

Safeguarding Integrity and Anti-Corruption

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Abstract: corruption has no longer become a local issue but a phenomenon that transcends national borders, affecting all societies and economies. Hence international cooperation for combating and controlling it has become an obligatory matter as stated by the "United Nations Convention Against Corruption".

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Importance of the research paper:

The United Nations Convention against Corruption said that corruption¹ is prevalent in both public and private sectors. Article 8 states that "In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

2. In particular, each State Party shall endeavor to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honorable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996."

Article 12 dealing with the private sector says "Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures. 2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions

and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

From the above- mentioned articles it is clear that corruption is a social phenomenon whose concept is so wide that it includes all public and private sectors.

The problems of the research paper:

Levels of corruption vary according to political systems. Its level is low in systems where institutional controls between the three authorities of governing; the executive, the legislative and the judicial that establishes effective mechanisms to prevent and detect the illegal and punishable conduct levels of corruption.²

Levels of corruption are weak when the institutional mechanisms for combating corruption are weak or not applied properly.³ In these systems, narrow political elites control the economic opportunities and operate them for their own interest. They use the relatively valuable and rare political

opportunities to acquire personal gains and diminish official work controls.⁴

Methodology and plan of the research:

I have followed the deductive approach to deal with the nature and kinds of corruption in the first chapter, In chapter two the analytical approach is applied to deal with means of combating corruption.

Chapter one: The nature and kinds of corruption

Corruption is defined as the misuse of the public authority for the sake private interest through bribery, extortion, exploitation of influence, favoritism, fraud, and giving tips in order to expedite services or through embezzlement. Corruption has become prevalent in public service men and private sector as well⁵. This includes abuse of public funds or solicit services for private gains. This also includes misuse of official authority or influence for reward or to gain private advantages.⁶

Section one: definitions of corruption;

In terms of the language, corruption means the contrary of the interest and the opposite of reform. It is commonly said that people become corrupt. They retreated and broke the bonds of kinship between them. The corrupt thing is one whose legal benefit is eliminated.⁷

The concept of corruption:

Corruption means the spread of chaos, loss of right and interest due to the non-commitment with the rules and principles of Islamic Sharia (law). It is a crime whose perpetrator is punished according to its nature and circumstances of its commitment.

To sum up corruption in Islamic thought means the loss of the objectives of the Islamic Sharia (law) which are the preservation of the soul, religion, mind, honor and money because of violation of what Allah and his messenger have forbidden and what the religions scholars are unanimously agreed upon⁸.

Corruption usually occurs when an employee demands or accepts a bribe to facilities a contract or let a public tender⁹.

Moreover, corruption can occur through exploitation of the public service without resort to bribery by appointing relatives, favoritism or direct theft of public funds.¹⁰

Corruption has been defined by some people as misuse of public authority or public service for private interest¹¹.

Section 2: kinds of corruption

Corruption comprises many kinds according to its form:

1- Financial corruption related to all financial deviation and violation of the financial rules and regulations that govern the financial and administrative function of state. It also includes violation of the institutions of the financial control bodies.¹²

2- Administrative corruption: It is related to aspects of corruption and administrative functional and organization deviations. Moreover, it comprises the violation of the public official while performing his functions according to the system of laws regulations and rules.¹³

Administrative corruption is the most effective form of corruption especially in developing countries. Among the most dangerous forms of administrative or functional corruption are embezzlement, appropriation or facilitating of public funds in addition to accepting bribery by government officials for the purpose of facilitating the interest of citizens.

It is quite evident that administrative corruption is related to the public official. The United Nations Convention Against Corruption in article (2)A defines the public official as ((a) "Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party)

It is clear in this context that corruption as a phenomenon is not confined to the administrative bureaucracy inside the public sector or payment and receipt of bribes or mediation in this regard. Corruption can exist in developing or developed government whether they are capitalistic communist, socialist democracy or dictatorship¹⁴

Moreover, corruption is not confined to government or public sectors, as the private sector suffers from more severe corruption cases than the public sector. Corruption in the private sector is related to the monopoly of power it has. The stronger the monopolistic power and freedom of disposal the weaker the power of control and accountancy, the stronger the power of corruption and corruption in the private sector.¹⁵

Chapter 2: means of combating corruption

This chapter deals with means of combating corruption in section one and the Arab efforts to combat corruption in section two.

Section one: means of combating corruption:

Corruption is a very difficult problem. It is a multi-faceted one whose causes, conditions, justifications and bases of continuance are interrelated greatly. Its confrontation requires a comprehensive complete strategy (political, administrative societal, preventive, legal and criminal at the end.

Means of combating corruption:

Firstly: the criminal pursuit of corruption: this is one of the most important means of combating corruption which participates effectively in its fighting if it is properly used in order to avoid its grave negative result on the public service and human rights.¹⁶

The effectiveness of this means depends upon the following¹⁷:

a- The ability of national penal laws to criminalize as many as forms of corruption whether it is administrative or political. Laws do not cover all forms of corruption as many important forms are neglected. Although many Arab countries endorsed the United Nations Convention Against Corruption in 2003. Yet their national laws do not criminalize bribery within the private sector nor illicit enrichment which the convention criminalizes.¹⁸

b- The efficiency of the investigators who are charged with the pursuit of efficient gathering evidences enough to convict the accused. Investigations of corruption case are sometimes assigned to police officers affiliated to the ministry of interior or investigators of transparency authority or those of the Council of Judges. Investigations generally need specified and neutral bodies.¹⁹

c- Judiciary has to be effective, independent, and neutral. Interference with its decisions or affecting them have to be prevented.

d- Other executive or legislative authorities have to stop interference with acts of criminal pursuit of corrupt elements whatever the justifications and reasons of interference may be, whether interference is through influencing judges, investigators or their administrative officials.²⁰ secondly: transparency:

Transparency simply means working in public. All institutions and utilities that run the public affair have to be transparent and reflect what is going inside them. All facts have to be known and must be available for public discussion and accountability²¹ The more transparency increases in society and on all fields, the more combating corruption and controlling its destructive effects increases.²² Corruption grows and flourishes only under vague circumstances and uncertainty²³.

Thirdly: putting the proper man in the proper place. Employees usually follow the footsteps of their bosses concerning corruption and fairness. We cannot

accept the executive authorities to appoint corrupt bosses and ask the control agencies to put them to accountability and prevent them from corruption and achieve illicit interests through exploiting their public authorities and their direct leadership.

Thus, the choice of employees has to be made on sound bases in order to put the proper, fair and efficient person who has experience and leadership ability on top of institutions and departments.²⁴ However in order to combat corruption the proper person must have some requirements such as:

1- High practical efficiency: the higher academic certificate is not a sufficient asset. The personal academic efficiency is not a sufficient asset. The personal academic efficiency is an important element in addition to the academic certificate.

2- Specialization: The person to be appointed has to be specialized in the job in which he will have a leadership position and role. For example it is not accepted to appoint medical doctors as general inspectors in the ministry of finance.

3- Practical experience: In addition to the high certificate and specialization prerequisites, the nominee for a leadership post has to have a practical experience in his field in order to understand the hidden secrets of his job and institutions.

Fourthly: Diminishing the role of the public sector:

The big size of the public sector and the multi-faceted nature of its function makes it difficult to have an effective control over all the works and units of the public sector regardless of the big size of the control agencies due to the huge size of public sector institutions.

2- Supervision and controlling of the public sector requires very huge costs.

3- The increase of control agencies to cope with the big size of the public sector leads to obesity and stagnation and very excessive increase of costs. Thus, the public sector's functions have to be listed and decreased to the smallest extent. The role of the private sector has to be encouraged and assume more functions. The public sector has to be prevented from doing the functions within the private sector's ability. Dwindling the public sector decreases corruption cases and make its control and supervision very easy.²⁵

Fifthly: Provisions of conditions for honesty before demanding the employees to stick to it. This means providing the employees with suitable conditions for a dignified living. This can be done through sufficient salary, solving the problems of housing, provision of social and health security. We cannot ask the employees to be honest while they receive insufficient salary for them and their families to live an honorable life.²⁶

Part Two:**The Arab Efforts against Corruption.**

Combating corruption has to be done through several means by confronting its causes, forms and reasons for its continuation.

(1) Efforts of the Kingdom of Saudi Arabia against corruption.

Firstly: Investigative authorities: Article (26) of the criminal procedure law has specified the agencies of criminal investigations according to the missions they are charged with and the authorized agency for enquiry, research, collection of evidences and setting up plans to apprehend and find out the perpetrators of corruption crimes in both the public and private sectors.²⁷ Verbal process of enquiry and inspection is entrusted with the ministry of interior represented in the following bodies:

(A) Directorate General of Investigations:

(B) Public Security (Criminal Security)

(C) Financial Investigation Unit.

Secondly: Control Agencies:

They are represented by some government bodies such as;

(A) The Cabinet:

According to the law of the Cabinet, the cabinet has the power to draw all the domestic and external policies in addition to financial, economic, education and defense policies of the Kingdom. The cabinet also has the power to supervise these policies. According to article (24) of its law, the cabinet in its capacity as the executive power such as monitoring the enforcement of all applicable laws and regulations in the Kingdom, innovation of public utilities, supervision of public development plans, and establishing committees to control the functioning of ministries and government bodies.

B) The Shura council:

According to its law the Shura council exercises consultative powers in the cases referred to it by the Prime Minister in The kingdom Of Saudi Arabia particularly monitoring the laws that are issued in the Kingdom, studying international conventions and treaties that the Kingdom will be party to, discussion of the annual reports of the ministries and other government authorities and submitting proposals to the Cabinet in this regard.

Moreover the Cabinet has the power to summon any political official to any of the Cabinet's sessions and question the issues related to his ministry or government body.²⁸

(C) The Diwan of the public control:

According to article (7) of the law of the Diwan of Public Control issued by the royal decree no M9(1971), the Diwan is responsible for the post-control over all the revenues and expenses of the state, in addition to controlling all the movable and

immovable assets, the proper use of these assets, and their preservation. Moreover, the function of the Diwan includes making sure that all the agencies under the control of the Diwan apply the laws and financial and accounting regulations according to their respective law and that their financial practices do not contradict with or violate these practices and regulations according to their respective law and that their financial practices do not contradict with or violate these laws and regulations.

Thus, the Diwan practices two kinds of control: the financial control and performance control. It has wide powers according to its jurisdiction as it reviews all financial and administrative reports of the whole Kingdom.²⁹

This review is performed according to the professional standards acknowledged worldwide. Some of these standards are related to internal control systems in the agencies under the control of the Diwan

2: Egyptian Efforts of Fighting and Combating Corruption:

The Egyptian legislation has not dealt with corruption in the legislative policy as an independent crime as the flexibility of the term does not agree with the general and abstract nature of the legal rule. The Egyptian legislation considers corruption as a negative indicator of how the state administers effectively its institutions. Thus, the legislator has established legal mechanisms to combat corruption as one background in an administrative structure parallel to an accountable system with two criminal and disciplinary sides.

This mechanism is applied on all levels in the administrative bodies of the authority³⁰. There is another external control of each authority over the other in the three powers of the state. The most significant laws of combating corruption include law no 80 issued in 2002 for combating money laundry in Egypt. The law forbids any conduct that includes acquisition, possession or disposal of money or administering if it was gained as a result of a crime so long as the intention of this conduct is to hide the money or camouflaging its nature.³¹

This law stipulates establishing an independent unit in the Central Bank for money laundry. This unit is responsible for receiving reports from the financial institutions concerning the doubtful operations of money laundry. The unit has to set up a data base for the information it has. This unit can also set up the sufficient means for the legislative authorities to make these rules applicable. The law also stipulates a penalty of not more than seven years imprisonment and a fine that equals two folds of the money that is the object of the crime for perpetrator of such crime of money laundry.

¹ The law allows cooperation between the Egyptian judicial bodies and their foreign counterparts in combating this crime according to the international conventions to which Egypt is a party or according to the principle of reciprocity.³²

Egypt is one of the Arab countries that has given special attention to the issue of combating money laundry. The beginning of this attention dates back to the sixties decade when law no (182) 1960 was issued and it was amended by law no (122) in 1989 that imposed heavy fines on drug dealers and smugglers that amount to half million Egyptian pound, in addition to other penalties that reach death sentence.

The law was actually put to effect when some cases were referred to the judiciary where legal evidences were sufficient.²

The illicit gain law:

The Egyptian legislation has criminalized the illicit gain as a felony. Article 18 of law no 62 1975 stipulates that whoever acquires for himself or another party an illicit gain is punished by imprisonment or a fine equal to the illicit gain. The objectives of the illicit gain law includes protecting the public job against the dangers of dealing with it, abusing or exploiting it for the interest of the employees. The employees are accountable periodically for their incomes so as to make sure that they have not made any illicit wealth from their jobs. Society rejects the increase of the individual's wealth if its source is illicit, particularly if society feels that this increase in wealth is related to the public interest that is abused by the employee in order to have illicit gain. This crime comes as a result of other related crimes such as bribery, embezzlement and profiteering. All these crimes are the source of illicit gain and the crime of illicit gain is related to it.

Conclusion

Corruption, whether it has administrative or financial aspects, is one of the most devastating political and economic crises that the Arab countries undergo. One of the most positive strategies of combating it is the international trend to establish a detailed system of uncovering corruption cases in ministries, government bodies and the other sectors of the state.

Following are some of the most important recommendations on the international and local levels.

Firstly: International recommendations:

The United Nations has realized the problems and hazards of corruption and its effects on the stability and security of societies resulting in demolishing the democratic institutions and values of morality and justice.

The United Nations recommended the following:

(1) Developing countries must use the financial aids to enforce the government institutions and adopt a national plan to support honesty, combating corruption as an important factor in fighting poverty.

(2) Supporting independent and fair judiciary and upholding the responsibility to develop the judicial system. Judiciary has to be protected against political influences. Judges themselves have to be subject to laws and their immunity has to be identified for the sake of justice. Moreover, Judges have to be enabled to restore usurped properties from abroad.

(3) Governments have to impose measures to combat money laundry hot spots, banks and financial institutions that have to be obliged to uncover and freeze usurped properties abroad.

(4) Rich countries have to control financial institution through concentration on trust funds, request of ownership information and combating money laundry in order to decrease the participation of these institutions in developing corruption and provision of protection of corrupt elements.

(5) Rich government countries have to enforce the application of conventions of cooperation and development organization in the economic field particularly combating bribery.

(6) International companies have to enforce the document of "the best practices" to make sure that the employees and the off-shore staff are committed to it.

Secondly: Local recommendations:

In order to combat corruption in the Arab countries the following measures have to be taken:

1- Political and economic reform has to continue in order to curb corruption and achieve social, political, and economic stability, creation of wealth and job opportunities and lowering the levels of poverty.

2- Raising the efficiency of the administrative body through encouraging partnership between the public and private sector, improving the performance of the public sector by employing the proper number of employees in the administrative body.

3- The main role of the government has to be confined in setting up laws, controlling the economic condition and immediate intervention to adjust it, setting the priorities of reform in the economic sectors, dissemination and making public the mechanisms of combating corruption, freedom of information and data circulation and transparency.

4- Effective participation of the civil society in eliminating corruption, provision of a fair and integral judicial system and independence of the judiciary.

5- Lowering poverty levels and achieving sustainable development, applying the principles of democracy and activating the principles of good governance, transparency and accountability.

6- Accelerating the development process through supporting education, raising the standard of living, measuring the level of transparency and effective efforts of combating corruption on the level of local units (the experience of Mexico) in order to identify the agencies that apply transparency and encouraging them to continue on the right track.

Measuring transparency is usually done through the following indicators:

➤ Availability of information, accountability and taking care of the needs and interests of the citizens and their complaints. Moreover holding meetings with the officials who deal with the public in order to stress the principles of honor, integrity, fighting and avoiding corruption.

➤ Setting up a special law for international commercial deals in order to preserve the rights of each party in it, renewal and review of the existing laws in order to establish an effective body to monitor corruption practices inside the boundaries of the state.

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