponding penalty, falling under crimes or misdemeanours according to Articles 25 and 26 of the Penal Code respectively. It is worth noting that judges operating within the CACC are not working exclusively or on a full-time basis within this court, but also perform additional tasks of both a judicial and administrative nature as well as attending meetings at all different levels.

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<sup>34</sup> Judicial Oversight Authority Act, Law No. 29 (2016).

<sup>35</sup> The SJC Order 96 (2019). See Annex 1 (SJC Orders).

### **First Investigative Judges of CACC in Baghdad (Karkh and Rusafa)**

The First Investigative Judges (FIJs) of the CACC sit across the two Baghdad courts - Karkh and Rusafa. As designated by Supreme Judicial Order 96, they hold a pivotal role in the pursuit of justice against major corruption cases. In close collaboration with investigators from the Commission of Integrity (COI) and prosecutors, these judges are critical in evaluating the strength of a potential case in referral to the CACC. The judges oversee all elements of the pre-trial investigation - including bail applications, ensuring the protection of the accused's rights, and ensuring that pre-trial investigative procedures remain impartial, fair, and respectful of due process. Once the pre-trial investigation is finalised, FIJs are responsible for compiling and organizing case files, preparing them for referral to the CACC for further proceedings - if appropriate.

Empowered by the Criminal Procedure Act of 1971,<sup>36</sup> FIJs wield a comprehensive array of tools to carry out their duties and maintain the integrity of cases. These tools include the collection of evidence, issuance of search warrants, seizure of assets, compilation of crucial documents, questioning of witnesses, and the interrogation of suspects. Notably, consultations with the respective judges reveals that, in practice, the majority of grand corruption cases fall under the purview of the FIJ of Karkh - with only a handful being handled by the FIJ of Rusafa.<sup>37</sup> It is also worth noting that the FIJs do not work exclusively on grand corruption cases, but also investigate all cases, as well as offering judicial consultation, administrative support, and mentoring services at judicial institute.

### **Public Prosecutors Office (PPO)**

Established by the Public Prosecution Act (Law no 49, 2017),<sup>38</sup> the Office of the Public Prosecutor (PPO) operates within the federal judicial authority - supervised by the SJC. The PPO receives information from various sources (including from the Federal Bureau of Supreme Audit), reports on corruption cases, and collaborates with the COI in investigating corruption crimes in coordination with the FIJs. It monitors law suits and follows on their progress in accordance with the Criminal Procedure Code 1971, with no power to file suits. The PPO is obliged to attend all hearings, represent public interest state-related suits, and confirm charges before the court. It holds the power to appeal judgments, decisions, and measures issued by investigative judges and courts, oversee the implementation of judgments and orders regarding conviction, detention, and other courts' orders, and participate in civil suits related to fund recovery and actions against persons and assets smuggled abroad. Additionally, it can challenge the constitutionality of laws before the Federal Supreme Court (article 2, 5, 7 and 12) and Criminal Procedures Code 1971.

It is worth noting that articles 5(12), 5(13), and 5(14) of the Public Prosecution Act originally mandated the PPO to investigate financial, administrative and all 'violation of official duty' crimes, establish a Department for Administrative and Financial and Public Fund Crimes in the Office, and introduce an Administrative and Financial PPO in each ministry and independent body. However, these clauses were challenged and declared unconstitutional by the Federal Supreme Court in 2021.<sup>39</sup>

### **Integrity Criminal and Misdemeanour Courts**

These courts are set out according to provisions of the Criminal Procedure Code of 1971. They are equally distributed between the headquarters of Baghdad Appellate Court in Karkh and Al-Rusafa, and appellate courts in other governorates. In terms of jurisdiction, they handle all kinds of criminal cases, including corruption-related cases not considered as grand corruption, spanning across

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<sup>36</sup> Articles 46 and 50-87 of the Act.

<sup>37</sup> The meeting with the FIJ of Rusafa on 28<sup>th</sup> February 2023 explained the referral of cases investigated by him to the FIJ in Karkh.

<sup>38</sup> Public Prosecution Act (Law No 49, 2017), Section 2, 5, 7, 8, 9, 10, 11, 12.

<sup>39</sup> Federal Supreme Court Decision, case no 112/Federal/2021 (9/11/2021) on Article 5 (12, 13, 14) of the Act.

felonies, misdemeanours, and violations. However, some cases, randomly monitored by the TM team, have been observed as falling within the category of major corruption cases according to the criteria specified in Judicial Order No. 96.<sup>40</sup>

### **Investigative Judicial Committee 285**

This Committee was established by the SJC in October 2021<sup>41</sup> to succeed the Committee established in accordance with Order 29 (the now-defunct Abu-Ragheef Committee).<sup>42</sup> Its primary mandate was to investigate pending cases, review existing ones, and subsequently refer to the CACC for trial. Initially, the Committee received a total of 186 cases, which increased to 257 after re-evaluation and categorization based on charges and defendants.<sup>43</sup> The Committee dismissed 58 cases due to insufficient evidence, while referred 54 to the CACC for trial. However, the Committee was dissolved on April 26, 2023, by the order of the Supreme Judicial Council No. 95/S/A. The remaining 145 cases were transferred to the FIJ of Karkh to continue investigations.

### **b. Non-Judicial Bodies**

#### **Commission of Integrity and Illicit Gains (COI)**

This is Iraq's foremost anti-corruption body that deals with corruption at all levels of government. The commission is considered independent by the 2005 Constitution (article 102), possessing legal, financial, and administrative autonomy and is accountable solely to the Council of Representatives. The establishment of the Commission aligns with UNCAC articles 5 and 6 – with it serving as the primary national anti-corruption mechanism responsible for promoting transparency, integrity, and accountability, implementing comprehensive strategies, and engaging civil society. The COI Act (2011) grants the Commission a broad mandate, including preventive measures, participation in investigations and appeals of corruption cases, and the promotion of honesty, integrity, and transparency.<sup>44</sup>

The Commission oversees financial disclosures of high-level officials, issues codes of conduct, and has the authority to scrutinize transactions, investments, assets, and potential conflicts of interest. Its investigations department, guided by the Criminal Procedures Act (1971), conducts primary investigations which are supervised by investigative judges. The COI can drop corruption claims if deemed unsubstantiated, and it attends trials as an observer with the power to appeal courts' decisions if not satisfied with the outcome. To expedite major corruption cases, the COI established a Supreme Committee for Combatting Corruption in November 2022.<sup>45</sup>

#### **Federal Board of Supreme Audit (FBSA)**

The FBSA, an independent body, oversees public sector finances and audits state contracts and government expenditure.<sup>46</sup> Accountable solely to the Council of Representatives (as per Article 103 of the Iraqi Constitution), it conducts financial audits to detect fraud and ensure that governmental institutions are legally compliant. Their work involves scrutinizing incidents of fraud, waste, and misuse of resources in the management of public contracts. The bureau, with its own administrative and financial autonomy, investigates cases of fraud, waste, and resource misuse in public contracts

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<sup>40</sup> Details of monitored cases in these courts, see Annex 3, Figure 1.1 (Classification of Cases Per Court).

<sup>41</sup> This Committee was established by the SJC Order No 285, 2021 (Annex 2), in pursuant to section 35 (3) of the Judicial Regulation Act 1979, which gives the SJC the authority to form such committees with the powers of investigative judges.

<sup>42</sup> Federal Supreme Court decision No. 169/Federal/2021 dated 2/3/2022 declared Diwani Order No. (29) of 2020, establishing the Investigative Committee for major corruption cases, led by Lieutenant General *Ahmed Abu Ragheef*, unconstitutional, arguing that the Order violated article (37/first/1), 47, 87, 88 of the Constitution, which guarantee the principles of human rights, separation of powers, independence of the Judiciary, and the mandate of the COI in investigating financial and administrative corruption.

<sup>43</sup> In pursuant to articles 132, 133 and 188 of the Criminal Procedures Act 1971.

<sup>44</sup> The Commission mandate in this respect corresponds to that recommended by the UNCAC for the national anti-corruption mechanisms under article 6 and 36 of the convention.

<sup>45</sup> [https://nazaha.iq/en\\_body.asp?id=3361](https://nazaha.iq/en_body.asp?id=3361); [https://nazaha.iq/en\\_body.asp?id=3367](https://nazaha.iq/en_body.asp?id=3367)

<sup>46</sup> Bureau Of Supreme Audit Act No 31 of 2011 (amended).

upon request. While lacking authority to submit complaints to judicial bodies, it reports corruption incidents to the COI and the Public Prosecutor and may testify in court when required.<sup>47</sup>

## 2.4 The Cycle of a Grand Corruption Case

The typical cycle of a grand corruption case begins with the COI. The COI, in coordination with the Public Prosecutor's Office, initiates investigations into major corruption cases, either on its own accord or following the receipt of information by the Federal Board of Supreme Audit, a non-governmental informant, or a whistle-blower within the concerned institution or a private individual. Preliminary investigations into potential cases are overseen by the First Investigative Judges of the Federal Appellate Court of Baghdad-Karkh and Baghdad-Rusafa. Judicial Order 96 mandates the COI to assign investigators for preliminary investigations under the judges' supervision<sup>48</sup> and when appropriate refer grand corruption cases to the CACC for trial.

The CACC serves also as an appellate court for decisions during the pre-trial stage, subject to appeal to the Court of Cassation under the Criminal Procedure Act 1971 and Judicial Organization Act 1979 (No 160, amended). Additionally, appeals to the Cassation Court may lead to the affirmation of decisions, partial disapproval prompting a reinvestigation in part or in whole, or an outright rejection of the CACC's judgment. For further reference, please see Diagram 1 below.

## 2.5 Summary

In summary, the legal framework on the interpretation of corruption crimes is set out by the COI Act - which defines the corruption crimes and the governing provisions in the Penal Code. Criteria for major corruption crimes are specified by Supreme Judicial Council Order No. 96, encompassing cases of high-ranking officials or individuals connected to them and/or substantive amounts of wasted money. Although money laundering is outside the CACC jurisdiction, some cases found their way to it, alongside illicit enrichment. Regarding the institutional framework, the CACC has given the exclusive jurisdiction for trial, while the first investigative judges of Karkh and Rusafa are entrusted with the judicial investigation. The COI, in collaboration with the Public Prosecution, is delegated to conduct the preliminary investigation. This multi-tiered approach in managing major corruption cases, though complex, diversifies the expertise of concerned institutions. Assigning the CACC to all major corruption cases centralizes handling of cases and leverages judges' extensive experience, ensuring comprehensive coverage while maintaining consistency in decisions. Dissolution of the Judicial Investigation Committee No. 285 is a positive measure to unifying judicial investigative bodies.

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<sup>47</sup> As per Supreme Judicial Council Order No. 451, 32/3/2019.

<sup>48</sup> These procedures are based on Article 3 of the Commission on Integrity and Illicit Enrichment Law No. (30) of 2011, along with Articles 51 and 52, together with Article 137 of the Code of Criminal Procedure No. (23) of 1971, and Supreme Judicial Council Decision No. 96 of 2019 (Appendix -1 (Supreme Judicial Council Decisions)).

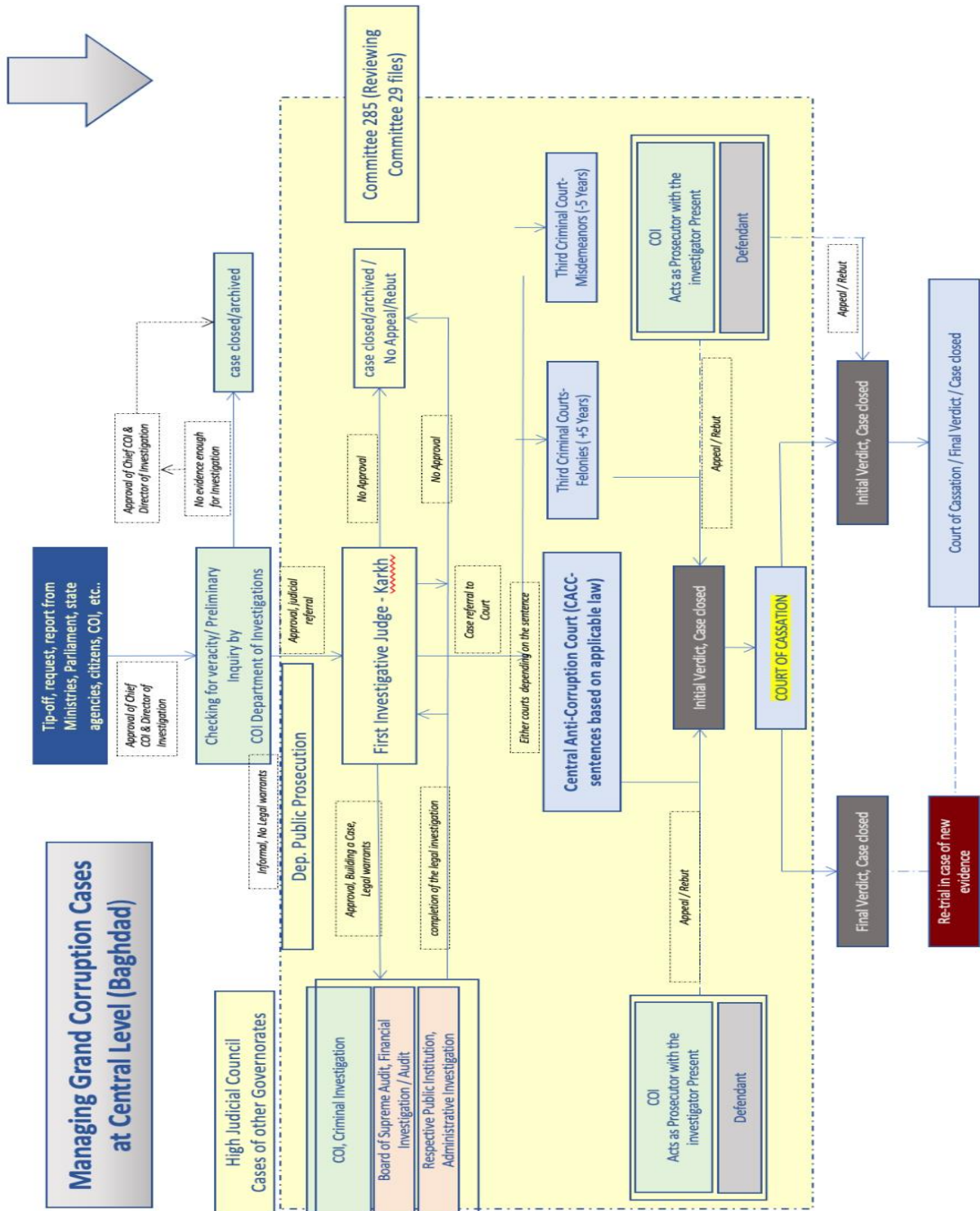


Diagram 1: The Cycle of a Grand Corruption Case

## PART III – TRIAL MONITORING FIRST YEAR ASSESSMENT: ANALYSIS AND KEYS FINDINGS

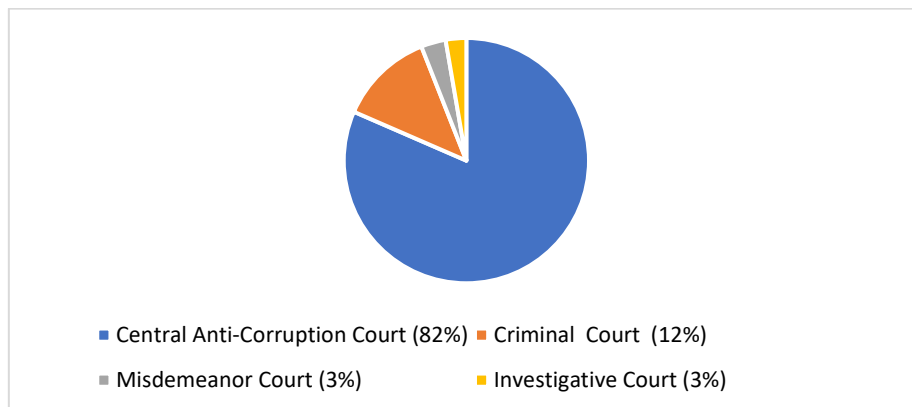
This section examines how investigation, prosecution, and trial have been conducted under the aforementioned legal and institutional bodies and attempts to provide insights into their operational dynamics. Analysis of the collected data employs both quantitative and qualitative methodologies to offer a comprehensive overview of the collected data, at both the macro and micro levels.

### 3.1 Quantitative Analysis: Figures and Results

The following quantitative analysis aims to provide a precise numerical examination of the monitored cases and reviewed casefiles based on the type of court, the number of trial hearings, the position of the accused, the type of charges filed, and the verdicts issued (whether acquittal or conviction) and the frequency of their occurrence. TM Officers observed in the monitoring period a noticeable increase in the number of cases adjudicated before the CACC. To illustrate, the CACC monitored 150 cases in the 12 months between August 2022 to July 2023 period, compared to the 173 reviewed casefiles produced by the CACC in the period between October 2019 to July 2022.<sup>49</sup> Despite the impact of the Covid-19 crisis on the work of government institutions (including the Judiciary), the increase in the number of cases and the quality of investigations and trials during the reporting period reflects an improvement in the general efficiency of the CACC.

#### 3.1.1 Cases By Type of Courts

Of the 179 monitored cases, 150 cases were tried before the CACC - with an additional 23 cases in the Criminal Court and 6 cases in the Integrity Misdemeanour Court.<sup>50</sup> Notably, 19 of these cases not tried by the CACC involved high-level officials or significant sums, prompting questions about the inconsistent application of the criteria for referring cases to the CACC in accordance with Judicial Order 96.



**Graph 1.1: Cases by Type of Court (Monitored Cases)**

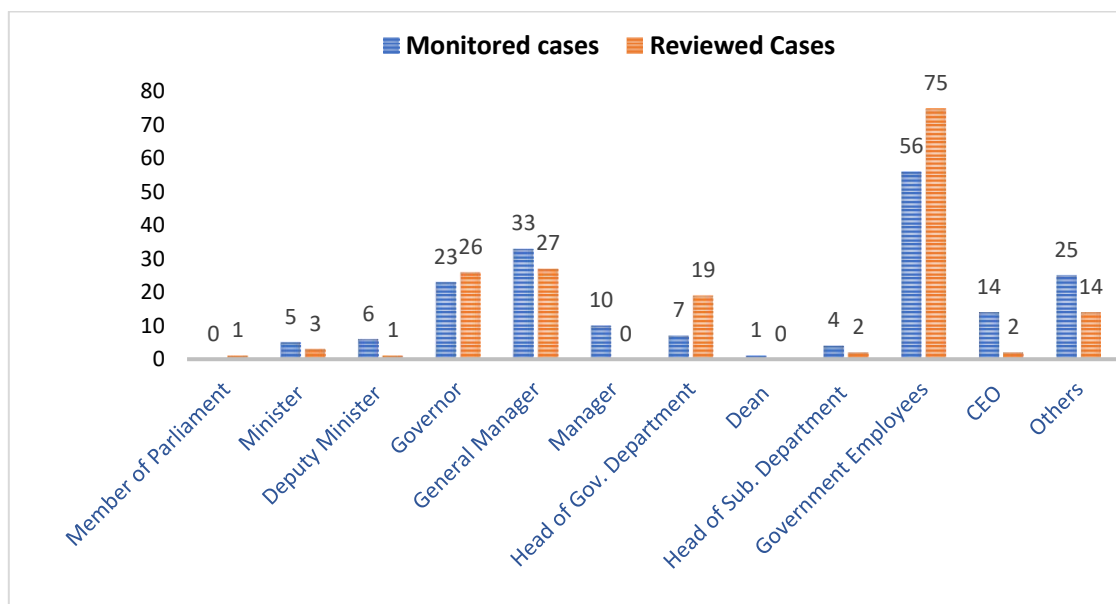
#### 3.1.2 Cases by Position of Accused

- In comparing reviewed cases (issued between 2019 and 2022) against monitored cases (August 2022 to July 2023), a general increase was observed in the number of defendants holding senior

<sup>49</sup> In this period, the CACC ruled in 206 cases related to grand corruption. However, 33 of these cases were transferred to court in another governorate (25 by the CACC and 8 by the Court of Cassation), and hence not reviewed by the TM team.

<sup>50</sup> A total of 184 cases were monitored by the TM team. The remaining 5 cases remain at the pre-trial stage with the integrity investigative courts.

positions (including Government Ministers, Deputy Ministers, general managers, CEOs, and managers). Meanwhile, the number of cases filed against lower-level government employees decreased. These trends reflect the purpose of establishing the CACC and its specific mandate and procedures for addressing major corruption crimes.



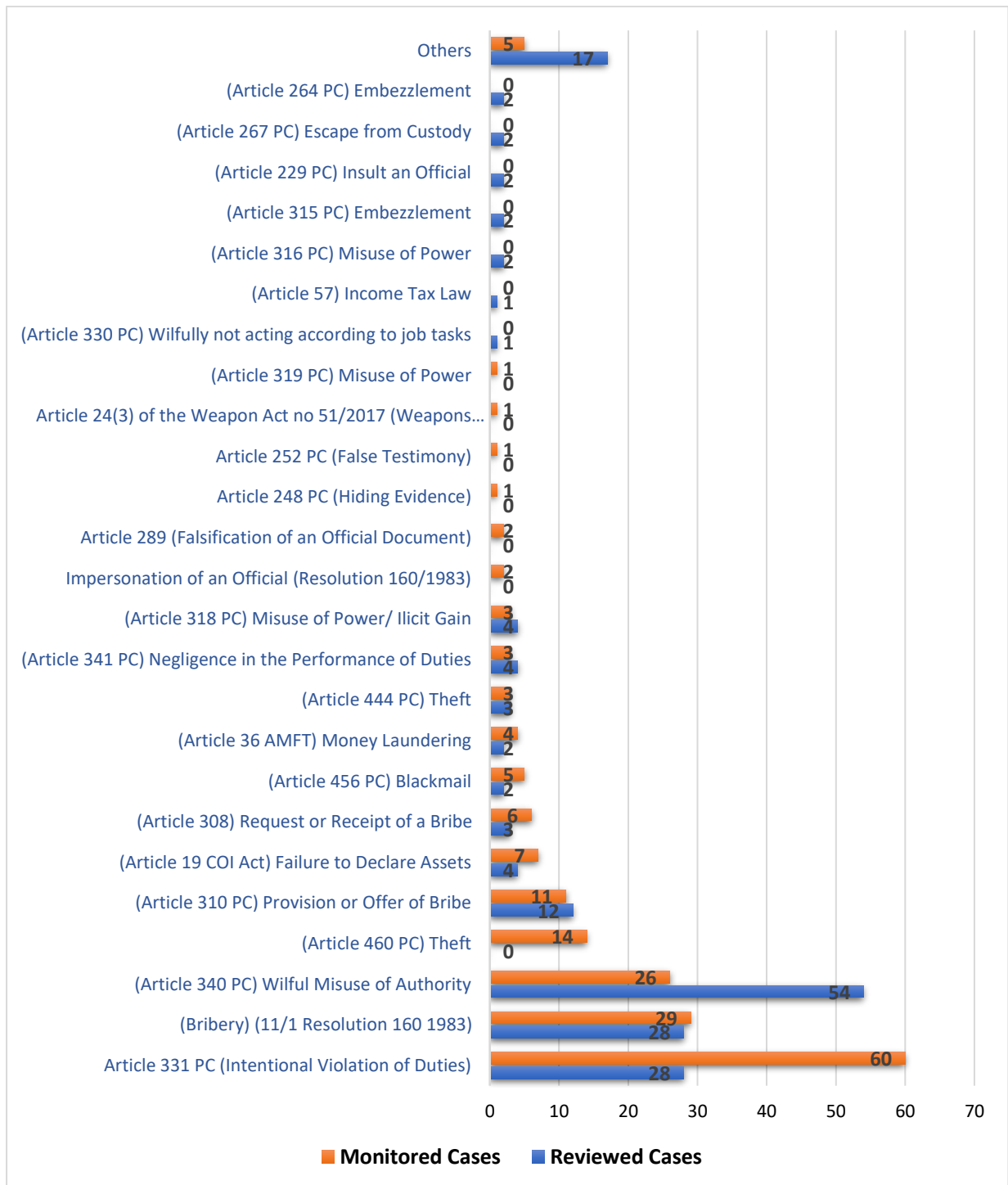
**Graph 1.2: Positions of Defendants (Monitored vs Reviewed Cases)**

The category of ‘Others’ includes truck drivers, investors, journalists, and relatives of officials.

### 3.1.3 Cases by Charges

- The data identifies significant trends across both the monitored cases and reviewed case files – shedding light on the gravity of corruption crimes. Notably, charges brought under Article 331 of the Iraqi Penal Code (listed as a misdemeanor offense) constitute approximately 33% of all verdicts in monitored cases (between August 2022 and July 2023) compared to 16% of verdicts in reviewed cases (between 2019 and 2022)– indicating a notable increase in the proportion of cases tried as misdemeanours, and therefore subjected to lighter sentences.<sup>51</sup>
- In contrast, felony charges under Article 340 of the Iraqi Penal Code show a decline from 31% in reviewed case files to 14% in monitored cases – reflecting almost a halving of the number of cases tried as felonies.
- Charges related to bribery offenses remain consistent, accounting for 25% of total charges in both monitored and reviewed cases. Likewise, the number of charges involving theft, fraud, seizure of state money, and forgery of public documents is also consistent across monitored and reviewed cases.
- Rare occurrences are observed of charges relating to Article 341 (7 cases) and Article 330 (1 case), despite their great relevance to the abuse of public authority.

<sup>51</sup> According to Criminal Procedures Act, the punishments for felonies range between 5-15 years imprisonment, life sentence or death penalty, whereas the punishments for misdemeanours range between 3 months to 5 years imprisonment or a fine.



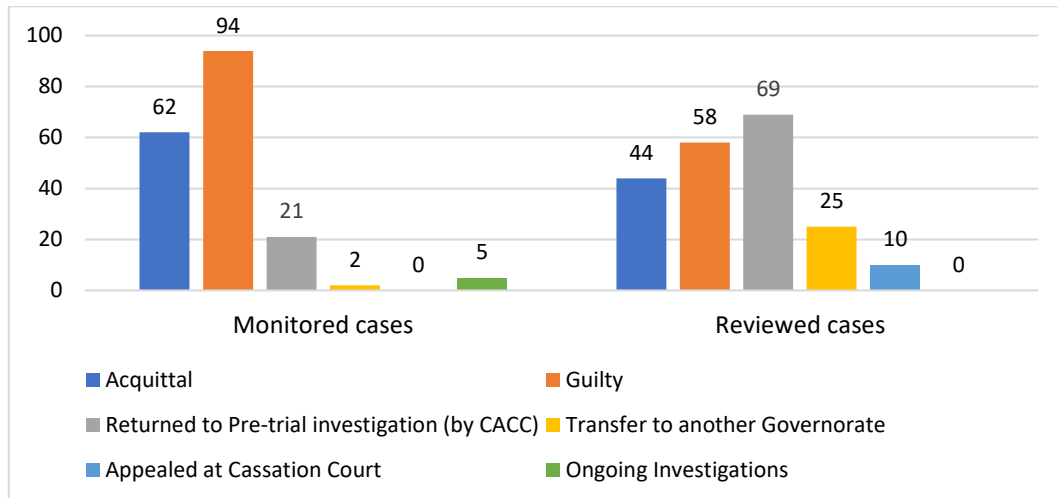
**Graph 1.3: Cases by Charge (Reviewed and Monitored Cases)**

### 3.1.4 Cases by Trials' Outcome

- The data indicates a substantial increase in convictions over acquittals in the monitored period - showcasing an improvement in the efficacy of prosecution. Monitored cases reflect 94 guilty verdicts as opposed to 62 acquittals, while reviewed verdicts show 58 guilty verdicts versus 44 acquittals. Please see Graph 1.4 for more information.



- Notable progress has been observed in the overturn referral process, with a decrease in cases sent back for re-investigation by the CACC or the Court of Cassation in monitored cases (42)<sup>52</sup> compared to reviewed verdicts (69).



**Graph 1.4: Acquittal and Conviction Verdicts (Monitored vs Reviewed Cases)**

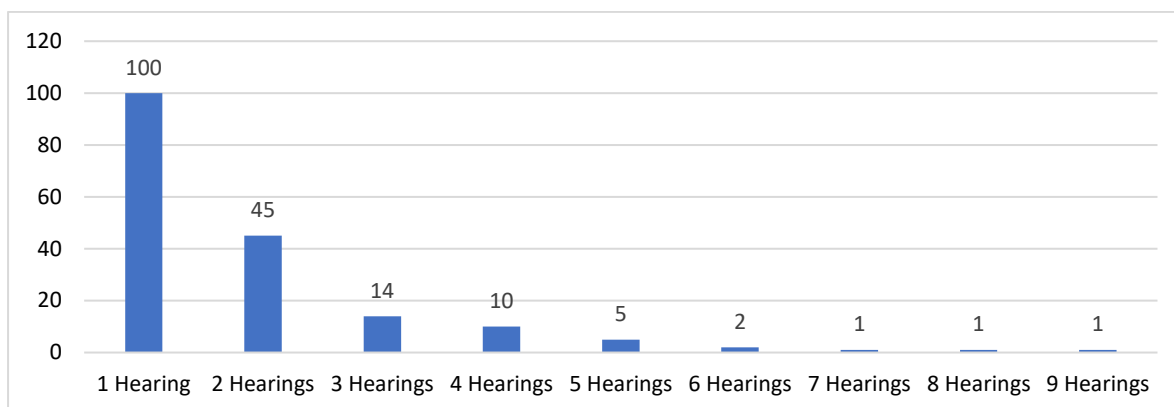
- Sentences and fines exhibit significant variation between cases tried under the Penal Code and those under the Money Laundering and Illicit Gains provisions of the COI Act, especially concerning the recovery of wasted/stolen assets and the fines and compensation associated with them.
- Financial Penalties Snapshot:
  - The highest imposed fines amounted to one million US dollars and 2 billion IQD in a money laundering case, and an illicit gains case resulted in 1,671,027,000 US dollars fine. The lowest fines typically ranged between 1 and 10 million IQD - the maximum limit set by the penal law.
  - On the other hand, across both monitored and reviewed cases, the most lenient judgments were for defendants who were viewed into the judgment to be young, elderly, and first-time offenders (19 cases), as well as 15 cases where the defendants were acquitted under General Amnesty Law.

### 3.1.5 Cases by Number of Hearings

The number of hearing sessions in each monitored case varied based on available information, testimonies, and evidence. Some cases were concluded in a single session, while others extended to a maximum of 9 sessions.<sup>53</sup> Out of the 179 cases that were monitored and finalized within the year of monitoring, 56% were resolved in one session, 25% in two sessions, and 3 cases took between 7 and 9 sessions to close due to their complex procedures. The categorization of cases based on hearing sessions aims to highlight the efficiency of trial procedures in terms of speed. The right to a fair trial without unnecessary delay is a constitutional right recognized by the Iraqi constitution and safeguarded by the Public Prosecution Law of 2017.

<sup>52</sup> These 42 monitored cases include 21 cases sent back to pre-trial investigation by CACC (as illustrated in grey in Graph 1.4, and an additional 21 cases returned by the Court of Cassation.

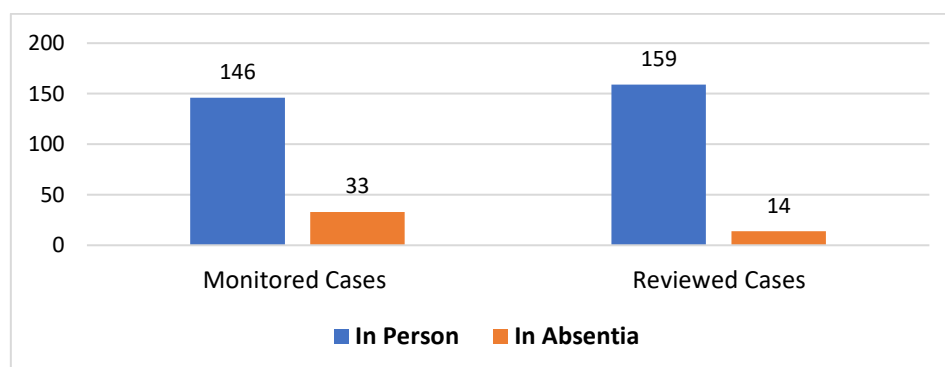
<sup>53</sup> It was not feasible to identify number of hearings in reviewed verdicts from the casefiles.



**Graph 1.5: Number of Hearings (Monitored Cases)**

### 3.1.6 Trials in Absentia vs In Person

The data indicated an increase in the number of trials in absentia in monitored cases (33 cases) compared to reviewed verdicts (14 cases),<sup>54</sup> signifying a rise in the absence of defendants. TM Officers report that this is often due to defendants fleeing the country or hiding from authorities. The escalation in the number of fugitives necessitates urgent consideration of measures to locate defendants, whether inside the country or not, and coordinate efforts to repatriate them if they managed to escape abroad - ensuring their presence for procedural and legal accountability. Indeed, the UNCAC binds convention members into providing mutual forms of legal assistance in gathering and transferring evidence for use in court, even extending into the extradition of offenders.



**Graph 1.6: Trials in Absentia vs Trials in Person (Monitored and Reviewed Cases)**

### 3.1.7 Corruption by Government Sectors

- The data shows that the leading sectors subject to corruption charges in monitored cases were governorate councils and offices with (38) cases. This is followed by the Ministry of Finance (34) cases. Additionally, the Ministry of Industry and Minerals faces 26 corruption cases. Moderate-incidence sectors include Defense (16), Transportation (10), Electricity (9), and the Sunni endowment Office (9).<sup>55</sup> Additionally, sectors such Municipality Government, Oil, and Education have seen a lower level of corruption incidents, with 5 cases each.<sup>56</sup> These results

<sup>54</sup> Graph 1.6 – Trials in Absentia vs in Persons

<sup>55</sup> The Sunni Endowment Office is an Iraqi Administration tasked with organizing the affairs of Sunni mosques and other Sunni institutions. Created by the Iraq governing council, it is an independent authority not related to any ministry. it has their own financial and administrative department.

<sup>56</sup> Table 1 - Monitored Cases Per Sectors

raise questions about internal controls, auditing processes, organizational systems, and policies within the highlighted sectors.

Sector	Monitored Cases
Governorate Council and Governorate Office	38
Ministry of Finance	34
Ministry of Industry and Minerals	26
Others <sup>57</sup>	20
Ministry of Defense	16
Ministry of Transport	10
Ministry of Electricity power	9
Sunni Endowment	9
Municipality Government	5
Ministry of Oil	5
Ministry of Education and Higher Education	5
Ministry of Interior	3
Ministry of Planning	3
Ministry of Trade	1
<b>Total</b>	<b>184</b>

**Table 1: Corruption cases per Sector (Monitored Cases)**

### 3.1.8 Corruption Cases by Governorates

- The data reflects a concentration of major cases in the Baghdad Governorate. While there's a slight reduction in monitored cases post-August 2022 compared to the reviewed cases issued pre-August 2022 period, a large disparity between Baghdad and other governorates persists.<sup>58</sup> This may suggest a higher prevalence of corruption in Baghdad or under-reporting and concealment of incidents due to factors such as the lack of transparency, fear of reprisals, and deficiencies in anti-corruption mechanisms. Further examination of how grand corruption cases are addressed across the governorate level is warranted.

Governorate	Monitored Cases	Reviewed Cases
1. Baghdad	101	100
2. Babil	29	10
3. Diyala	16	6
4. Najaf	11	7

<sup>57</sup> Other cases involved defendants who did not work in a governmental capacity. For example, one defendant charged with money laundering was the CEO of a private company. Another case involved a journalist who was accused of blackmailing the CEO of a private company. Two further cases related to lawyers in the private sector forged official government documents for their clients, and an additional illustrative case involved a dentist impersonating a government actor.

<sup>58</sup> Table 2 - Number of Cases per Governorate

5. Ninawa	8	1
6. Basra	6	2
7. Salah Al-Din	5	8
8. Thi Qar	4	12
9. Wasit	1	8
10. Diwania	1	6
11. Muthana	1	1
12. Karbala	1	0
13. Kirkuk	0	6
14. Maisan	0	5
15. Anbar	0	1
<b>Total</b>	<b>184</b>	<b>173</b>

**Table 2: Corruption Cases Per Governorate**

### 3.2 Qualitative Analysis: Key Insights

Considering the quantitative trends and findings, critical concerns have emerged, demanding further in-depth examination. These key points revolve around anti-corruption legislation, investigative and adjudicative procedures, and collaboration between concerned stakeholders. Providing a nuanced analysis of these issues is imperative, as addressing them promises to significantly bolster anti-corruption measures while concurrently elevating the competence, efficiency, and overall performance of the judicial system.

#### 3.2.1 Case Referral Criteria

Effective classification of crimes is critical for determining their legal implications. UNCAC at Chapter 3 explicitly outlines actions such as bribery, embezzlement of public funds, concealment and laundering of public funds for criminalization. As specified in the Penal Code (articles 23-27), crimes are categorized into felonies (punishable by 5-15 years imprisonment, life imprisonment, or the death penalty), misdemeanours (punishable by 3 months to 5 years imprisonment or a fine), and infractions (punishable by 24 hours to 3 months imprisonment or a fine). Prior to the establishment of the CACC by the SJC Order 96, all corruption-related cases were exclusively under the jurisdiction of criminal courts of general jurisdiction. According to the SJC Order 96, grand corruption encompasses three categories: major corruption cases, corruption crimes involving high-level officials and state institutions, and individuals connected to them.<sup>59</sup> The selection of cases is made by the Head of the PPO, in consultation with the COI and in coordination with the Investigative Court.

Notably, the criteria set by the SJC Order lacks a well-defined threshold for what constitutes either 'major' corruption or 'high-level' positions. As data shows, 19 of the 29 monitored cases tried before the Criminal and Integrity Misdemeanour Court fulfilled these criteria and involved either high-ranking officials and/or large sums of money. This brings to fore the question of implementation and suggests that investigative judges possess a high degree of discretion in ascertaining which cases constitute grand corruption and are referred to the CACC for trial.<sup>60</sup>

<sup>59</sup> SJC Order No. 96, issued on 16 October 2019, Annex 2.

<sup>60</sup> Figure 1.1- Cases Monitored Before CC and IMC Re the 'Criteria of Grand Corruption Cases.

Two Illustrative cases:

**A former Governor** faced charges for two corruption-related crimes. The first case was tried before the Criminal Court (CC) in Karkh, resulting in a 6-month imprisonment sentence, while the second case was tried by the CACC, and the accused was acquitted due to insufficient evidence. This example pertains to the high-level position of the accused as a referral criterion.<sup>61</sup>

**An employee in the Governorate** was brought before the Criminal Court (CC) in Rusafa. The charges involved the disposal of 8 billion and 700 million IQD belonging to a Governorate Provincial Council, with the assistance of another employee. The case was transferred to the Criminal Court of the governorate where the crime occurred. This case highlights the high amount of money involved as one of the referral criteria to the CACC.<sup>62</sup>

The need for a more precise distinction between grand and petty corruption is essential. Additionally, more clarity is needed to identify an approximate threshold of the amount of embezzled funds or assets, as well as the functional level of the accused. Such an action will help to close the non-referral gap and prevent the possibility of trying individuals accused of grand corruption in courts with a lower jurisdiction, where they will be subject to lighter sentences and scrutinized by judges with less experience.

### 3.2.2 Investigation

Major corruption cases progress through a series of stages, involving two or three of the following:

- Administrative Investigation, conducted by concerned institutions.
- Preliminary Investigation, led by the COI in coordination with the Public Prosecution's Office.
- Judicial Investigation, carried out by the first investigative judge of the CACC (and Committee 285 - up to its dissolution in April 2022).
- Additional investigation during trial by the CACC.

The accused and the Integrity Commission and the Public Prosecution all have the right, during the judicial investigation stage, to challenge the decisions of the first investigative judge at the CACC, including decisions to close the investigation. The court reviews these challenges, confirming the decisions or sending the cases back for further investigation. It also has the authority to overturn the referral decision on its own initiative if it is not satisfied with the quality of the investigation. The three mentioned parties have the right to appeal the decisions during the investigation, trial, or after the verdict directly to the Cassation Court. The Cassation Court may confirm, modify, or annul the decision and order a new investigation in the case. Once the investigation is completed, the file is referred to the CACC for trial. According to Article 213 of the Criminal Procedures Code 1971, the court examines and rules on the case based on the evidence presented during the investigation or trial, including confessions, witness testimonies, investigation reports, official records, expert reports, and other evidence.

The derived data shows that 21 cases out of the monitored cases referred to the CACC were sent back by the court for further investigation. Additionally, the number of reviewed cases referred for re-investigation by the CACC reached 69.<sup>63</sup> Reasons for rejecting the referral and sending cases back, as stated in the decisions of the CACC and the Cassation Court, include the absence of crucial

<sup>61</sup> Case no. 63\_CC\_2022/CACC, Case no. 3153\_C\_2022/CC.

<sup>62</sup> Case no. 270\_C\_2022 (Rusafa)

<sup>63</sup> See Graph 1.4 above.

evidence for conviction, ambiguity in criminal charges, failure to lift immunity, failure to take the proper or complete actions related to notifying the accused parties, inadequate recording of testimonies, and similar reasons.

*An illustrative case returned,*

***A former Minister*** was referred by the investigative judge to the CACC for deliberately violating his office duties under Article 331 of the Penal Code through giving oath before the head of the political party. In February 2023, the CACC convicted the defendant, sentencing him to one year of imprisonment.<sup>64</sup>

*In March 2023, the Cassation Court, responding to an appeal, identified gaps in the investigation and returned the case for re-investigation - including to obtain information regarding the exact date of the minister's oath and if it was given during his ministerial tenure. The court also requested an examination of the contracts signed by the Minister with companies after the oath.*

*Following this investigation, the charges were dropped, and the accused was released in the final decision.*

TM Officers observed a decrease in the proportion of cases returned for re-investigation or retrial during the monitoring period in comparison to the previous period – indicating an improvement in the efficiency of the court. Despite this, the number of monitored cases where cases were returned for re-investigation or re-trial remains substantial (42 cases). It is worth noting that this number does not include cases that were dropped during the initial investigation phase by the COI or the internal administrative investigation of affected institutions. According to Article 10 of the Discipline of State Employees and Public Sector Act No. 14 of 1991, Ministers or heads of departments have the authority to form an investigation committee for employees accused of potential violations of their duties. Article 10(3) empowers this committee to refer the case to the "competent courts" if the act is considered a crime. While internal administrative mechanisms within affected institutions may streamline corruption cases, they could also pose a barrier to addressing major corruption cases involving high-ranking officials, potentially compromising the impartiality of the internal investigation committee.

*An illustrative case,*

***Seven defendants, one former governor and six government employees,*** were accused of violating their job responsibilities in their capacity as the head of, and members, of a committee to review and validate contracts and recommendations relating to their governorate. An internal investigation took place which did not recommend that the case be referred to criminal proceedings. Following a COI investigation, the defendants were charged with the intentional violation of their duties under Article 331 of the Iraqi Penal Code during the bidding of a contract. It was later discovered, during judicial proceedings, that one of the defendants had sat in the internal administrative investigation.<sup>65</sup>

Several factors pose a challenge to the quality of investigations and trials, including the large number of incoming cases, the scarcity of judges assigned to review them, and their engagement in other

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<sup>64</sup> 26\_CC\_2023.

<sup>65</sup> Monitored Case: 55\_CACC\_2022

cases and responsibilities. Additionally, judicial actors reported during roundtable discussions that slow response rates from government institutions can delay pre-trial investigations – with correspondence regularly taking months. To enhance the judicial process in these major cases, judicial authorities should conduct a comprehensive review of challenges associated with workload and time. This would help to streamline the judicial process and identify means to provide greater technical and technological resources. Indeed, this is reinforced across the UNCAC. For example, see article 6 and article 36 on ensuring resources for specialised bodies, as well as article 50 where the UNCAC encourages member states to adopt “*special investigative techniques*” to enhance their investigative processes and ensure the admissibility of evidence in court. Specialized training for investigators of the COI, public prosecutors, investigative judges, and their assistants is crucial, and efforts should be directed towards enhancing the collaboration of government institutions in procedures and providing evidence.

### **3.2.3 Corruption Crimes and Applicable Legal Provisions**

As mentioned earlier, 47% of the cases adjudicated fall under Articles 331 (as felonies) and 340 (as misdemeanours), and an additional 25% involve bribery acts under Articles 308, 310, and 312 of the Penal Code and Resolution Order 160 (II/1) (either felonies or misdemeanours).<sup>66</sup> The remaining cases (28%) cover a range of offenses, including theft, fraud, embezzlement of state funds, and forgery of public documents. It's noteworthy that six money laundering cases were ruled upon by the CACC, despite their not falling under the jurisdiction of that court.

The frequent use of Articles 331 and 340, as well as Resolution Order 160, raises questions about interpretation, whether this reflects the lower prevalence of certain forms of corruption in Iraq, the challenges in proving these crimes, including technical and financial requirements in investigation and adjudication, or the lack of precision in defining corruption-related crimes under existing laws. The lack of precision and high evidentiary thresholds may cause investigators, prosecutors, and judges to rely on relatively broad provisions regarding the violation of public office duties. As such, there is a need for comprehensive legislation that precisely defines all forms of corruption, accurately identifies each crime, and stipulates specific and clear penalties that correspond to each offense – in line with guidance from UNCAC’s Chapter 3 on Criminalization and Law Enforcement.

### **3.2.4 Sentence vis-à-vis Committed Crimes**

According to the data, there was a significant increase in the number of convictions (94) compared to acquittals (62) during the monitoring period in comparison to the reviewed period - and a sharp decrease in the number of cases sent back for re-investigation at the trial stage (21 monitored versus 69 reviewed) - indicating substantial progress in investigations and adjudications. However, the data from both monitored and reviewed case files indicates the lack of consistency in some outcomes regarding the severity of punishment relative to the incurred damages or financial scale of the committed act. Based on provisions in the Criminal Procedures Code, judges have discretionary power to consider the circumstances of a case and the attributes of the accused when delivering a sentence (see articles 128-140). Some verdicts were notably lenient, suspended, or completely dismissed, often attributed to factors such as defendants being young or old (19 cases), first-time offenders, or benefiting from general amnesty (15 cases).<sup>67</sup>

As for fines, except in cases of money laundering and illicit gain, the fines maintained a regular range from 1 million IQD to the maximum allowed by law, which is 10 million IQD. It is worth noting that fines in illicit gain cases are proportional to the amounts involved, whereas in Money Laundering cases, fines are equal or up to five times the amount of illicit earnings - as per Article 19 Integrity

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<sup>66</sup> Graphs 1.3 indicate that the number of cases tried under articles 340 and 331 is 86 cases out of 179 monitored cases and 82 cases out of 173 of reviewed verdicts, in addition to 40 monitored and 43 reviewed cases under bribery charges.

<sup>67</sup> Annex 3, Figure 1.2: *Sentences of Guilty Verdicts (monitored cases)*

Commission & Illicit Gain Law (No.30/2011) and Article 36 of the Anti-Money Laundering and Counter-Terrorism Financing Law.

*Illustrative Examples involving fines:*

**A former Governor** was accused of taking 4.6 billion IQD, receiving a bribe of 1,560,000 USD, and demanding two luxury cars from the complainant (the contractor). The court sentenced him to 10 years in prison (the maximum penalty) and imposed a fine of only 10 million IQD (which is 400 times less than the bribe amount), raising questions about fund retrieval.<sup>68</sup>

**A Former Minister** was accused of willful exploitation of public office by awarding a contract worth 41 billion IQD and an annex to the contract worth 21 billion IQD to a contractor with the support of legal and contractual department heads in the ministry. The accused claimed to have been threatened by a member of the Council of Representatives with parliamentary immunity who received 13 billion IQD from the contractor. The court sentenced the accused to one year in prison with a suspended sentence due to his young age and clean criminal record. The contractor was also sentenced to one year in prison and ordered to repay the amount specified by the Federal Integrity Commission.<sup>69</sup>

*An Illicit gain illustrative case:*

**A former General Manager of a public company** was accused of charges of illicit enrichment, concerning assets valued at 317 million IQD and 343,000 USD. In addition to the sentence of 6 years imprisonment, the fine was the amount of the illicit gains and a fine equivalent to it.<sup>70</sup>

It is worth noting that cases adjudicated under the aforementioned Anti-Money Laundering and Terrorism Financing Law and the Commission of Integrity and Illicit Gain Act were subjected to maximum fines that do not compare to those imposed under the Iraqi Penal Code. This indicates the need for a review of existing legislation and the broader sentencing policy to ensure that there is broad alignment across verdicts with respect to similar crimes.

### **3.2.5 General Amnesties**

The application of the general amnesty system is evident in 10 monitored cases and 5 reviewed cases. The court approved an amnesty in these cases, closing the lawsuit after the accused returned the stolen or misused funds. Additionally, it is a requirement that the accused must not commit a criminal act within the next five years. The legal representative's waiver of rights to pursue damages in civil proceedings is not a prerequisite for the granting of an amnesty.

*Illustrative cases:*

**A former governor** accused of wasting state funds and interest through facilitating the smuggling of cement without payment of customs tax, received amnesty upon depositing the gained amount of 506 million IQD from the illicit act.<sup>71</sup>

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<sup>68</sup> Case no. 70\_CC\_2022

<sup>69</sup> Case no. 18\_CC\_2020

<sup>70</sup> Case no. 60\_CC\_2023; the sentence in accordance with article 19 (2) is not less than 7 years imprisonment.

<sup>71</sup> Case no. 53\_CC\_2022



*Five government employees were accused of deliberately wasting public funds designated for school construction in 2013. With no criminal records and no government pursuit of charges for the incurred damage, the defendants' amnesty request was granted.<sup>72</sup>*

As argued by some judges and prosecutors, amnesties may be an effective asset recovery tool.<sup>73</sup> To ensure that large sums of money are returned to government institutions in full, it may be useful to incentivize perpetrators to co-operate with judicial actors. However, the use of the General Amnesty Act, including in major corruption cases raises concerns. It enables perpetrators to evade accountability and escape punishment simply by repaying stolen funds, thereby undermining the deterrent nature of punishment, and shielding individuals from accountability for criminal acts. Additionally, there are no provisions under the General Amnesty Act for state actors to reclaim any monetary gains which may have been acquired with stolen funds, considering that all corruption crimes occurred prior to 2016 and defendants have had ample time to utilize the funds. Ultimately, with the possible increase in amnesty requests - especially in relation to cases inherited from the dissolved Committees No 285 and No. 29 - general amnesty has the potential to weaken broader anti-corruption efforts. It might be more logical to exclude major corruption cases from the general amnesty scope or at least consider the defendant's restitution of embezzled funds as a mitigating factor rather than an absolute waiver of punishment.

### **3.2.6 Money Laundering Cases**

Money laundering crimes are treated as distinct from corruption offenses, governed by a distinct law and adjudicated by a special court for money laundering and counter terrorism. They are currently beyond the purview of the CACC's jurisdiction - even if meeting the criteria for grand corruption cases. The CACC has, nonetheless, tried six money laundering cases, all referred by Judicial Committee 285, under article 36 of the Anti-Money Laundering and Financing Terrorism Act (2015).<sup>74</sup>

These six cases, which include both reviewed and monitored cases, reflect a broader trend whereby jurisdiction is granted to the Central Anti-Corruption Criminal Court to handle such cases if they are linked to corruption cases already under consideration by the court. Despite the organic connection between corruption and money laundering, it is important to make a distinction between these different offenses. Integrating money laundering crimes that meet the criteria of substantial amounts and high positions under the jurisdiction of the Central Anti-Corruption Criminal Court is the most effective approach to address the technical complexities of analysing money laundering outside the scope of corruption.

An illustrative Money Laundering Case:

*This case involved four relatives—a General Manager of Investment Authority, his son, the CEO of a Money Exchange Company, and his wife, connected to six properties:*

- In absentia trials resulted in the son and wife receiving 6-year imprisonment sentences, property confiscation for the son, and a 2 billion 140 million IQD fine for the wife.*
- The General Manager faced a 1-year imprisonment term and a 2 billion and 14 million IQD fine, reflecting the estimated value of two real estate properties.*

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<sup>72</sup> Case no. 12\_CC\_2022

<sup>73</sup> As per discussion workshops with relevant judicial stakeholders such as the Public Prosecutors and Supreme Judicial Council in Q1 2024.

<sup>74</sup> Two of these are old verdicts, one of them is Case 63\_CC\_2021 involved a general manager of a municipality, investigated regarding five properties, in suspicion of money laundering. The CACC overturned the referral decision and sent back the case for re-investigation. No record is available further.

- *The CEO received a 4-year imprisonment sentence, a 2 billion and 14 million IQD fine, and a 1 million USD fine. On appeal, the Cassation Court altered the charges from money laundering to possessing, concealing, or using items obtained from a felony, alongside related articles of the IPC, reducing the sentence to 2 years imprisonment and waiving the fine entirely.<sup>75</sup>*

### 3.2.7 'Claim or No Claim of Damages' Declaration

In the legal proceedings, government institutions are represented by legal representatives obligated to attend hearings and advocate for their institutions.<sup>76</sup> These representatives are bound by Article 9 of the Criminal Procedures Code 1971 relating to the submission and withdrawal of claims.<sup>77</sup> During hearings, the court summons these representatives to testify on the alleged act, the accused's role, and assessed damages. The representatives conclude by communicating the institution's decision on whether to proceed or withdraw with a claim to pursue recuperation of damages from the defendant in civil proceedings. This is achieved through the submission of a 'Claim' or 'No Claim of Damage' statement signed by the minister or highest-ranking official of the affected institution.

- The analysis reveals that 130 (out of 179 before the CACC) of the monitored cases had active representation from the affected institution. Across these cases, representatives in 53 cases pursued further claims for damages before the civil courts and representatives in 59 cases withdrew their claims. Representatives in the remaining 18 cases yielded this right to the judgment of the CACC.
- When looking exclusively at the 94 monitored cases which produced a guilty verdict – 63 had active representation from the affected institution. Across these cases, representatives in 44 cases pursued further claims for damages before the civil courts and representatives in 19 cases withdrew their claims.
- Finally, out of 173 reviewed cases, 140 had active representation from the affected institution. Across these 173 cases, representatives in 46 pursued further claims for damages before the civil courts and representatives in 48 cases withdrew their claims. Notably, in 55 cases the court affirmed the institutions' right to pursue compensation in civil courts based on claims during investigation or independently.

*To illustrate with a monitored case,*

***Five engineers, who were members of a committee assigned for a reconstruction project for rebuilding schools, were accused of inflating prices, wasting public funds totaling 19,183,000,000 million IQD. The legal representatives of relevant institutions of the***

<sup>75</sup> Case no. 79\_CC\_2022, Case no. 83\_CC\_2022, Case no. 12\_CC\_2023, Case no. 14\_CC\_2023.

<sup>76</sup> Legal representatives of state institutions adhere to the Iraqi Jurists Union Act (1981), Legal representatives of state institutions follow the Iraqi Jurists Union Act (1981), mandating their membership (article 3). Governed by the Disciplinary Committee (article 16), they may face penalties like attention draws, warnings, or temporary union dismissal for up to a year, based on the Disciplinary Law of State Employees (1936) or its successor (article 18). If an act is considered criminal, the Committee refers the member to the relevant court (article 19).

<sup>77</sup> Article 9 outlines that a criminal claim is inherent in a complaint, including civil action unless otherwise stated. The criminal court considers the civil right in the context of the criminal right. Waiving the complaint relinquishes the criminal right but not the civil right unless explicitly stated. Waiving the civil right doesn't automatically waive the criminal right, except as dictated by the law or declared by the complainant. It doesn't impact public right lawsuits. Waiving a complaint or lawsuit against a civil right prohibits the revival of the waived right before any court. The complainant's waiver prevents the criminal court from considering the civil lawsuit but doesn't prevent recourse to the civil court for the civil right unless explicitly waived.

*concerned ministry and governorate council did not claim damages. The defendants were released upon the invocation of the General Amnesty Law (2016).<sup>78</sup>*

*Another example of a reviewed verdict,*

***A former governor** was accused of deliberately squandering public funds of a project originally designated for the reconstruction and stabilization of districts and cities liberated from terrorism. He diverted an amount totaling 700 million IQD to be utilized for his governor's residence, hospitality expenses, and household supplies. Representative of the governorate testified to no damage claim. Due to insufficient evidence, the court dismissed the charges and released the defendant.<sup>79</sup>*

The decisions made by legal representatives on whether to assert or withdraw a claim of damages in civil proceedings carry profound implications throughout legal proceedings. When a legal representative opts not to pursue civil damages or withdraws an initial claim during the investigation, it strips the concerned institution in the state of the right to initiate a civil action for the recovery of stolen or misappropriated funds. These decisions also exert a notable impact on the criminal case itself, as revealed in discussions with judges and prosecutors during roundtable sessions in September 2022. A declaration of no claim weakens the criminal case, transforms the legal representative or institution into a defensive position, and closes the door to the pursuit of recovering public funds.

### **3.2.8 Public Prosecution**

As mentioned earlier, the Public Prosecutor's Office plays a pivotal role in criminal justice, holding extensive powers related to cases of financial and administrative corruption and crimes against public office. These powers extend to investigations, trials, challenging decisions, appealing judgments, monitoring the execution of sentences, including asset recovery and extradition of implicated individuals, and maintaining legitimacy in the judicial process.<sup>80</sup>

Effective participation from the public prosecution is crucial to presenting a strong case that considers public interest, defendants' rights, and the preservation of the integrity of the judicial process simultaneously. However, the TM team recorded significant variation in the involvement of the public prosecution. In the first 9 months of the monitoring period, was reportedly characterized by limited engagement by the public prosecutors. This engagement improved in the second 9 months. The public prosecutor plays a vital role in trial engagement, procedures, questioning witnesses, defendants, and legal representatives, presenting data, and requesting convictions or acquittals. This underscores the importance of supporting and enhancing the capacity of the public prosecutor, aligning with the requirements of a fair trial and allowing parties, including the public prosecution, to ask questions and engage in discussions through the court towards reaching a conclusive judgment.

The effective implementation of Article 5 (12, 13, 14) of the Public Prosecution Law, which calls for establishing dedicated units to address cases of administrative and financial corruption within government institutions, working independently from them, holds significant potential to deter corruption. However, the 2021 ruling by the Federal Supreme Court on the unconstitutionality of these provisions led to their suspension, thereby losing the opportunity to establish an effective independent mechanism for combating corruption at its early stages.

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<sup>78</sup> case 57-CC-2023

<sup>79</sup> Case no. 5\_CC\_2021

<sup>80</sup> Public Prosecution Act of 2017 (No 49), article 2, 5, 7, 8, 9, 10, 11, 12.

### **3.2.9 The Right to a Fair Trial**

Article 19 of the Iraqi constitution outlines substantial provisions relating to fair trial rights. Iraq's commitments of fair trial rights include the independence of the Judiciary, equality under the law, no crime or punishment except by law, the guarantees to litigation, defense, innocence until proven guilty, public trial, personalized punishment, non-retroactivity, legal aid, and swift judicial proceedings. These are all rights guaranteed under the ICCPR, to which Iraq is a state party (see ICCPR articles 14 and 16).

#### **a. Public Trials and Judicial Proceedings**

Article 19(13) of the constitution states that any preliminary investigative documents must be submitted to the competent judge in a period not exceeding 24 hours from the time of the arrest of the accused, with extension only possible once and for an additional 24 hours. The principle adopted here is one reflected by ICCPR's Article 14(3), where it stipulates that 'in determination of any charge against him, everyone shall be entitled to the following minimum guarantees, in full equality,' including 'to be tried without undue delay.'

The speed of adjudicating cases is usually linked to the accuracy of investigations – the chances of resolving strong cases quickly increase when the preparations are done carefully. Similarly, cases that involve numerous sessions may also indicate the diligence of judicial authorities in examining or referring them back for further investigation. In many instances, delays are not necessarily indicative of deficiencies in judicial procedures but rather may suggest shortcomings in administrative or preliminary investigations. The quantitative analysis data indicates a significant decrease in the number of cases re-referred for investigation in monitored cases compared to reviewed cases (see Graph 1.4 above). Additionally, trial delays could be attributed to legal representatives or defense lawyers exercising their right to request session postponements to access or request case documents.

Furthermore, the complete absence of civil society organisations in court sessions was observed by the TM team. The judiciary clarified that there are no prohibitions on attendance to civil society organisations, as any prohibition or restriction contradicts the provisions of Article 19(7) of the Iraqi constitution, which stipulates that trial proceedings should be public unless the court decides otherwise. Civil society organisations, on the other hand, have indicated that they are not able to attend court sessions due to security constraints placed upon access to the compounds where the courthouses are located. A potential solution would be to coordinate between civil society and the Supreme Judicial Council and discuss arrangements that seek to accommodate members of the public, journalists, and other civil society actors in a manner that respects local traditions while preserving the integrity of the trial and the order in court. Such an initiative could be beneficial in enhancing public trust in the fairness of the judicial system in Iraq and the role of civil society in supporting the judicial system.

#### **b. Legal Aid and Defense Lawyers**

Legal aid is constitutionally recognized in Iraq as a fundamental right (Article 19(11) of the Constitution), obligating the state to appoint a lawyer for a defendant who has no legal representation. This right spans all stages of criminal proceedings, from investigation to trial and appeal. According to the Criminal Procedures Code (1971), the head of the court appoints an attorney for the accused, with remuneration determined by the President of the Criminal Court (Article 144(A)). In cases of refusal or inadequate defense, the court can replace the appointed attorney and impose fines.<sup>81</sup> Likewise, the Lawyer Act of 1965 mandates the establishment of a legal aid committee in each court, comprising three lawyers appointed by the Bar Association. This committee extends legal aid under specific circumstances, selecting lawyers from the roster unless compelling reasons dictate otherwise. Lawyers declining to provide assigned legal aid may face

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<sup>81</sup> Criminal Procedures Act (1971), article 144.

disciplinary consequences. For insolvent defendants, designated lawyers defend them in court without charge, with necessary expenses covered by the Bar Association.<sup>82</sup>

However, significant shortcomings exist in the process of assigning defense lawyers.<sup>83</sup> In 23 monitored cases, lawyers were assigned from those available in the court building on the trial day, leading to minimal preparation and reducing the attorney's role to a mere formality. The minimal remuneration provided by the courts contributes to attorneys' reluctance to take on these cases. This deficiency, a longstanding issue within the Iraqi system, was highlighted in feedback from various Policy Dialogue roundtables.

Effective legal representation, provided by diligent and competent lawyers, profoundly impacts case outcomes. It involves gathering and presenting evidence, cross-examining witnesses, challenging the prosecution's arguments, protecting the accused's rights, presenting a strong defense, and negotiating for favourable plea deals or lenient sentencing. Addressing the shortcomings in appointing and preparing defense lawyers is crucial for upholding the constitutional right to legal representation, ensuring a fair and effective justice system for all individuals involved in criminal proceedings, and aligning with international human rights standards.

### **c. Torture And Ill-Treatment**

Both the Iraqi Constitution of 2005 and the Criminal Procedures Code of 1971 explicitly prohibit physical and mental torture or ill-treatment and prohibit the use in evidence of statements or confessions extracted under duress.<sup>84</sup> This aligns with Iraq's commitments under the United Nations Convention on Torture and other Cruel, Inhuman, and Degrading Treatment (1984, ratified in 2011), and the International Convention for Civil and Political Rights (1966, ratified in 1971). Despite this, a qualitative review of the data indicated that there were 16 cases in which defendants raised allegations of the use of torture during interrogation to obtain admissions (12 from monitored cases, and 4 from reviewed cases).<sup>85</sup> Of the 12 monitored cases where allegations were raised, 10 were in cases investigated by the now-dissolved Committee 29, before they were forwarded to the CACC by Judicial Committee 285 in February 2023. The remaining 2 monitored cases involving claims of torture commenced after the Committee 29 was dissolved in March 2022, and involved allegations of torture during police custody, with individuals claiming coercion to alter statements.

During the monitored cases, the CACC took varied actions in response to allegations of torture. In 6 instances, charges were dismissed due to insufficient evidence. However, claims of torture were not always corroborated through medical reports and 5 cases resulted in guilty verdicts with sentences ranging from 1 to 4 years imprisonment. Finally, one case, initially referred to by the first investigative judge, was returned for pre-trial investigation. TM Officers were unable to establish whether claims of torture, where verified, were referred onwards to criminal investigation.

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<sup>82</sup> Lawyer Act of 1965, articles 66, 67, 70, 71, 72, 73.

<sup>83</sup> See Annex 3, Figure 1.5: Types of Legal Representation

<sup>84</sup> Iraqi Constitution 2005, article 37-1 (C) reads 'All forms of psychological and physical torture and inhumane treatment are prohibited. Any confession made under force, threat, or torture shall not be relied on, and the victim shall have the right to seek compensation for material and moral damages incurred in accordance with the law.' Article 127 of Criminal Procedures Act (1971) reads 'The use of any illegal method to influence the accused and extract an admission<sup>38</sup> is not permitted. Mistreatment, threats, injury, enticement, promises, psychological influence or use of drugs or intoxicants are considered illegal methods.'

<sup>85</sup> Namely, no. 3\_CC\_2021, Case no. 2\_CC\_2021, Case no. 57\_CC\_2021, Case no.52\_CC\_2022, Case no. 58\_CC-2022, Case no. 79\_CC\_2022, Case no. 50\_CC\_2023, Case no. 56\_CC\_2023, Case no. 53\_CC\_2023, Case no. 66\_CC\_2023, Case no. 68\_CC\_2023, and Case no. 93\_CC\_2023.

To illustrate:

**A former Deputy Minister** accused of receiving bribes denied all allegations and claimed to have confessed after being interrogated, tortured, and threatened by security personnel. In response to the accusation, the defendant stated that his department was not responsible for the mentioned contracts, which were managed by another department and another defendant. Charges were dropped due to lack of evidence.<sup>86</sup>

In 4 reviewed casefiles,<sup>87</sup> torture allegations were raised against the now-dissolved Committee 29 by defendants claiming to have been victims of torture during pre-judicial investigation. Of these cases, the CACC returned one case to pre-trial investigation. In the remaining three cases, medical reports did not confirm allegations, leading to sentences of 1 to 7 years imprisonment and a 10 million IQD fine. Overall, addressing these instances of torture is critical for upholding human rights and ensuring a just legal system. It is important to note that any claims of torture must be result in a prompt review of a medical report – otherwise it would run counter to the principles of the constitutional guarantee for a trial held without undue delay (as reflected in Article 19(13) of the Iraqi Constitution).

### 3.3 Summary

The comprehensive qualitative analysis set out in this report highlights the following key takeaways: the significance of transparent criteria for case referral to CACC; the pivotal role of an efficient and fair investigation process; the continuous need for robust anti-corruption laws; the importance of aligning sentences with the severity of crimes; the need for judicious application of the general amnesty; the interconnectedness of anti-corruption efforts with measures against money laundering; the critical role of ‘Claim of Damages’ declarations; the necessity for clear guidelines in suspending accused individuals; and the imperative to address allegations of torture and ill-treatment. The report’s findings emphasize the need for a cohesive, rights-centric approach to combat corruption effectively. A comprehensive and well-coordinated approach is vital for building a robust anti-corruption framework. Continuous evaluation and improvement in these areas will contribute to a more effective role of the CACC and fair justice system, as well as alignment with international standards and the principles of justice and accountability.

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<sup>86</sup> Case no. 50\_CC\_2022

<sup>87</sup> Case no. 22-CC-2022, Case no. 26-CC-2022, Case no. 32-CC-2022, and Case no. 46-CC-2022 (one of the defendants in this last case was acquitted due to lack of evidence).

## IV. RECOMMENDATIONS

Acknowledging the strides made by successive governments in the fight against corruption in Iraq, there remains a collective hope for more expansive efforts to sustain and build upon existing progress. However, it is imperative to address systemic issues within the Iraqi justice system that impede its effective handling of corruption cases. Based on our observations and key findings from the monitoring and review of grand corruption cases, the following recommendations are presented. These aim to confront identified problems and challenges in the investigation and emphasize the need for a comprehensive approach and coordinated effort across all branches of government—political, executive, and legislative—while actively engaging civil society groups.

### To Government of Iraq:

- **Anti-Corruption Legislative Reform**

- *Reform the Penal Code of 1969 and other Substantive Laws* to align with international standards set by the UNCAC and other relevant anti-corruption instruments. The revision should encompass all facets of corruption, beyond the COI characterization, providing precise definitions for each offense. It should extend beyond conventional corruption crimes to include trading in influence, concealing and laundering the proceeds of corruption, such as Money Laundering, obstructing justice, and private-sector corruption. Consider a comprehensive overhaul, deliberating on the amendment or adoption of a new Penal Code that consolidates amendments for enhanced accessibility and streamlined implementation by relevant stakeholders.
- *Alternatively, consider enacting dedicated anti-corruption legislation*, which clearly and comprehensively defines all forms of corruption, precisely outlines each crime, and stipulates specific and clear penalties tailored to each offense, similar to other specialized laws, and encompass, in a comprehensive and more precise manner, crimes covered in the Penal Code, Commission of Integrity and Illicit Gains Act, Law, Anti-Money Laundering Act.
- *Streamline the investigation and adjudication processes* to enhance the collection, documentation, and presentation of evidence. Specific guidelines should be developed to address financial aspects of crimes, ascertain the criminal intent of defendants, determine common intent among different perpetrators, utilize factual evidence effectively, and acknowledge expert testimonies as integral to trials.
- *Reform the legal aid system* to ensure full legal representation, with clear criteria, ethical standards, and reasonable remuneration for defense lawyers.
- *Review the General Amnesty Act* to ensure the continued exclusion of corruption cases. Additionally, emphasize that repaying stolen or wasted money should be considered only a mitigating factor for punishment and that authorities should be able to pursue any gains made with stolen funds. This approach ensures that accountability is maintained, and punishment is not precluded by financial restitution.

- **'Claim of Damages' Declaration**

*Re-evaluate the discretion granted to government institutions under Article 9 of the Criminal Procedures Act*, allowing them to withdraw criminal and civil claims. The current provision raises concerns as it provides authorities with the power to decide whether to pursue or withdraw a case. The withdrawal of claims, even after indictment, poses a risk of weakening the prosecution's case, making convictions more challenging. This not only jeopardizes state interests, including financial concerns and public perception, but also hinders the pursuit of justice. Moreover, the withdrawal of claims limits the state's ability to recover misappropriated funds and secure financial restitution. The potential erosion of accountability, especially concerning high-level officials, underscores the

need to strike a balance between governmental authority and the imperatives of accountability, justice, financial recovery, and upholding the rule of law. Decisions to withdraw claims should be made judiciously, weighing potential consequences, and considering the broader public interest. It may be advantageous to ensure that these decisions are made by an independent party acting on behalf of the institution, and not by actors within government institutions – especially in grand corruption cases involving senior officials possessing institutional influence.

- **Government Legal Representatives**

*Reassess the role of legal representatives of government institutions in conducting administrative investigations at the pre-judicial stages and representing institutions during judicial investigations and trials.* Firstly, it is imperative to provide these representatives with adequate staffing, training, and resources to ensure quality their contributions. Additionally, to maintain public trust in the integrity of corruption investigations at all levels, these representatives must operate free from internal pressures. The current structure raises concerns about their independence, which may be influenced by institutional reporting lines. In particular, it is noted that the dissolution of the (independently acting) Inspector General in October 2019 has left a gap in administrative investigations – underscoring the need to take measures in securing legal representatives’ independence and maintaining the authenticity of the investigative process. This gap should be filled by an independent actor, acting impartially and objectively to represent the interests of the affected institution.

- **Sector-Based Reform, Including of Public Procurement**

*Adopt a holistic framework that integrates general and sector-specific strategies. Foster inter-agency collaboration,* strengthen oversight mechanisms in high-corruption sectors, invest in capacity-building programmes for ethical standards, and establish transparent reporting mechanisms, robust internal controls, transparency measures, and regular audits. Continuous improvement through policy reviews and updates, coupled with an anti-corruption policy framework, ensures adaptability in the ongoing fight against corruption. Address the observed deficiencies in public procurement and management laws by instituting a comprehensive reform, through enhancing current laws, introducing specific guidelines for each stage of public contracts, and ensuring transparency, fair competition, and objective decision-making criteria.

**To the Supreme Judicial Council:**

- **SJC Judicial Order 96 (2019)**

*Revisit SJC Judicial Order 96 (2019) to incorporate supplementary criteria for discerning grand corruption cases falling under the jurisdiction of the CACC.* Clearly define the thresholds for misappropriated funds and the rank of officials implicated in grand corruption-related cases, streamlining the referral system for the CACC. An addendum in this context would mitigate ambiguity, preventing high-level cases from being misclassified and erroneously adjudicated in lower courts, thereby preserving the integrity of the classification and sentencing process.

- **Training and Capacity Building**

*Introduce an exchange programme to facilitate the sharing of knowledge, experiences, and best practices among judicial professionals, fostering international collaboration in the fight against corruption.* Enhance judicial performance and responsiveness to corruption cases through comprehensive training initiatives, including on definitions of corruption, various corruption-related cases, and obligations on the state and citizens. Improve interpretation and application of anti-corruption laws by incorporating the domestication of global and regional anti-corruption treaties into training programmes. Expand the scope of training to encompass digital forensics, financial investigation, and techniques for tracking and recovering assets. Extend this training to public



prosecutors, investigative and trial judges, and, where feasible, to investigators associated with the Commission of Inquiry (COI).

- **Synchronized Sentencing Policy**

*Institute a standardized sentencing policy for grand corruption cases, incorporating transparent guidelines in accordance with international standards.* Ensure transparency, fairness, and deterrence, particularly in cases involving severe corruption crimes, by considering elements like the scale of corruption, monetary involvement, and mitigating or aggravating factors. Strive for uniformity in sentencing comparable cases, mitigating disparities based on social status, political affiliation, or connections. Prioritize the deterrence factor to effectively hold individuals involved in grand corruption accountable, reinforcing a consistent and stringent approach to justice.

- **Judicial Oversight Authority (JOA)**

*Enhance the mandate of the Judicial Oversight Authority (JOA) to encompass comprehensive oversight of the entire processes of investigation, prosecution, and adjudication – including of corruption cases.* Empower the Judicial Oversight Authority to complete its function by providing them with the necessary training and powers to ensure integrity, transparency, and accountability. Expanding the JOA's directive goes beyond current practices, enabling it to effectively observe, monitor, and evaluate the entire spectrum of the justice system.

**To the Bar Association:**

- **Legal Representation**

*Initiate a comprehensive overhaul of the existing legal aid system to enhance representation for defendants in need.* Establish transparent and regulated criteria for selecting legal aid cases, considering factors such as income, severity of the offense, and the availability of the accused. Guarantee full retention of legal aid, providing comprehensive representation across all trial stages, including appeals. Clearly outline the duties and responsibilities of lawyers, emphasizing ethical standards, confidentiality, and an unwavering commitment to providing the best defense for the accused. Ensure an appealing system by guaranteeing adequate remuneration for legal aid providers, recognizing their crucial role in the justice process.

**To Civil Society Organizations (CSOs):**

- **Restraints and Challenges**

*Create a network and develop a strategic plan to push for law reform by addressing legal restrictions on CSOs working on anti-corruption.* Establishing a civil society organization alliance and networking to develop a strategic plan for lobbying for the reform of anti-corruption laws and addressing the restrictions imposed on civil society organizations in following up on cases, through communication with relevant authorities and discussing arrangements that accommodate civil society actors and journalists and others in a way that respects local traditions and context while maintaining the integrity of trials and order in the courtroom. Organize public campaigns targeting legislative and non-legislative measures that limit the constitutional rights of journalists and activists. Establish a coalition of CSOs working in the anti-corruption context, collaborating with legal experts to develop policy papers, and engage with policymakers, legislators, political parties, and government officials. Raise awareness about the imperative for relevant legal reform through targeted workshops, meetings, and roundtable discussions.

- **Monitoring and investigative capacity**

*Collaborate with national and international organizations, UN agencies, government institutions, and bar associations to design training and capacity-building programmes for CSOs.* Focus on educating CSOs on investigating, monitoring, and reporting corruption trials.

- **Capacity Building and Public Engagement:**

*Engage with national and international partners to access resources, expertise, and best practices in anti-corruption efforts. Conduct public awareness campaigns to inform citizens about their rights to legal representation and the importance of exposing and reporting corruption.*

**To the International Community:**

- **Joint Information Centre:**

*Provide support for the establishment of a Joint Information Centre (JIC) or framework that is dedicated to monitoring, recording, and analyzing major corruption cases domestically, regionally, and internationally. Acknowledge such an initiative's potential to enhance transparency, accountability, collaboration, and coordination between stakeholders involved in anti-corruption efforts. Stress the importance of providing solid data on major corruption cases accessible to the public while adhering to the legal and privacy regulations.*

- **Recovery of Assets, Internal and External Support:**

*Advocate and support initiatives to establish robust legal frameworks for domestic and international asset recovery, fostering collaboration between state agencies, financial institutions, and foreign governments. Emphasize the need for establishing a clearly drafted and effective regime for identification, freezing, seizing, tracing, management, and repatriation of stolen assets.*

- **Training and Capacity Building:**

*Support the implementation of recommendations addressed to the Judiciary, COI, bar association, and civil society organisations (CSOs) by providing expertise, knowledge, funds, and capacity building initiatives. Ensure the availability of training on trial monitoring and investigative media for CSOs for them to act as effective anti-corruption watchdogs.*

## V. CONCLUSION

In conclusion, this report on monitoring trials of major corruption cases underscores the indispensable role of transparent and accountable judicial procedures in the fight against corruption. By focusing on the experience of the Central Anti-Corruption Criminal Court as specialized court handling major corruption crimes, the report provides a comprehensive and transparent assessment of factors affecting the judicial process of these trials with observations encompassing factors ranging from ensuring fair trial rights to the specific challenges of external factors influencing investigations and trials. The report aims to provide valuable insights to enhance Iraq's efforts in combating corruption by building on the successes achieved since the establishment of the Central Anti-Corruption Criminal Court and its system.

Despite the commendable progress, such as the establishment of a specialized court to deal with high-level anti-corruption crimes, the report identifies areas that can still be improved for greater alignment with the relevant standards of the United Nations Convention against Corruption. The success of anti-corruption initiatives depends on adopting a comprehensive strategy involving legal and institutional reforms, together with decisive and prudent enforcement of public policies with a full awareness that seeking justice in corruption cases is not only about holding the accused accountable but also about fostering public trust in the Judiciary and its institutions. While the path to a corruption-free society poses a challenge, it is a worthwhile journey that requires belief and commitment from the government, civil society, and international community. The aspiration for a corruption-free Iraq becomes not just an aspiration, but an achievable reality through sustained effort and collective dedication.

## **Annex 1 - Applicable Laws and Provisions**

### **Iraqi Penal Code No.111 of 1969**

**Article 289** - In circumstances other than those in which the law stipulates a special sentence, any person who falsifies an official document is punishable by a term of imprisonment not exceeding 15 years.

**Article 307** - (1) Any public official or agent who seeks or accepts for himself or for another a gift, benefit, honor, or promise thereof to carry out any duty of his employment or to refrain from doing so or to contravene such duty is punishable by a term of imprisonment not exceeding 10 years or by detention plus a fine which should not be less than the amount he sought, was given, or was promised but should not, under any circumstances, exceed 500 dinars.

(2) The penalty will be a term of imprisonment not exceeding 7 years or detention if such request, acceptance or receipt occurs with intent to receive remuneration after such duty is or is not carried out or following the contravention of such duty.

**Article 308** - Any public official or agent who seeks or receives for himself or for another a gift, benefit, privilege, or promise thereof to carry out or refrain from carrying out an act that does not fall within the duties of his office but he claims or considers that such act was carried out in error is punishable by a term of imprisonment not exceeding 7 years or by detention plus a fine of not less than the amount he sought, was given or was promised. The fine should not, under any circumstances, exceed 500 dinars.

**Article 309** - The provisions of the preceding two Articles apply even though that public official or agent intended not to carry out such act or refrain from doing so or contravene the duties of his office.

**Article 310** - Any person who gives, offers or promises a public official or agent anything stipulated in Article 308 is considered to be offering a bribe. Any person who mediates for a person who offers or accepts a bribe in order to offer, seek, accept, receive or promise such bribe, is considered to be an intermediary. The person who offers a bribe as well as the intermediary is punishable by the penalty prescribed by law for a person who accepts such bribes.

**Article 311** - 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.

**Article 312** - The following persons are punishable by detention:

(1) Any person who seeks or receives a gift, benefit or privilege believing it to be a bribe for a public official or agent with intent to keep it for himself.

(2) Any person who receives or accepts such gift, benefit or privilege while being aware of its purpose even though the public official or agent to be bribed has not already specified or become aware of it, as long as he is not an intermediary in the act of bribery.

**Article 313** - Any person who offers a bribe to a public official or agent and he does not accept it is punishable by detention or by a fine.

**Article 314** - In addition to the penalties stipulated in the Articles of this Section, an order for the confiscation of the gift received by or offered to the public official or agent will be issued.

**Article 315** - Any public official or agent who embezzles or conceals funds, goods, documents establishing legal rights or other things that come into his possession is punishable by imprisonment.

The penalty will be life imprisonment or imprisonment for a term of years if the public official or agent is a tax collector, their deputy, deposit trustee, or money changer, or if he embezzles anything surrendered to him in his capacity as such.

**Article 316** - Any public official or agent who exploits his position in order to obtain funds, goods, or documents establishing legal rights or other things to which he is not entitled, and which belong to the State

or to an establishment or organization in which the State has a financial interest is punishable by imprisonment.

The penalty will be a term of imprisonment not exceeding 10 years if such funds, goods, documents, or other thing belong to some entity other than those mentioned in the preceding Sub-Article.

**Article 317** - If the value of anything involved in an offence stipulated in Articles 315 and 316 is less than 5 dinars, the Court may sentence the offender to detention instead of the penalty prescribed in those Articles.

**Article 318** - Any public official or agent who is entrusted with the supervision of a department belonging to an authority in which he is working or a transaction or case and who then maliciously harms or causes harm to that department in order to obtain some benefit for himself or for another is punishable by imprisonment.

**Article 319** – Any public official or agent who benefits directly or through the mediation of another from a transaction, contract or agreement, the preparation, assignment, implementation or supervision of which is in the hands of such public official or agent is punishable by a term of imprisonment not exceeding 10 years or by detention. The same penalty applies if he receives for himself or for another a commission in respect of such activity.

**Article 320** - Any public official or agent who employs others to carry out the activities relating to his position and who retains for himself, in whole or in part, the wages or other recompense due to his employees, or who employs slave labour and takes their wages for himself, or who enters in a government register the names of fictitious or genuine persons who have not been engaged in those activities and retains their wages for himself, or who pays such employees their wages at the government's expense, is punishable by a term of imprisonment not exceeding 10 years or by detention.

**Article 321** - In addition to the penalties stipulated in the Articles of this Section, the offender shall be ordered to make restitution for the funds he has embezzled or appropriated for himself or for the value of the benefit or gain which he has obtained.

**Article 322** - Any public official or agent who arrests, imprisons, or detains a person in circumstances other than those stipulated by law is punishable by a term of imprisonment not exceeding 7 years or by detention.

The penalty will be a term of imprisonment not exceeding ten years or detention if the offence is committed by a person wearing an official uniform to which he is not entitled, or who uses a false identity, or makes use of a counterfeit order claiming it to have been issued by an authority that is entitled to issue such orders.

**Article 323** - Any public official or agent who, while being aware of the violation of his duty to the law, punishes a convicted person, or orders him to be punished, by a penalty greater than that imposed on him by law or by a penalty to which he has not been sentenced is punishable by detention.

**Article 324** - Any public official or agent who is entrusted with the administration or supervision of a centre, prison, or other institution set aside for the discharging of a penalty or precautionary measure and who admits a person without an order to do so from a competent authority, or refrains from implementing an order issued for the release of such person or for his continued detention following the period prescribed for his custody, detention or imprisonment is punishable by detention.

**Article 325** - Any public official or agent who engages slave labour in activities unconnected with the legally or constitutionally recognized public interest, or activities other than those that are prompted by necessity, or who obliges a person to engage in activities or circumstances other than those in which the law sanctions such activity is punishable by detention. This is in addition to an order that he pay any wages due to those people he has unlawfully employed.

**Article 326** - Any public official or agent who, in the course of his official duty, enters the house of a person, or any part thereof, without the consent of that person, or causes another to enter the house in circumstances other than those in which the law sanctions such entry or without due care to the procedures laid down for making such entry punishable by detention plus a fine or by one of those penalties. The same penalty applies to any public official or agent who carries out a search of a person, house, or location without

the consent of the owner, or causes another to carry out the search in circumstances other than those in which the law sanctions such search or without due care to the procedures laid down for such search.

**Article 327** - Any public official or agent who knowingly reveals information that has come to his knowledge in the course of his duty to a person to whom he is required to withhold such information is punishable by a period of detention not exceeding 3 years plus a fine not exceeding 300 dinars or by one of those penalties. The penalty will be imprisonment if, as a result of that revelation, the interests of the state are harmed. The same penalty applies to any person associated with the government or their deputy or any person working on his behalf who is involved in the conclusion of a contract or transaction and who reveals information that they have received in the course of concluding such contract or transaction and which he is obliged to withhold.

**Article 328** - Any official or employee in a postal or telecommunications agency as well as any public official or agent who opens, destroys or conceals a letter or telex entrusted or consigned to such agency, or who assists another to do so or reveals secrets contained therein is punishable by a term of imprisonment not exceeding 7 years or by detention. The same penalty applies to any of those persons who reveal the contents of a telephone conversation or assist another to do so.

**Article 329** - (1) Any public official or agent who exploits the authority of his office, and who prevents or hinders the execution of an order issued by the government, legal provision, regulation, judgment, or order issued by a court or competent public authority, or who delays the collection of revenues, taxes, or such thing that is regulated by law is punishable by detention plus fine or by one of those penalties.

(2) The same penalty applies to any public official or agent who refrains from executing a decision or order of a court or competent public authority within 8 days of his official notification to do so and the execution of such decision or order falls within his jurisdiction.

**Article 330** - Any public official or agent who unlawfully refrains from executing the duties of his office or wilfully fails to fulfil his duties in response to a request, instruction, to mediation by another, or for any unlawful reason is punishable by detention.

**Article 331** - Any public official or agent who wilfully commits an act in breach of the duties of his office, or refrains from executing the affairs of that office with intent to harm the welfare of an individual, or to benefit one person at the expense of another, or at the expense of the state is punishable by detention plus a fine or by one of those penalties.

**Article 332** - Any public official or agent who cruelly treats a person in the course of his duties thereby causing him to suffer a loss of esteem or dignity or physical pain is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties but without prejudice to any greater penalty stipulated by law.

**Article 333** - Any public official or agent who tortures or orders the torture of an accused, witness, or informant in order to compel him to confess to the commission of an offence or to make a statement or provide information about such offence or to withhold information or to give a particular opinion in respect of it is punishable by imprisonment or by penal servitude. Torture shall include the use of force or menaces.

**Article 334** - Any public official or agent who uses the authority of his office to purchase forcibly any moveable or immovable property from its owner, or unlawfully takes possession of such property, or a benefit or title belonging to another, or who compels the owner to make any disposals of such property to him or to another, or to enable him to benefit from such property in any way is punishable by detention, plus a fine or by one of those penalties. He shall be ordered to make restitution for the property that he has appropriated or its value if it has no substance in addition to the compensation if necessary of any person who has suffered harm as a result of the offence.

**Article 335** - Any public official or agent who unlawfully uses his position to take possession of property, goods, or title documents or other such things in his possession as a consequence of his position, or assists another to do so, and without intent to take legal possession, is punishable by a term of imprisonment not exceeding 10 years or by detention.

**Article 336** - (1) Any public official or agent who, by deception or any other illegal means, violates the freedom or integrity of auctions or invitations to tender by the government, or by an establishment or company, in which the government has a financial interest, or those of an official or semi-official agency is punishable by detention plus a fine or by one of those penalties.

(2) The same penalty applies to any person other than a public official or agent who commits an act stipulated in the preceding Sub-Article.

(3) Such a person shall be ordered to make restitution for the loss arising from an act stipulated in this Article.

**Article 337** - Any official prohibited by reason of his position from engaging in commerce who trades without profit or gain with his own private property or the property of his ancestor, descendant, brother, sister, spouse, or any person in his custody or care is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 200 dinars or by one of those penalties.

**Article 338** - Any official or employee in an official or semi-official agency who uses the authority of his position to acquire for himself or for another from a person without his consent anything of little or no value is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 200 dinars or by one of those penalties in addition to an order that he return those items that he has acquired or pay their value in full if they are no longer in their original state.

**Article 339** - Any public official or agent who is involved in the collection of a tax, revenue, fine or other such thing or who is responsible for the payment of fees, wages or such things and who knowingly seeks or acquires or orders the collection of that to which he has no right to or which exceeds that which is due is punishable by a term of imprisonment not exceeding 7 years or by detention. Sums unlawfully collected shall be ordered to be refunded.

**Article 340** - Any public official or agent who wilfully inflicts damage on the property or interests of the authority for which he works or to which he is associated by virtue of his position or on another's property that has been entrusted to him is punishable by a term of imprisonment not exceeding 7 years or by detention.

**Article 341** - Any public official or agent who causes by a serious error on his part the infliction of grave damage on the property or interests of an authority for which he works, or with which he is associated by virtue of his position, or on another's property or interests that have been entrusted to him is punishable by detention if it is as a consequence of gross negligence in the performance of his duty or the abuse of his authority or a serious breach of the duties of his office.

**Article 446** - The penalty will be detention for an offence of theft committed in circumstances other than those stipulated in the preceding Articles.

The penalty prescribed in this Article may be substituted for a fine not exceeding 20 dinars if the value of the goods stolen does not exceed 2 dinars.

**Article 456** - (1) Any person who obtains or transfers for himself or another ownership of any moveable property that is in the possession of another in any of the following circumstances is punishable by detention in any of the following circumstances:

(a) If the offence is committed by deception.

(b) If the offence is committed by assuming a false name or identity or by misrepresenting a particular fact, thereby deceiving the victim, or compelling him to surrender such ownership.

(2) The same penalty applies to any person who, in the ways stated above, compels another to surrender or transfer to him ownership of a promissory note or to dispose of property or a document granting a remission from debt or any other document that can be used to establish a right of ownership or other material right or who, in the ways stated above, compels another to sign, annul, destroy, or amend such document.

#### **Revolutionary Command Council Order 160 of 1983 (II/1 resolution)**

This Order deals with bribery crimes; it imposes the punishment of 10 years' imprisonment and a fine of not less than 500 IQD and not more than 10,000 IQD on any employee or public servant who requests or accepts gifts, benefits, advantages, or promises of receiving any of these, to perform his/her work or to refrain from

doing so. In case this criminal act occurred during war, the punishment shall be life imprisonment plus confiscation of movable and immovable property of the convicted.

#### **Commission of Integrity and Illicit Enrichment No.30 of 2011**

**Article 19** - Without prejudice to any stricter penalty stipulated in any other law, violators shall be punished to the provisions of this law as follows:

1. Anyone who refrains from submitting the form without a legitimate excuse shall be punished with imprisonment for a period not exceeding one year.
2. He shall be punished by imprisonment for a period of no less than (7) seven years and a fine equivalent to the value of the illegal gain, if each of the officials mentioned in Article (16/1) of this law was unable to prove the legitimate reason for the significant increase in his money, his wife's money, or his children's money.
3. He shall be punished by imprisonment for a period of no less than (3) three years and a fine equivalent to the value of the illegal gain every person other than those mentioned in second clause of this Article, the court proved the illegality of the increase in his money. Refunding the value of the illegal gain, and the convicts will not be released according to the second clause,
4. Court ruling to refund the illicit gain and release of the accused under clauses (Second and Third) of this article only after paying the amount of the fine and returning the value of the illegal gain, and the lapse does not preclude criminal case for death, but only with the execution of the ruling to refund the value of the illegal gain.
5. Any official who deliberately conceals required information in the declaration form or provided false information related to the illicit gain shall be punished with imprisonment for a period of no less than (1) one year.
6. Anyone who disclosed, by virtue of his position, any information related to the application will be punished with no less than 6 months and no more than 3 years.
7. Anyone who fails to resolve the conflict of interests during the period mentioned in Article 20 (clause 2) shall be punished with imprisonment, and the ruling on this penalty entails dismissal of the employees from service and the assigned one from duty.

#### **Anti-Money Laundering and Fund Terrorism Law No.39 of 2015**

**Article 54** - A criminal court specializing in ML cases shall be formed at the Supreme Judiciary Council. Other courts at the appeals districts may be formed, when necessary, through a declaration to be issued by the President of the Supreme Judiciary Council and published in the Official Gazette.

**Article 36** - Anyone who commits a money laundering crime shall be punished by imprisonment for a period not exceeding 15 years and a fine not less than the value of the money subject of the crime and not exceeding five times.

## Annex 2 - Judicial Orders

### 1. Judicial Order No.96 CACC's Establishment

بسم الله الرحمن الرحيم

العدد: ٩٦ / ١٩  
التاريخ: ٢٠١٩/١٠/١٦

جمهورية العراق  
مجلس القضاء الأعلى  
دائرة شؤون القضاة وأعضاء  
الادعاء العام

بيسان رقم ( ٩٦ ) لسنة ٢٠١٩

بناءً على ما قرره مجلس القضاء الأعلى بجلسته الثانية عشر المتعددة إلكترونياً بتاريخ ٢٠١٩/١٠/١٦ واستناداً لأحكام المادة ( ٢٩ / ثانياً ) من قانون التنظيم القضائي رقم ( ١٦٠ ) لسنة ١٩٧٩ المعدل تقرر:

أولاً:- تشكيل ( محكمة جنابات مكافحة الفساد المركزية ) في رئاسة محكمة استئناف بغداد / الكرخ الاتحادية تختص في نظر قضايا الفساد الكبير وقضايا الفساد الخاصة بالمتهمين الذين يتولون مناصب مهمة في كافة السلطات ومؤسسات الدولة ومن له صلة بها بأي صفة كانت والتي يتم اختيارها من قبل رئاسة الادعاء العام بعد التداول مع هيئة النزاهة بالتنسيق مع المحكمة .

ثانياً:- يتولى التحقيق في تلك القضايا قضاة التحقيق الأوائل في محكمة التحقيق المختصة بقضايا هيئة النزاهة في محكمة استئناف بغداد / الرصافة والكرخ الاتحادية بالتنسيق مع رئاسة محكمتي الاستئناف بخصوص القضايا المرتكبة في بغداد وبغية المحافظة .

ثالثاً:- تتولى هيئة النزاهة تسمية عدد كاتب من المحققين لإجراء التحقيق الابتدائي في القضايا الداخلة ضمن اختصاص المحكمة وتحت إشراف قضاة التحقيق المختصين المشار إليهم في الفقرة ( ثانياً ) .

رابعاً:- يلغى هذا البيان من تاريخ ٢٠١٩/١٠/١٦ .

القاضي  
فائق زيدان  
رئيس مجلس القضاء الأعلى  
٢٠١٩/١٠/١٦

موقع صادره

Judicial council Iraq - Baghdad  
٧٩١٦.٨٤٣٣٤٧  
:hjc.jdqj2008@yahoo.com



## English Translation

The Republic of Iraq  
Supreme Judicial  
Council, Department of  
Judges' Affairs  
and members of the  
public prosecution

NO.96/Q/A  
Date /16/9/2019

### **Judicial Order No.96 for the year 2019**

Based on the decision of the Supreme Judicial Council in its twelfth session, which was held online on 16/10/2019, and based on the provisions of Article (29/Second) of the Judicial Organization Law No. (160) of 1979, as amended, it was decided:

**First:** A formation of a Central Anti-Corruption Criminal Court in the presidency of the Baghdad / Karkh Federal Court of Appeal that specializes in examining major corruption cases and corruption cases related to the defendants who hold important positions in all authorities and state institutions and who are related to them in any capacity whatsoever, which is chosen by the Public Prosecution Presidency after deliberation with the Commission of Integrity in coordination with the court.

**Second:** The investigations of these cases are carried out by the senior investigative judges in the Investigation Court that specializes in cases of the Commission of Integrity in the Baghdad/Rusafa and Karkh Federal Courts of Appeal, in coordination with the presidency of the two appellate courts regarding the cases committed in Baghdad and the rest of the governorates.

**Third:** The Commission of Integrity shall nominate a sufficient number of investigators to conduct the preliminary investigation in cases falling within the jurisdiction of the court and under the supervision of the specialized investigative judges referred to in Paragraph (Second).

**Fourth:** This statement will be implemented from 16/10/2019

## 2. Establishment the Investigative Judicial Committee No.285

بسم الله الرحمن الرحيم

العدد/١٧/ق/أ  
التاريخ/٢٤/١/٢٠٢٢

جمهورية العراق  
مجلس القضاء الأعلى  
دائرة شؤون القضاة وأعضاء  
الادعاء العام

مجلس القضاء الأعلى

أمر قضائي -

بإزاء على ما عرضته الهيئة التحقيقية القضائية المتخصصة بالنظر في القضايا المعروضة من قبل اللجنة الدائمة المشكلة بالأمر الديواني (٢٩) تقر:

أولاً: إلغاء الهيئة التحقيقية القضائية المتخصصة بالنظر في القضايا المعروضة من قبل اللجنة الدائمة المشكلة بالأمر الديواني (٢٩) - رئاسة محكمة استئناف بغداد/الرصافة الاتحادية المشكلة بموجب الأمر القضائي المرقم (١٢٦/ق/أ) المؤرخ ٢٠٢٠/٩/٦ .

ثانياً: تختص الهيئة التحقيقية المشكلة في رئاسة محكمة استئناف بغداد/الكرخ الاتحادية بموجب الأمر القضائي المرقم (٢٨٥/ق/أ) المؤرخ ٢٠٢١/١٠/٢٦ بأعمال الهيئة المشار إليها في الفقرة (أولاً) أعلاه .

ثالثاً: يتخذ هذا الأمر اعتباراً من تاريخ صدوره .

القاضي  
د. فائق زيدان  
رئيس مجلس القضاء الأعلى  
٢٠٢٢/١/٢٤

مجلس القضاء الأعلى

نسخة منه إلى /  
• مكتب السيد رئيس الوزراء - إشارة إلى كتابكم المرقم (م.ر.و.س/٦٤/٥٦/٦١٠) المؤرخ ٢٠٢٠/٨/٢٧ - للتفضل بالعلم مع التقدير .  
• رئاسة الادعاء العام - للتفضل بالعلم واتخاذ ما يلزم مع التقدير .  
• رئاسة هيئة الاشراف القضائي - للتفضل بالعلم مع التقدير .

الجمهورية العراقية - بغداد - حي الحارثية - موقع ساعة بغداد  
هاتف - ٠١١٠٢١٠٣ - ٠١١٠٢١٠٤  
البريد الإلكتروني - hjc.jdep2008@yahoo.com

**English Translation**

**The Republic of Iraq  
Supreme Judicial Council,  
Department of Judges'  
Affairs  
and members of the public  
prosecution**

**NO.17/Q/A  
Date /24/01/2022**

- Court order –

Based on what was presented by the judicial investigative body specialized in examining the cases presented by the permanent committee formed by the Diwani order (29), it was decided:

**First:** The abolition of the judicial investigative body specialized in examining cases presented by the permanent committee formed by the Diwani order (29) - the presidency of the Baghdad-Rusafa Federal Court of Appeal, which was formed according to Judicial Order No. (126 / Q / dated 06/09/2020).

**Second:** The investigative commission formed at the presidency of the Baghdad / Karkh Federal Court of Appeal, according to Judicial Order No. (285 / Q / 1) dated 26/10/2021, is concerned with the work of the commission referred to in Paragraph (First) above.

**Third:** This order shall be implemented as of the date of its issuance.

Copy to /

The Office of the Prime Minister - with reference to your letter No. (M.S / 1/01/110) dated 27/8/2020 - for your information with appreciation.

Presidency of the Public Prosecution for kind information and to take the necessary action with appreciation.

Presidency of the Judicial Oversight Authority - Kindly note with appreciation.

3. Addendum to the Judicial order No.119

بسم الله الرحمن الرحيم

العدد/ ٢١٤ /مكتب/ ٢٠٢٢  
التاريخ / ٢ / ٣ / ٢٠٢٢

جمهورية العراق  
مجلس القضاء الأعلى  
مكتب رئيس المجلس

١٥  
٢٠٢٢/٣

رئاسة الادعاء العام  
رئاسة هيئة الإشراف القضائي  
رئاسة محاكم الاستئناف الاتحادية كافة  
م / أعمام

تحية طيبة

إحاقاً بالأمر القضائي المرقم (١١٩/ق/١)  
المؤرخ ٢٠١٧/٤/١٦ - مرافق - .  
يرجى تسمية قاضي تحقيق مختص في كل رئاسة استئناف  
لنظر قضايا غسل الأموال مع ضرورة إنشاء قاعدة بيانات  
تخص إحصائيات تلك القضايا ليتسنى إرسالها عند  
طلبها من البنك المركزي العراقي لأهمية الموضوع  
في تقييم مستوى امتثال العراق للمعايير الدولية .  
مع التقدير .

القاضي  
د. فائق زيدان  
رئيس مجلس القضاء الأعلى  
٢٠٢٢/٣/٢

مجلس القضاء الأعلى  
مكتسبياً  
رئيس المجلس

نسخه منه إلى /  
• مكتب مكافحة غسل الأموال وتمويل الإرهاب - ننمسن بالعلم مع التقدير .  
• دائرة شؤون القضاة وأعضاء الادعاء العام - للتفضل بالعلم واتخاذ ما يلزم مع التقدير .  
• دائرة العلاقات العامة والشؤون القانونية - للتفضل بالعلم مع التقدير .

Supreme Judicial Council- Iraq- Baghdad  
Tel - 07270102103 - 07270102104  
E- mail : hjc.opc@hjc.iq

مجلس القضاء الأعلى . العراق ، بغداد . حي الحارثية . موقع ساعة بغداد  
هاتف - ٠٧٢٧٠١٠٢١٠٣ - ٠٧٢٧٠١٠٢١٠٤  
البريد الإلكتروني

(1)

**English Translation**

**Republic of Iraq  
Supreme Judicial Council  
Office of the President of the Council**

**NO: 214 -Office -2022**

**Date: 2-Mar- 2022**

Presiding over the Public Prosecution  
Presiding over the Judicial Oversight Board  
Presiding over all federal appeals courts

subject\ general

Good greetings,

In compliance with judicial order No. (119 \ Q \ A) dated 16-Apr-2017 attached

Please designate a specialized investigative judge in each appeals presidency to look into money laundering cases, with the need to create a database related to the statistics of these cases so that it can be sent upon request from the Central Bank of Iraq due to the importance of the subject in assessing the level of Iraq's compliance with international standards.

With respect,

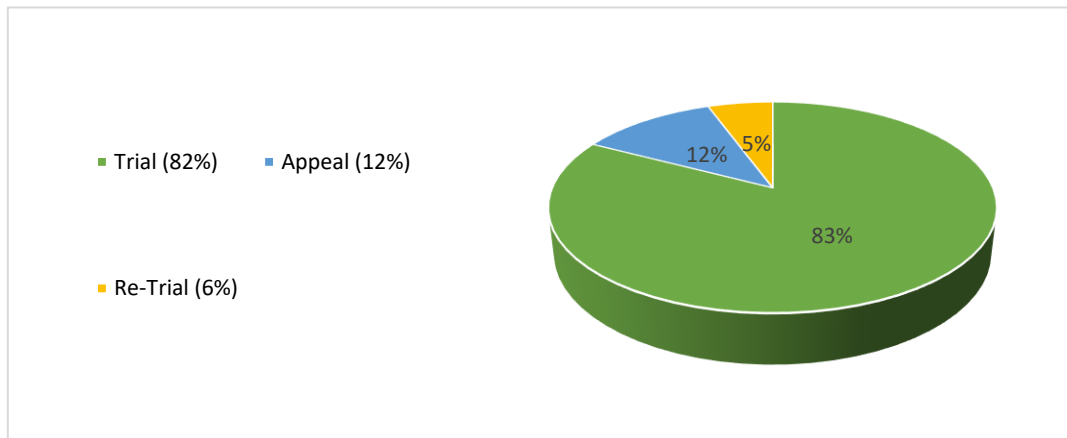
Judge  
Dr. Faliq Zaidan  
President of the Supreme Judicial Council  
2-Mar-2022

Copy to

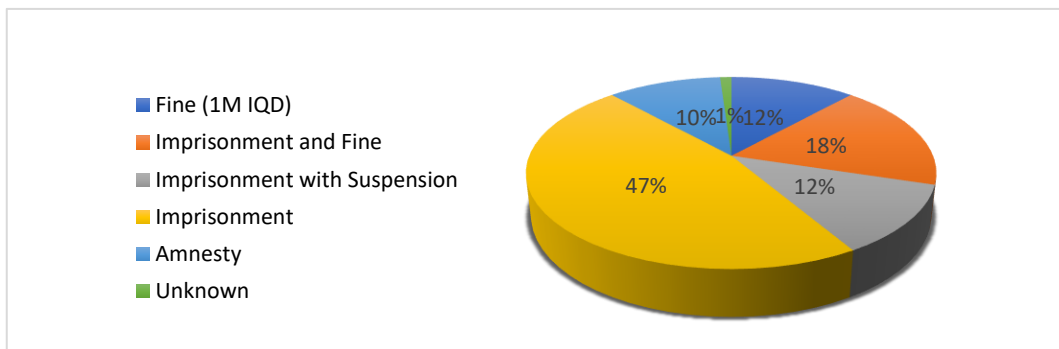
- Office of Combating Money Laundering and Financing of Terrorism - SMS with the knowledge with appreciation.
- Department of Judges and Public Prosecution Members Affairs - for your kind information and take the necessary measures with appreciation.
- Department of Public Relations and Legal Affairs - for your kind information with appreciation.

## ANNEX 3 - QUANTITATIVE ANALYSIS - FIGURES AND TABLES

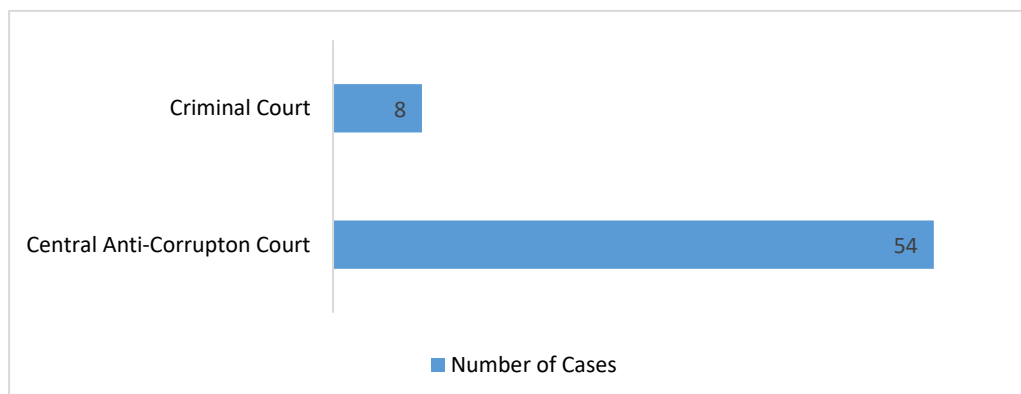
**Figure 1.1:** Type of hearing (monitored cases in the Central Anti-Corruption Criminal Court)



**Figure 1.2:** Sentences of Guilty Verdicts (monitored cases)<sup>88</sup>

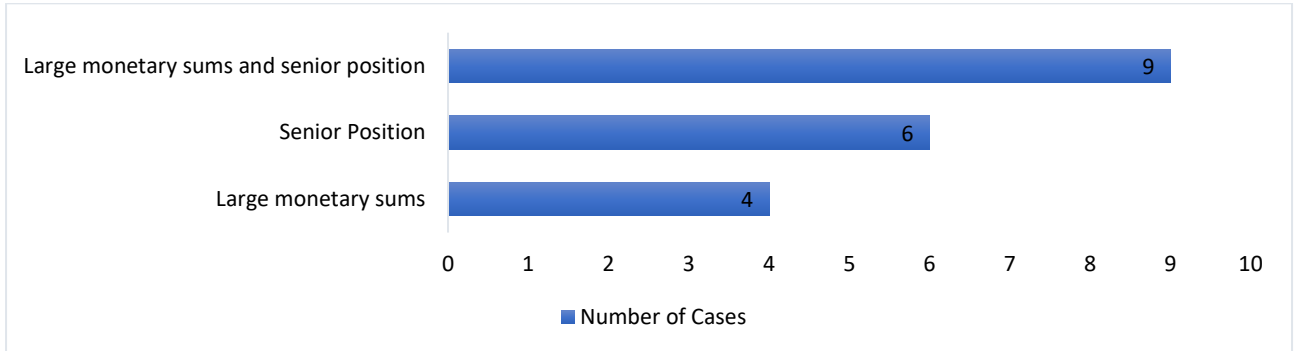


**Figure 1.3:** Type of court (acquittal verdicts in monitored cases)

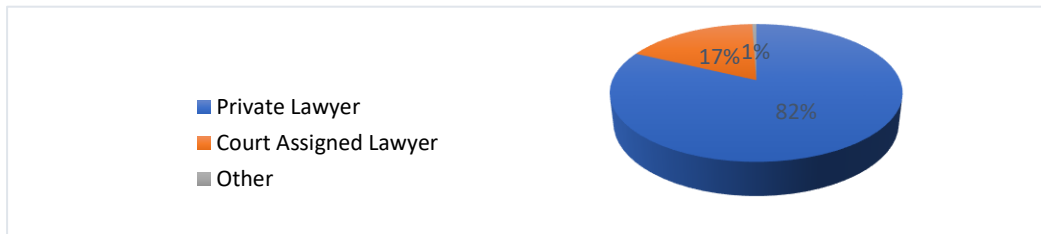


<sup>88</sup> For 6 cases, an initial sentence of 1 year imprisonment (5 of them suspended) was appealed – which resulted in acquittal for some of the defendants involved in those cases. Additionally, for the ‘Unknown’ category, Trial Monitoring officers were unable to obtain complete access to trial proceedings for one case and so were not able to report on the final sentence.

**Figure 1.4:** Types of Cases tried before the Criminal Courts and Integrity Misdemeanour Courts



**Figure 1.5:** Types of Legal Representation (monitored cases)



**Footnote for Figure 1.5:** The ‘Other’ case was a case reviewed in the Rusafa Criminal Court, where the defendant was not present for the initial session and the trial was suspended. Trial Monitoring officers were not able to access to future sessions in order to gather information.

## **ANNEX 4 – SAMPLES OF MONITORED AND REVIEWED CASES**

### **1. Cases Concerning Irregularities during Pre-Trial Investigation**

*An example of a monitored cases,*

*Two Ministers and Head of the Bureau of Supreme Audit were accused of intentionally damaging the interests of the state by awarding a Bridge Project in the centre of Babylon Governorate to the Two Rivers Banks and United Green Company. In doing so they bypassed the mandate, powers, and competence of the Economic Committee stipulated under Article 4 of the Economic Committees Formation Law (No. 84) of 1995, and rejected the bid submitted by another private company (Claimant/Appellant), despite being a lower bid compared to that submitted by Two Rivers Banks and United Green Company (the executing company). This led to a waste of public money in the value 2,350,000,000 IQD, in Babylon in 2007. The CACC heard the case in May 2023 and decided to return the case file to the investigative judge to complete the missing information as identified in the decision – more specifically, the total estimated cost of the Project as calculated by the concerned municipality. The CACC sought clarity into whether the difference in counter-offer of the plaintiff/appellant was 22% lower as according to the COI external auditor or 29.9% according to the legal representative of the Cabinet. The CACC also sought clarity into whether members of the economic committee had signed on the decision to award the contract to the Two Rivers Banks and United Green Project. Furthermore, the investigation was requested to clarify whether the information in the statement of the legal representative of the Ministry of Planning regarding modification of the article 11(7) of the Execution of the Government Contracts 2007, more specifically, to exclude any bid that is less than 30% or more than the total amount of the estimated cost of the project. Another piece of information requested by the court was concerning the change of the estimated cost of the project by the Governorate, which reflected on the difference specified by the 25%, without submitting such change to the economic committee.<sup>89</sup>*

*A monitored case including concerns regarding administrative investigation,*

*Defendants were accused of direct utilization of fictitious projects, allocating 5,013,000,000 IQD for the rehabilitation of government buildings. The accused had escaped detention following the initial investigation conducted by the COI and the investigative court. Therefore, the CACC proceeded with trial in absentia. However, in the middle of the hearings, the legal representative of the public institution testified that one of the accused has been working from the office for the whole period of the investigation. Additionally, the CACC observed that there were significant gaps during pre-trial investigation. The CACC concluded that there were gaps in the collection of statements from the legal representative, the determining of the value of the contract, and the status of separating the case of the other defendant who had been convicted for 3-years in a separate judgment from the Court of Cassation. As such, the CACC rejected the case referral citing improper investigation.<sup>90</sup>*

*An example of reviewed verdicts:*

*Two defendants, both former governors, were referred to court on several counts of corruption-related offences. The defendants were arrested and later released on bail, having been accused of wilfully inflicting damage on the property entrusted to them by virtue of their positions during their service as governors. In the hearing, the CACC were faced with the fact that there were conflicting correspondences, with different dates and contents, from the Parliament regarding the lifting of their*

<sup>89</sup> Case No. 82-CC-2023. This is one of the cases where the TM team has observed one of the investigation hearings, with one of the Minister, in November 2023, and later before CACC.

<sup>90</sup> Case no. 68\_CC\_2022.



immunity. The court decided in the view of the discrepancies to overturn the referral decision and send the case for further actions by the pre-trial investigative court.<sup>91</sup>

Also,

The Public Prosecutions Office appealed to the CACC, the decision of the Judicial Committee 285, which ordered the release of the defendant (the Manager of Bayaa Real Estate Directorate), and the closure of the investigation. On appeal, the CACC overturned the decision of the Judicial Committee 285, describing it as improper and not in conformity with the law, as both the administrative and preliminary investigations, done by the Inspector General and the COI respectively, substantiated the defendant's signature on the property papers in 2010 which were sent to the State Property Registration Department. The defendant's actions constituted a violation of the Real Estate Claims Authority Law No. (13) of 2010, under article 331 of the IPC, by registering a disputed land in the name of the Ministry of Finance during an ongoing case for recovery of the land before the Karkh Civil Court. Accordingly, the CACC ordered, in March 2022, a full re-investigation of the case to complete the missing documents and re-visit the decision. In February 2023, the Judicial Committee 285 referred the case once more to the CACC, which issued a verdict in April 2023 to sentence the defendant to one-year imprisonment with suspension and on account of the defendant's elderly age.<sup>92</sup>

## 2. Cases concerning Inconsistent Sentencing

An example of a monitored case,

The defendant was the manager of Baghdad Investment Authority. He was accused of buying two properties using money obtained as a result from criminal activities. The first property was purchased for 1,222,000,000 IQD, and the second property was purchased for 792,000,000 IQD in association with other defendants tried in separate cases. The CACC sentenced him to 1-year imprisonment and 2,014,000,000 IQD as acceptable (the price of the properties).<sup>93</sup>

Also,

Two employees working in an independent government agency were prosecuted for violating the duties of the job by signing payment documents to buy a hotel in the KRG - in violation of the instructions of the Federal Bureau of Supreme Audit. They paid 47 billion IQD and rented the hotel on the same day to the company that owned the hotel for 30 years, for a yearly rent of 1,600,000,000 IQD. The court sentenced the first defendant (male) to 1 year imprisonment. The second defendant (female) was also sentenced to 1 year imprisonment, but her sentence was suspended for 3 years on account of mitigating circumstances (i.e. her being a woman, with a family, and no criminal record). The judge stated that, given her circumstances, the second defendant was unlikely to commit a crime in the future.<sup>94</sup>

Also,

The director of an airport was accused of spending 1 million and thirty-six thousand USD without any authoring documents to that extent. The court sentenced him to 2 years imprisonment.<sup>95</sup>

Also,

The defendant was the owner of a private company, charged with offering a bribe to a Deputy Minister to facilitate the award of a contract under one of the government projects. The court sentenced the defendant in-absentia for 10 years imprisonment and 10 million

<sup>91</sup> Case no. 1\_CACC\_2019 (29 cases were referred by COI against the defendant) and Case no. 3\_CACC\_2019.

<sup>92</sup> Case no. 3\_Appeal\_8 Mar 2022- CACC (Appeal) and Case no. 40 -CC- 5 April 2023- CACC (Decision).

<sup>93</sup> 89-CC-2022.

<sup>94</sup> Case no. 35\_CC\_2023

<sup>95</sup> Case no. 45\_CC\_2022

*IQD. At a later stage, the defendant challenged, by way of appeal, the trial in absentia, and was granted general amnesty while waiting for the appeal decision.<sup>96</sup>*

Finally,

*Five defendants were accused of deliberately misusing public funds of the institution they worked in, by forging documents relating to citizens pensions, issuing retirement false identities, and distributing salaries and pensions to their benefit, in the years 2015, 2016 and 2017. The legal representative of the government claimed damages against the defendants as the institution sustained a loss of 3,760,000,000 IQD. Four of the defendants denied the charges and claimed to have acted under the direction of the fifth defendant who was the head department and had confessed to the crime. The court sentenced the fifth defendant to 2 years imprisonment and acquitted the other 4 defendants.<sup>97</sup>*

### **3. Torture and Ill-Treatment**

Illustration of monitored cases,

*The defendant, a former Head of an independent authority, was accused of willfully violating the duty of his position through directing the Management and Investment Authority Funds with its margin in 29.4.2021, allowing the fund to proceed with the purchase of a Hotel in Erbil despite the lack of financial cover for the purchase and poor account for the decision's economic feasibility. The defendant approved the analysis of the funds of the trusts in the management and investment in contravention of the instructions of the Federal Office of Financial Supervision. The defendant was also found to have pressured the legal employees to waive the right to appeal before the Civil Court in Erbil, and not to object to the estimation of the value of the hotel – in addition to renting it to the seller, for a small amount, and for a period of 30 years. All that was seen as an attempt to benefit at the expense of the state's interest under article 331 of Penal Code (1971). The CACC found the defendant guilty and sentenced him to 4 years of imprisonment, with no possibility of parole. During the trial, the defendant stated that he was not informed about the case against him and was arrested from his home. He claimed that the force that arrested him kept in custody for a week, where he had been tortured and forced to sign a prepared statement before handing him to the investigative court.<sup>98</sup>*

---

<sup>96</sup> Case no. 61\_CC\_2022. The defendant challenged the absentia verdict, and the case was re-tried in person before the court.

<sup>97</sup> Case no. 16\_CC\_2020

<sup>98</sup> 68-CC-2023. According to the media news, a week after the court verdict, the defendant escaped from the detention centre and 20 days later died while being arrested. Police Officers and family members of the defendant were charged under article 268 in connection of his escape. There are 8 ongoing cases related to this case against several defendants employed by the Authority.





Funded by the European Union  
بتمويل من الاتحاد الأوروبي

