



Political Corruption in the Arab World

A Case Study

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The report aims to diagnose the phenomenon of political corruption in the Arab world by defining its forms, and challenges in combating it, as well as to pin point related gaps in the legal, political, and economic spheres in six Arab countries: Palestine, Morocco, Egypt, Yemen, Tunisia, and Lebanon. The purpose of this diagnosis is to provide practical recommendations that would facilitate the planning and implementation of interventions that would pressure related parties to put a stop to political corruption.

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INTRODUCTION:

The nature and manifestations of political corruption differs from one country to another. However, in all cases it translates into corruption acts committed by a specific ruling class and individuals, politicians, leaders of political parties, and members of government (ruling elites), regardless of their political affiliations and or positions. Political corruption is when this "Elite" group of individuals colludes to: exploit their position of power to influence decisions, policies, and legislations to their favor whether it is for personal interest, or to support loyalists, obtain illicit gain for personal wealth, enhance personal financial and social status, or fund election campaigns. It is also when one facilitates obtaining and legalizing bribery in return for granting the use or possession of state land, or for granting contracts, privileges, permits, licenses, or trade agreements. Such actions and behavior transform the public treasury into personal bank accounts for this elite group, including excessive spending on personal recreation activities and smuggling of public funds abroad to bank accounts and or investments.

Kleptocracy is the name given to countries where political corruption is widespread. In these countries, wealth of officials and the ruling class (elites) is achieved at the expense of the people, usually through looting of public funds.

It is worth noting that these (elites) usually have control over decision making in the state's institutions including majorities in parliaments, hence influencing

legislations to their favor. Moreover, they also have the power to influence decisions of some judges and officials in monitoring and control institutions of the state. Furthermore, often, their loyalists are able to hold central positions in the most sensitive institutions of the state including media outlets and public and professional institutions, hence granting them additional power and control over processes of decision making.

Moreover, these groups are intertwined with well known businessmen and elites from the private sector through shared goals and interests. This network of alliances and mutually exchanged favors and positions between the players enables them literally to capture institutions of the state. This in return is what makes the process of addressing the issue of combating corruption, by conventional means, futile.

To further complicate the situation, these groups also are more likely to be the ones who would build the security sector in the form of strong apparatuses that generally would defend the regime, the president or king and all those in power and their loyalists as they are considered symbols of the state. The price for this defense is returned in the form of privileges and assurances for officials of these apparatuses. And more often than not, these officials and loyalists become vital partners to the ruling class.

Political corruption is also often accompanied by arbitrary use of authority against powers granted to other parties of the political system. This is done with the purpose of achieving gains and interests that differ from those that the power was granted to them in the first place, hence becoming a totalitarian regime that controls the details and positions of decision making at the political and

economic levels. In addition, this regime and its decisions are not subject to any legal or popular accountability or external monitoring and control. This is mainly due to: immunities granted, as well as weakness of parliaments, monitoring and or judiciary officials who are subordinate to the regime.

These factors gradually transform the system into an authoritarian regime that does not respect the principle of separation of powers even if at times some semblance of a democratic system seems to be maintained, such as holding presidential and parliamentary elections, or formulating a constitution that, at the end, it would reinforce its reins of power over the state.

Abuse of power, being a form of political corruption is a direct violation of the rule of law, epitomized by placing self-interest before public interest while serving in a public office. A good example is when the judiciary's independence is undermined by being made subordinate to other powers, and in particular, it is when public prosecution apparatuses become defenders of the regime rather than the citizens.

Political corruption is embedded with many devastating consequences at the political, economic and social levels, some of which: ¹decline in the role and participation of the people in public affairs, which in turn leads to confusion in the mind of citizens of the concept of citizenship regarding duties and rights. Moreover, It also reduces the role of the middle class to serving a limited group of elites in the military institution; security institutions; private sector; leaders of political factions; or representatives of sects. In other words, political corruption leads to the control of a small group over the various aspects of life, which results in a superficial participation in public life. This weakens the legitimacy of the political system and undermines the foundations of democracy and good governance. It also hinders reinforcement of the rule of law and the independence of the judiciary; leads to: falsifying elections, the absence of monitoring and accountability, distortion in the administration of the state's institutions as a result of appointing individuals based on sectarian or family relations, etc., especially in senior positions of governmental offices. Furthermore, political corruption increases the number of the poor and marginalized groups; encourages extremism and leaves the state vulnerable to external forces. It also contributes to a decline in the level of basic services provided to citizens. All of the abovementioned negative effects are, in most cases, the result of this small group of corrupt individuals who hold key positions in the states' institutions.

Moreover, political corruption is a threat to democracy and the rule of law, particularly, in developing countries that are in a transitional stage, as in some Arab countries. It also causes devastating effects at the economic, social and cultural levels; a main cause of eruption of protests by movements in many Arab countries at the end of 2010. These movements also sought to challenge the corrupt authoritarian regimes to make substantial positive changes in supporting and protecting: public freedoms, human rights and the dignity of the Arab citizen, anti-corruption efforts, including demand for return of stolen assets. As it stands, these countries are still in the process of re-writing a new social contract that promotes the concept of separation of powers, and ensures the end of tyranny and corruption. This phase requires joint efforts of all parties, including intellectuals and experts, local and regional, to contribute to the development of a national vision that would illustrate the shape and form of a contemporary civil state; a state that would be based on good governance and citizenship. Also to ensure the establishment of a national integrity system that prevents opportunities of corruption and impunity for the corrupt. Once achieved, there will be need to provide an accurate diagnosis of the phenomenon of corruption in the Arab world including its forms, negative effects, and underlying causes. The diagnosis will serve as a prelude to obtain political will for combating corruption; develop strategies and action plans that are country specific and necessary for preventing the return of corruption, first and foremost, political corruption.

Finally, in order to contribute directly to the democratic process, sought by the anti-corruption movements and activists, which revolves around the basic principles and provisions of the constitutions of Arab countries, and to avoid the return of political corruption, TI chapters in the region took the initiative to prepare this analytical diagnostic report. The report will examine manifestations of political corruption in six Arab countries: Palestine, Morocco, Yemen, Egypt, Tunisia, and Lebanon.

1 Michael Johnston- Syndromes of Corruption: Wealth, Power and Democracy. Translated into Arabic by Nayef Yasin, Al-Riyad, Abikan Library, 2008- P. 60-65

METHODOLOGY

Methodology for this report was based on examining the state of each country in relations to political corruption. A set of indicators were defined and agreed upon by the researchers from Palestine, Morocco, Yemen, Egypt, Tunisia, and Lebanon. The indicators were carefully selected to determine the most prominent manifestations of political corruption, their causes, and key areas found. Also examined are practices on the ground by those in charge, in each of the countries involved in the study. Areas examined include: the principle of separation of powers (state of the executive, legislative, and judicial authorities); integrity of elections; management of public funds and property; state security institutions; monitoring institutions and apparatuses; political parties; civil society (NGOs), the media; (see annex on specific indicators for the report).

Each researcher prepared a specific research paper on his/her country according to the indicators mentioned above. All papers were reviewed by a principle researcher who identified the common denominator found in political systems of the countries under research. Finally, main challenges that hampered efforts of combating corruption during the past few years were highlighted.

ROOTS OF POLITICAL CORRUPTION IN ARAB POLITICAL SYSTEMS AS ILLUSTRATED IN THE INDIVIDUAL RESEARCH PAPERS

Management of public affairs is monopolized by the state and its agents

Mechanisms for assuming power in the Arab world do not reflect genuine democratic practices that lend legitimacy to the regime. This is true for monarchies where the king and his associates are granted immense executive, legislative, and supervisory powers. It is also true for republican rule that is based on the one party rule, which is derived from the power

of the tribe, sect, family, or a specific ideology. It also applies for regimes that are in alliance with the military and or security institutions. Hence, when looking at the long period of time a country is ruled by one head of state, one political party, or one military leader, it is safe to conclude that these regimes use similar means to remain in power. These means are generally based on control of important decisions related to social, economic and political affairs of the people. This group, by abusing power entrusted by capitalizing on their peoples' misery and concern in securing a living for their families, which indirectly forced them to stay away from participating in the management of public affairs, is the ultimate political corruption.

Arab regimes were keen to "contain" activists and officials that are appointed in key decision-making positions in the executive, legislative, and judicial authorities, as well as in official control and monitoring institutions. They also established CSOs "governmental" with the purpose of controlling its objectives and activities. Formal media centers and channels were also controlled by the regime. To achieve all of the above, regimes used various methods such as: grant economic, social, and political privileges; promote the phenomenon of clientelism and favoritism, which is based on family and sectarian relations. They

also bought loyalty, in particular, loyalty of the security agencies and apparatuses that were known by many names and far exceeded the number needed. The regime and this "network" had shared and common interests where corruption became the adhesive that cemented this relationship.

The environment and opportunities of corruption which emerged in the Arab world is not connected to a specific individual, but rather to a group or segment of society such as: a political party, family, or sect, with no accountability demanded for those responsible. This was due to the weakness of the legislative and judicial authorities as well as that of CSOs. As time passed, this was no longer a fleeting phenomenon or random cases linked to a specific event, but rather a phenomenon linked to the symbols of the regime and its cronies. This is reinforced by the long periods of rule sustained by the process by which keeps the president or king in power, as these countries do not conduct true elections that lead to changing the ruler hence he remains in position for many years. This, at first applied to heads of states that took power as a result of a military coup or was a crowned king or prince appointed at the time of colonization of the region. However, this phenomenon became widespread to include systems of republics as well as part of

Weakness and lack of independence of the judiciary, and containment of the legislative authority by the ruling class, facilitated impunity for the corrupt.

what became known as “inherited authority”.

The process of containment, which included members of parliaments, was an important step on the path that led to enactment of laws, which maintained the survival of these regimes. It also influenced public policies and budgets accordingly. Furthermore, this segment of society (heads of states, their associates, public officials etc.) benefited from the period of economic transformation that accompanied privatization of services previously performed by the public sector. In this regard, these individuals established companies and other interests with groups of individuals from the private sector in exchange for mutual benefits, taking advantage of the absence of transparency in the process of economic transformation. They also took advantage of the absence of an effective system and mechanisms that would prevent conflict of interest. This resulted in direct partnerships between small elitist groups from the private sector that have aspirations to join the ruling class and the political system resulting in an “unholy alliance”. This expanded the base of the regime and enabled it to have a direct financial share.

In contrast, the role of the middle class declined and that segment was made impoverished as unemployment soared, poverty rate became higher, and the number of marginalized groups increased. It was evident that what resulted in the Arab world were authoritarian political regimes. These regimes depend, as mentioned earlier, on clientelism and personal interests, which helped to maintain and stabilize these regimes, backed by an international community that acts based on the principle of securing and protecting the interests of major powers.

Capture of the state’s institutions by this group was accompanied by failure in the processes of

development and democratization of these countries, which complicated administrative, financial, and anti-corruption efforts. Moreover, the capture created political, developmental and social conditions that contradict objectives of the social contract and its principles that define the relationship between the citizen and the regime, by making it a submissive contract. This led to a state of frustration among the public who could not find a solution to this dilemma except to revolt against the regime with the aim of ousting it and developing a new social contract that will fulfill citizens’ aspirations of democracy, development, social justice, and dignity as well as fighting corruption.

Arab movements that resulted in a transitional period and intended to draft a new social contract should unanimously document this contract in the constitution of the country. Otherwise it will be a carbon copy of the previous one. Prior to drafting the new social contract, joint effort, from all parties involved including intellectuals and experts of the particular country, is required to prepare and present a comprehensive diagnosis of the state of political corruption in a given country. Results and recommendations of the diagnosis should then be integrated into the new social contract with special emphasis on principles of transparency and systems of

accountability. This in turn will contribute to building a national integrity system, and facilitate the drafting of procedures and activities for combating corruption in general and political corruption in particular.

THE MOST PROMINENT MANIFESTATIONS OF POLITICAL CORRUPTION IN THE ARAB WORLD

This section of the report addresses the most prominent manifestations of political corruption in key areas of the Arab political systems of Egypt, Morocco, Tunisia, Yemen, Lebanon and Palestine. These key areas include the principle of separation of powers; the three authorities: the executive, legislative, and judicial authorities; integrity of elections; security apparatuses; public control and monitoring bodies; management of public funds and property; (NGOs); and the media

CONTROL OVER AUTHORITIES IN THE ARAB REGIMES IS A SUBSTITUTE FOR SEPARATION OF POWERS

To adopt the principle that the king or president is above all other authorities is absurd.

Separation of power means prevention of one authority having control over the decision-making process. It also means the distribution of power over several authorities, since having the power under the control one authority leads to a despotic regime, and harms public rights and freedoms. On the other hand, separation of powers, effective monitoring and control systems, respect of authorities for each other's jurisdictions in accordance with provisions of the law and constitution, helps to establish a democratic system. A system that consists of an elected parliament with an authority to oversee work of the executive authority; an independent judicial authority that is able to enact laws and resolve disputes that might arise between authorities; an effective and organized executive authority able to provide services to the public; and responsible for public revenues and dispersing it transparently.

Upon examining constitutions of Arab countries, one would realize that they encompass within its texts wordings that ensure the principle of separation of powers as bases for political systems. Examples include the constitutions of: Morocco- 2011, Lebanon, Egypt-2013, Yemen, and Tunisia-2014. However, there are problems that lie in the implementation of these texts, which renders contents of these constitutions superficial based on the following: In many Arab countries, the head of the executive authority (president, king) is the one who controls all three authorities, executive, legislative and judicial. And also in most of them, he heads the security and military institutions and he is the commander of the armed forces. Furthermore, he is in charge of appointing the prime minister and other high officials in the executive authority as well as dismissing them. He also has the power to appoint a number of parliament members or one of its councils, as in Egypt and Yemen. In Yemen, he appoints the Al Shura Council (advisory council) in accordance with articles (124) and (125) of the constitution, but by a presidential decree. In such cases, the members feel indebted to the president by illustrating their loyalty, since he is the source by which they were appointed. It is worth noting that this council enjoys an immense power similar to the elected council.²

In Morocco, the king enjoys an immense power epitomized as follows: he heads the ministerial council where most important issues are discussed; has rights to dispel either or both parliamentary councils;³ he is the commander of the royal armed forces;⁴ and heads the higher security council;⁵

Moreover, in his capacity as head of the executive authority's higher council,⁶ the king has the right to order a "new reading for every or any draft law without any objection or refusal";⁷ he also appoints half of the 12 members of the constitutional court, where he appoints the head of the court from amongst them;⁸ and finally, the king has the right to demand a second review of the constitution;⁹

2 Abd-Ebaqi Shamsan, Political Corruption in Yemen, Snaa, Yemani Group for Transparency and Integrity

3 Chapter 51 – 2011 constitution

4 Chapter 53- 2011 constitution

5 Chapter 54-2011 constitution

6 Chapter 56-2011 constitution

7 Chapter 95-2011 constitution

8 Chapter 130-2011 constitution

9 Chapter 172 -2011 constitution

Adopting the principle that the head of the authority (president, king, etc.) is above all other authorities renders the principle of separation of power obsolete.

Similarly, the head of the executive authority plays a basic role in appointing judges and its supervisory body (The Judicial Higher Council), and the Prosecutor General, as in Yemen, Palestine, and Lebanon. In Yemen and Palestine, the president appoints the chief justice of the Supreme Court/Judicial Higher Council. In Lebanon, judges are appointed by a presidential decree, co-signed by the prime minister and the minister of justice. The head of the executive authority (president or king) holds all this power under the pretext of being above all other authorities, or at the least he is the final constitutional reference. And because of that he is not subject to accountability. Moreover, institutions that are under his jurisdiction also are not subject to supervision and monitoring neither to the legislative council nor to other regulatory bodies of the state. To conclude, he is the center of the political system and the only decision-maker. This is clearly highlighted in the vast majority of cases dealt with in this study.

Based on the above, the political system in the Arab world regarding the separation of the powers is defective, especially as it relates to control by the head of the executive authority (president or King) over other authorities. It is also defective in regard to applying the principle of balance and supervision, which constitutes the foundation of the principle of separation of powers. This clearly explains the emergence of the authoritarian regime, which is considered an appropriate environment for the spread of political corruption with all its manifestations.

STATE OF THE EXECUTIVE AUTHORITY

In addition to the basic characteristic that differentiates the Arab political systems, symbolized by control of the head of the executive authority (king or president) over all other powers, executive authorities in the Arab world function without

Absence of the principle of transparency and systems of accountability provided opportunities for influential individuals and authorities to control the wealth of the state.

any boundaries or limitations. Moreover, these authorities also do not implement the principle of separation of powers, which is the most important element for prevention of tyranny. Neither are they legally committed to be transparent at the administrative and financial levels. Add to that the weakness in accountability at the internal and external levels (horizontal and vertical) and lack of traditional integrity values.

>> Preventing conflict of interest

Conflict of interest is defined, for the purpose of this report, as any situation that arises allowing an opportunity for an official to influence decision making to serve his/her personal interest through other influential individuals and officials in civil service or public office. This means that a public employee is coerced to conduct or refuse to conduct a specific service with the aim of serving that official's interest, or a relative of his, or his political party, or any other party related, which is an illegal conduct. One of the worse examples is when an official contracts with a private company that he or one of his relatives own using the institution's name. To remedy this requires special legislations that will prevent and criminalize such conduct, since it is considered a form of corruption. It is also important to adopt codes of conduct that public employees can commit to.¹⁰

It is worth noting that there is no comprehensive legislation that prevents conflict of interest in regard to senior officials in public office in most of the countries included in this report, as pointed out in the individual reports of Tunisia, Palestine, and Egypt.¹¹ Moreover, it is common practice to have direct or indirect shared interest between a public office position or service and a private sector company.

¹⁰ The Coalition for Integrity and Accountability-AMAN, Integrity, Transparency, And Accountability, in Combating Corruption, Ramallah, 2013 Pages 27-28

¹¹ Abd-Elfattah Al-Jabali, public and private conflict of Interest in Egypt, (Cairo, al-ahram center for strategic and political studies, 2011) P.75

Article 36 of the Moroccan constitution-2011 stipulated that “Violations of conflict of interest shall be punishable by law...” However, no law was issued defining these violations until the writing of this report.

Some countries have legislations and provisions that clearly prohibit outbreaks of conflict of interest in specific positions such as the minister's and public prosecutor. In practice, however, this principle is neither respected nor applied. In Lebanon, for example, due to its sectarian nature, when appointing senior positions or forming a committee to manage a certain project, each sect's leader or representative insists that the selection be from his “people”.¹²

In other countries, and in Palestine, there are several legislations that address conflict of interest for specific categories of decision-makers such as Ministers and members of parliament. Unfortunately, there is an absence of a comprehensive legislation that would prevent conflict of interest in all senior positions. Moreover, there are also no approved procedures applied in this regard.¹³

Failure to adopt the principle of asset disclosure, for officials, enhanced their ability to benefit from power and allowed them to misuse their influence.

>> Financial and assets disclosures

Several legislations have been passed to govern this issue in most of the countries included in this study. In Morocco, for example, chapter 158 of the constitution 2011 stipulates that “it is mandatory of every individual who assumes public office, be he elected or appointed, and in accordance with the law, to submit a written statement about assets and property in his position, whether direct or in direct, upon assuming office, during, and upon ending his services.”

In Yemen, in regard to the governing law for financial disclosures, law number 30 for 2006, article (4) stipulates that provisions of the law apply to all those employed in public service. And In Palestine, in accordance with article (54) paragraph 2 of the Basic Law, which stipulates: “Members of

the legislative council must submit detailed financial disclosures of all their wealth including that of their spouses and minor children. Also article (80) paragraph 1 of the law indicates that the prime minister and ministers must submit financial disclosures, as well as other parties, as indicated in article (16) of the Anti-Corruption Law, of 2010.

In Tunisia, law number 17-18 obliged members of governments, a number of civil service employees, and judges to submit asset disclosures. And in Lebanon, the law number 154 dated 27/12/199, demands that the president of the republic, prime minister, members of parliament, ministers, heads and deputies of public institutions, general directors, army officers, heads of municipalities, and judges, to submit financial disclosures for themselves, their spouses, and minor children. Disclosures must be submitted to the constitutional council or to the central bank in sealed envelopes, with no entitlement for the public to see it.

Despite all these explicit legal texts regarding asset disclosures, the system is ineffective, as illustrated in the following practices: most of those required to submit disclosures do not oblige, as the case in Morocco and Yemen; officials are not held accountable as to the amounts recorded in these disclosures despite

suspicious of the unnatural growth of wealth; disclosures are submitted only once as the case in Lebanon and Morocco; disclosures are not submitted automatically with no follow up to ensure regular and systematic submission as in Tunisia; information given is inaccurate and no scrutiny is applied by the appointed supervisory body. This is due to lack of legal authorization, or lack of competent staff, and or shortages in human resources, as in the case of Palestine and Tunisia. As a result, impunity for crimes of illicit enrichment in most of these countries is commonplace.

Furthermore, due to the large number of individuals required to submit asset disclosures, applying the system becomes difficult as in the case of Morocco, Yemen, Tunisia, and Palestine. Difficulties can also arise due to the multiplicity of agencies to which these disclosures can be submitted, as in Palestine. There, disclosures submitted by ministers, and members of parliament are referred to the Supreme Court; disclosures of the president and his advisors remain at the president's office, where all others that are not listed here are referred to the Anti-Corruption Commission (ACC). Moreover, these disclosures remain confidential and cannot be opened except by a court order, as necessary.

¹² Huda Ghuson, political corruption in Lebanon, Beirut, The Lebanese Transparency Association-No Corruption, 2014, P.3

¹³ Abd-alrahim Taha, legislations on conflict of interest in the Palestinian National Authority, AMAN, 2007, p. 8-13

Public information and records are monopolized by officials and prohibited to the public.

>> There is no political will to approve the right to access to information

The majority of Arab countries have not passed a "right to Access to Information" Law, and Arab societies are not familiar with the concept of "open public records"; two main obstacles to deal with. These regimes, under the pretext of "national security" have continued to pass legislations that constrict freedom of information. In Egypt for example, presidential decree number 2915 for the year 1964, in regard to the Central Agency for Public Mobilization & Statistics, forbids any official, civil, or private party, to publish in any form or means, results or surveys, research or statistical information without permission. Moreover, Civil Law number 47, for 1987, prohibits civil service employees to issue statements, or declarations regarding his/her work without prior approval of his/her direct supervisor. Furthermore, the Agency's financial reports are submitted to the President, parliament and prime minister only, in accordance to law number 144 of 1988; and are considered confidential by the Agency and receiving parties.¹⁴

In Morocco, there is no law that governs the "right to information" although it is included in provision 27 of the 2011 constitution. In Lebanon and Palestine, draft laws in that regard were submitted to parliaments, but neither has been passed until the writing of this report.

However, laws have been issued in some Arab countries in that, especially after the outbreak of the Arab Spring. Yemen is an example where the law became valid in July 2012, and a general commissioner was assigned to enact the rules and regulations of the law. Problems encountered, in this country, were not law related but rather the mentality and bureaucratic administration that insist on withholding information and does not believe in that right and considers it the state secret.

In Tunisia, decree number 41 for 2011, approved a number of commitments that

governmental institutions are obliged to deliver in regard to publishing data and the right to access to information. However, this law by decree is marred with shortcomings that effect its enactment. For example, at the concept level, there is a problem in defining: public structure, administrative public documents, confidential documents, or a public employee. Misconceptions such as these can become major obstacles in implementing this law. In addition, implementation and follow-up is not assigned to any particular official body.

Based on the above, the right of access to information in most of the countries included in this study is still facing many obstacles. On the one hand, there is an absence of constitutional provisions that guarantee that right, as well as absence of protective legislations and or lack of clarity and inclusiveness of it within legislations. On the other hand, there is the prevailing culture, which believes in withholding information and refuses the openness approach.

All these facts reveal a lack of a genuine will, among influential individuals in Arab regimes, to allow access to information or to adopt policies that are citizen inclusive. These actions stem from the belief that if citizens have access to information it will be used to hold them accountable.

Control over decision-making in appointing senior officials, and absence of fair and transparent procedures for these appointments constituted a common denominator in the Arab world that reinforced favoritism.

Using procedures to appoint senior positions as guarantee to select loyalists

In most of the countries included in this report, there was an absence of transparency in appointing senior government positions. For example, announcements were not conducted for job vacancies, hence limiting fair completion. This granted decision-making centers of the executive authority (King or president) the chance to appoint/"reward" those who are loyal to his regime.

Control by the head of the executive authority in these appointments and the absence of a regulatory body over the process of selection opens the door to selecting particular people on bases of sect, political affiliation, or family ties, hence deterring political opponents from competing or getting appointed in these positions.

¹⁴ Hussein Mahmoud Hasan, An analytical study of causes of corruption in Egypt prior to the January 25 revolution: vision to combat corruption and its manifestations, (Cairo: center of social contract, 2011) Pages 11-12.

In Egypt, appointments in senior positions were limited to those who pledged absolute loyalty to the regime and the ruling party. The regime was keen on appointing retired officers that are known for their loyalty to the regime as officials in non-ministerial institutions or companies owned by the state, as well as to state media positions. Furthermore, the majority of appointed governors, their advisors, and deputies, as well as heads of municipalities and local councils are also retired officers who are loyalist to the regime.¹⁵

In Tunisia, (during the previous regime) the president, his wife, and those close to them from politicians and administrators, as well as allied media men and partner businessmen from the ruling family, controlled vital positions in the state and its institutions. The fact-finding commission on corruption and bribery, which was formed during the revolution, indicated that there is evidence of corruption among public employees at all levels, including: heads of municipalities, governors, members of government close to the president and his entourage and others, all of which was subject to paying bribes to mediators. The size and amount of the bribe varied

according to the privilege obtained by beneficiaries in these positions.¹⁶

Post revolution, the general commission for civil service positions took charge of validating the extent by which the framework in force for appointments in civil senior positions is implemented. However, this framework's jurisdiction does not cover the presidency of the republic, hence limiting its achievements. Results of a study, conducted by the General Union and Neutrality of Administration, and published in March 2013, indicated that 90% of appointments in public administrations were based on affiliations to the ruling party.¹⁷

In Morocco, the process for assuming leadership positions lacked implementation of the principle of equality and equal opportunity. Instead, clientelism and favoritism were the basis for appointments. In order to remedy the situation, a governing law issued on June 17, 2012, defined a number of criteria regarding these appointments. The law was part of a reform process and in compliance with chapter 92 of the constitution, which emphasized equal opportunity, merit, and transparency. It also emphasized non-discrimination, including non-discrimination on bases of political

affiliation among those nominated for senior positions. Despite the above mentioned, senior position appointments remain subject to political affiliations and exchange of mutual benefits.¹⁸

In Lebanon, there is a formal commission called the Civil Service Council whose job is to conduct competition for appointing selected winners for jobs advertised. However, this commission is subject to collusion with politicians from sectarian leaders. Also the task of appointing senior officials in the council of ministers is to be as illustrated in the Doha agreement of 2012; they remain subject to sectarian quotas or vacant, at times, due to lack of agreement to fill these vacancies.¹⁹

In Yemen, the former regime practiced systematic exclusionary practices against opponents when appointing senior officials in all positions, and especially in senior army posts. Often appointments were based on geographic locations, tribal and or political affiliations; hence most of positions in the army were granted to relatives of the president, as mentioned.²⁰

In Palestine, despite the fact that the basic law clearly indicates in article 26, that assuming a senior position is to be based on equal opportunity, and also provided several procedures necessary for assuming these positions, in practice, procedures for appointments lacked transparency in selection and nominations of applicants. For example, vacancies for these positions were not publically announced in local papers, nor was there fair competition between applicants, etc. What dominated these appointments was personal connections and political bias.²¹ This became more apparent after the political split between the movements of Fatah and Hamas, where arbitrary measures were taken by dismissing senior officials who are affiliated to the "other" movement, as specified in the decision issued by the Palestinian government in the WB on the August 27, 2007²². Similarly in Gaza, the Hamas government replaced senior officials by individuals from its movement or supporters.

15 Sayegh Yazid, "above the state: Republic of officers in Egypt". Carnegie Endowment for International Peace 2012. www.carnegieendowment.org/files/officers_republic_arabic.pdf.

16 Hamza Bu-syoud, political corruption in Tunisia, I Watch Organization- Tunisia, 2014

17 Nawat, march 22, 2013: www.nawat.org/

18 Ahmad Mofeed, Political corruption in Morocco, Ribat, Transparency Moroc, 2014, P.11

19 Huda Ghuson, previous reference, P. 4

20 Abd-Albaqi Shamsan, political corruption in Yemen, previous reference, P. 5

21 Ra'eda Qandeel, Integrity and transparency in procedures of appointments in senior positions in the PNA, section 2, heads of public non-ministerial institutions, AMAN, Ramallah, 2012, P.9-11.

22 Council of ministers' decision no. 80 for 2007- employees that are not committed to legitimacy, 27/8/2007

Emergency laws are used as tools in the hands of the ruling class to shun respect for the rule of law.

>> Using emergency laws to circumvent the rule of law and restrict public rights and freedoms

Arab constitutions, old and new, included numerous provisions relating to public rights and freedoms. However, many of the constitutions referred these rights to governing laws, which allowed for exploitation by executive authorities. This action was not for the purpose of protecting these rights and freedoms, but to impose restrictions that will empty them of their contents. Moreover, these executive authorities took advantage of power in hand to declare states of emergency and impose martial laws in order to violate and meddle in these rights with no higher body placing restrictions or conditions on them.

However, several Arab countries that underwent transformation, during the past few years, became aware of the gaps regarding public rights and freedoms when drafting their constitutions. For example, in the third section of the Egyptian constitution, the text specifies all the rights contained in the Universal Declaration of Human Rights as well as other regional declarations. Despite this, violations not only continue to occur, but were also made legal by including them in new laws, as the case of the demonstrations law no. 107 for 2013, where the Arab Network for Human Rights Information considered it to be hostile to freedom of speech. The law also restricts some of the most fundamental citizens' rights, such as: the right to non-violent protest, the right to strike, and the right to assemble. This is in addition to legal provisions that restrict the establishment of NGOs and political parties.

The new Moroccan constitution for 2011 included in its text a group of rights and freedoms covering all aspects of life; a step forward when compared with previous constitutions, which did not address some of the most fundamental rights such as civil, political,

economic, social or cultural. Unfortunately, the new constitution linked exercising many of the rights stated in its provisions to laws that would be developed by legislators, which have not been passed until today. This means that practice of these rights is either frozen or postponed.

In Palestine, the Basic Law included many of the rights and freedoms beginning with equality before the law without discrimination or: interference with freedoms, detention without trial, torture, or interference in the right of expression and speech...etc., and considered an attack on these rights as a crime no statute of limitations. And despite all of the above, many attacks fall and continue to fall on these rights, especially after the internal struggle and split in mid 2007 where many restrictions were imposed on these rights and freedoms. These rights and freedoms also witnessed many violations, and in particular those that are related to political rights, and freedom of opinion and expression, as well as freedom of establishing organizations and holding public meetings.

In Tunisia, emphasis was placed on the rights and freedoms in the preamble and in the second section of the new constitution. Equal emphasis was also placed on equality between citizens in duties and rights without discriminations, as well as: guarantee of the individual and public freedoms, respect for human dignity, prohibiting torture and considering it a statute of limitations. Also freedom of opinion and expression, and the press were stressed. In addition, the freedom to publish without censorship, to have access to information, establish political parties, organizations, holds public meetings, and engaging in non-violent resistance etc were among those covered.

Exercising the rights and freedoms is linked to the laws developed by the legislator, which either has not been issued or is restrictive to those rights and freedoms under the pretext of organization rather than protection of those rights and freedoms.

■ STATE OF THE LEGISLATIVE AUTHORITY

The containment process that included Parliaments, served to facilitate passing legislations that would help keep regimes in power, influenced budgets, besieged opponents, and belittled the role of parliaments in combating corruption.

Parliaments are a main authority in a democratic system. It is the body that represents the will of the people and is responsible for: issuing legislations, monitoring performance of the executive authority and holding its official accountable for policies and decisions, oversees revenues and expenditures of the state, and determines programs and plans submitted by governments.

These and other tasks executed by parliaments if forfeited to another authority such as the executive, for example, the latter would have powers to significantly influence the state's political decisions. Hence if the executive power holds control over the legislative, the latter provides the executive with opportunities to become an authoritarian power. This is clearly prejudicial to the principle of separation of power; not to mention that it annuls one of the most important tools for overseeing the work of the executive authority.

In this regard, executive authorities in related Arab countries were examined using several indicators in the following areas: whether parliaments were elected, appointed, or both; extent of legislative authorities' jurisdictions granted to executive authorities; parliaments abilities to perform their legislative and control duties; presence of an effective opposition within parliaments; subordinations of all executive positions to the control and accountability of parliaments.

It is worth noting that the regimes intended to control parliaments by ensuring that their loyalists and followers from accountants are among those appointed or elected. This allows the regime to have control over the whole political

system, since, on the one hand, the system favors those affiliated, and on the other hand, it is able to exploit the elections supervisory committee.

Results of the report clearly indicated the dominance of the executive power over the legislative in the countries covered by the report. Moreover, the head of the executive branch (king or president) has the power to convene parliament; dissolve its body, assign election date; approve legislations and order its publication in local papers; appoint some members of parliament or councils (senators, advisors).

The ruling party also enjoys the majority in these parliaments and for long periods of time. This factor enabled it to enact laws that served the interest of the regime and its supporters from the various sectors of society, especially businessmen from the private sector. It also provided protection for the regime from any real parliamentary accountability. Moreover, representation of the opposition is only a matter of formality and has no real effect on decisions. In Egypt, the National Ruling Party dominated the parliament with a comfortable majority, which deleted boundaries between it and the three authorities.²³

In Yemen, the General Popular Congress dominated the parliament

by having a comfortable majority hence enabling it to have power over the whole process of decision-making, in addition to making the legislative authority an extension of the executive.²⁴

In Egypt, the regime did not allow the opposition to play a role outside the scope and boundaries delineated for it, which gave it the characteristics of a friendly opposition. Therefore, as soon as that the parliament withdrew the vote of confidence from the council of ministers, the role of overseeing of the parliament became a secondary issue. And since the government can count on the majority of parliament members for support, it was protected from any questioning, accusations, and or accountability. Ultimately, this led to the formation of councils that are tools in the hands of the ruling party.

In Morocco, the parliament does not have the right to question the government or any of its ministers. Moreover, fact-finding commissions work under difficult circumstances and complex conditions that are imposed on it. In addition, parliament's reports are neglected despite the fact that many of these reports are related to financial corruption or legal cases. Furthermore, control of parliament

over public policy has limited impact.²⁵

Since mid 2007, the Palestinian Legislative Council (PLC) became unable to perform its legislative and overseeing roles. This was due to the internal political split, which had negative impact on its functions, and a hindrance in convening a unified council. It also led to the expansion of the executive authority's interventions in legislations.²⁶

Legislative Authorities in most of the countries included in the report suffered from executive authorities' control. Also the absence of an effective opposition, in most of these parliaments, led to the failure of these parliaments to play their role in fighting corruption. Moreover, not only did parliaments fail to break the closed political corruption circle, within these regimes, but were part of it, especially as they provided cover and protection for the regimes including protecting them from being punished for corruption crimes.

The ruling regime uses special courts as well as its loyalists within the judicial system to control judiciary's independence and actions.

23 Ibrahim Saif al-Manshawi, UNCAC 2005, Egypt post January 25 revolution, unpublished MA dissertation, (Cairo: department of economics and political science, 2013) P. 38.

24 Ab-Albaqi Shamsan, political corruption in Yemen, previous reference, P.9-10.

25 Ahmad Mofeed, political corruption in Morocco, Ribat, Transparency Morocco, 2014, P. 11

26 Corruption report 2012, AMAN, Ramallah, 2013, P.45.

STATE OF THE JUDICIARY AUTHORITY

The executive authority weakens the independence of judges by controlling their appointments, promotions, nominations, and referral to retirement.

The public prosecution apparatus, in most Arab countries, is a direct tool in the hands of the No.1 official. It is exploited to promote influence of the ruling elite, as well as to protect that class from accountability and to facilitate impunity.

Special courts weakened the role of the civil judiciary

The judicial authority is considered the third authority in the system of the separation of powers. It also plays an important role in overseeing other authorities through reviewing decisions taken and the extent by which these authorities commit to the constitution, in addition to being the safety valve by which equality and the rule of law is achieved. In order for the judiciary to fulfill its role effectively, it needs to be independent, effective, and transparent. Otherwise it will become a tool in the hands of the executive authority used to oppress opponents, protect those who are close to the regime (cronies) and grant legitimacy to its decisions. In that regard, there are many indicators by which one can examine judicial authorities in the Arab world, such as: the extent by which this authority is made subordinate, hence becoming part of the regime; the level of interference by the executive authority in appointing and dismissing judges; leadership of the judiciary; execution of judiciary provisions by the executive authority; existence of special courts where decisions are not appealed, such as state security courts; existing guarantees for the rule of law and obtaining justice.

Results of the report indicate that all constitutions, in the Arab countries included in this report, emphasize independence of the judicial authority, and commitment to provisions entailed. Constitutions also emphasize that judges and members of public prosecution are independent and are not subject to dismissal, with no power above them other than the law. Constitutions, in most of these countries, further indicate the establishment of an independent body (a higher judiciary council) for supervision and management of the judiciary.

However, despite all of the above, regarding independence of the judiciary, in practice, the

opposite is true in most of the countries of the report. Most of these countries grant the king or president the right to appoint judges, the head of the supervisory body of the judiciary, members and head of the Sharia judicial system, military court judges, state court judges, election court judges, and the prosecutor general. Also the president or king has the right to issue decisions regarding promoting, delegating, or retirement of judges by a special presidential decree.

In Morocco, the king heads the Judiciary Supreme Council and appoints half of its members. Also in Yemen, the president appoints the head of the Judiciary Supreme Council (Head of the Supreme Court) as well as heads of courts and members of the general prosecution.²⁷ In Palestine, the president appoints the head of the Judicial Higher Council, all judges, and the prosecutor general, through special presidential decrees. He also authorizes the minister of justice the powers of administrative supervision over courts as well decisions of locations, in addition to approving the judicial budget. Finally, he has the authority to transfer judges and members of prosecution, as well as issue orders to end their services.

Manifestations of the executive authority's interference in the affairs of the judicial authority in Egypt include the establishment of special courts to try civilians; and trial before military courts hence denying citizens of having the lawyer of their choice. Other manifestations include the subordination of the military judicial inspection to the minister of justice, as he is part of the executive authority; delegating judges to work with the executive authority; control of the prosecution office (subordinate to the minister of justice) over decisions issued by the public prosecution on vital cases hence allowing political consideration to influence its work;²⁸ transferring judges to remote courts as a form of judicial punishment. This comes in the course of the yearly judicial movement, which is administered by the Department of judicial inspection that is also subordinate to the minister of justice.²⁹

In Tunisia, there are powers granted to the minister of justice that are related to transfer, promotion, disciplining, and dismissal, of judges, which constitutes an entry point for interference of the executive authority in the judicial authority. Furthermore, the structure of the Judicial Higher Council is comprised of elected judges and appointed

27 Abd-Albaqi Shamsan, political corruption in Yemen, previous reference.

28 Yosri Azbawi, political corruption, political corruption in the Arab world: an Egyptian case study, 2014 Pages 17-18.

29 Hussein Mahmoud Hasan, previous reference, P.38.

ones, in accordance of provision 109 of the constitution. Appointed members constitute $\frac{3}{4}$ of the total number of the council, which raises questions in regard to the independence of the council. On the same note, the general prosecution is subordinate to the president and to the minister of justice.³⁰

The state of judiciary in most of the Arab countries covered by this report indicates interventions by the executive authority in the affairs of the judiciary authority. These interventions includes: appointing and dismissing judges, interference in judiciary budgets, establishment of special courts, interference of the minister of justice in administrative aspects such as in inspection, delegation, transfer, and discipline of judges. Moreover, interference include lack of respect for court orders and pressuring judges' and general prosecution decisions on cases, as mentioned earlier, where it is used to strengthen influence and protect the ruling elites from legal accountability, as well as provide opportunities for impunity.

■ TIGHTENING CONTROL OVER ELECTIONS RESULTS

The ruling elites designed election systems that will allow them control over parliamentary elections results and composition of parliaments before hand

In democratic systems elections are considered the basic tool for transfer of power. It is the tool that represents the people's will in selecting their representatives and the tool by which they can hold these representatives accountable. That is why all political regimes, including authoritarian ones, are keen on holding elections even if as a formality. However, in order for elections to fulfill their goals, they have to be fair, transparent, and just. Otherwise it will be a tool for falsifying the will of the people and instilling authoritarian regimes through forged democratic methods. By using a group select indicators, it is feasible to examine how the ruling class used elections to tighten its grip on results in order to remain in power in most of the Arab countries covered in this report. Some of these indicators cover the following areas: assurances of representation of the various components of society; measures to ensure neutral and independent supervision over the election processes; extent of holding elections periodically; limitation of presidential terms for office; if elections are held based on multi-party

systems; and governing legislations for election campaigns.

The state of Arab countries covered by this report in regard to public elections indicates that conducting fair, transparent and just elections was rare. Elections were not held periodically, and often electoral systems were meddled with hence reinforcing the individual election system, which limited the role of political parties. The state also monitored elections centers directly although at times there were observing committees present, as in the case of Egypt and Yemen. In Egypt for example, elections were a clear manifestation of political corruption symbolized by fraud, violence, and bribery. In addition, supervision over the election process was left for the internal ministry.³¹ Furthermore, the president of the country took charge of appointing the members for the Elections and Referendum Higher Committee. Also the state's armed and security forces, resources, and institutions, were employed in the interest of the ruling class during elections.³²

Similarly in Morocco, electoral corruption was a phenomenon inherent in each of the electoral stages. Main manifestations included

bribery, abuse of public property and funds; and unjustified interference of the regime in the elections,³³ in addition to lack of respect for the legal requirements followed at work, some of which are constitutional and are related to the integrity of the ballot and holding of elections; stated in the second chapter of the constitution of 2011.

In Lebanon, adoption of the electoral lists is the worst disadvantage of the electoral system. The leader of an electoral district prepares a list of nominees that show absolute loyalty to him. He announces his support to the list during election campaigns hence any nominee that makes the list is considered lucky and victory is guaranteed if his/her leader wins. On another note, despite the impartiality of the Palestinian Election Committee and its success in managing several fair and transparent elections, assurances of its independence and immunity against outside pressures are not sufficient, especially since the president of the country posses the power to appoint its members. He also has the power to re-form the committee, or exchange any of its members any time he wishes. Furthermore, he also has the power to appoint the committee's judges by a presidential decree post

31 Ihab Salam, "judiciary supervision and control over elections in parliament elections 2005, Amro Hashim release, center for political studies.

32 Annual report on human rights and democracy in Yemen, issued in 2009, Yamani marsad on human rights. P. 48.

33 Report of the central authority for the prevention of corruption, 2010-2011, P.18.

30 Hamza Bu-syoud, previous reference.

recommendations from the Judicial Higher Council.³⁴ Moreover, despite the fact that Palestine has conducted free, fair, and transparent elections, its only failure is the lack of transfer of power typified by politicizing civil, public, and security positions.

The negative archetype of elections in most of the Arab countries covered by the report, and especially under the former regimes, were clear manifestations of political corruption, epitomized by: election fraud, abuse of public property and funds, and the unjustified interference of security forces in the electoral process. However, and despite transformation undergone by many Arab countries in the adoption of new electoral systems, as well as enhancing assurances relating to fairness in elections, many of the previous manifestations still exist, such as: lack of holding periodic elections; rise in corruption manifestations such as bribery; weakness in the legal framework for election campaigns; absence of control and monitoring of the process; and weakness in assurances related to independence of the supervisory party of elections. As it stands, members of this supervisory party are appointed by the executive authority, and or are subject to pressures by individuals of political influence. Or at times, this party is not granted sufficient power, which in turn empties the electoral process of its meaning and purpose. Hence the process becomes a mechanism for reproducing the same authority with an official approval. However, this leads to citizens' loss of confidence and trust in political parties, democracy, and electoral processes hence reluctant to participate in politics, which contributed to keeping the ruling class in power for many years.

MANAGEMENT OF PUBLIC FUNDS AND PROPERTY SERVES THE INTEREST OF THE REGIME AND AFFILIATES

Managing public funds and property as if privately owned by the ruler or government and not the state's.

Management of public funds requires mechanisms and procedures that are endorsed, transparent and subject to monitoring and control. Absence of these measures leads to squandering of public funds and the prevalence of corruption within management, as well as provides opportunities for the ruling class to steal and reinvest it abroad, as the case in many of the Arab countries. Following are indicators used to measure and hence illustrate how regimes reinforced their clout and despotism. Most of these regimes took over the bigger share of the state's resources by: using certain mechanisms in submitting the national

budget to the parliament and obtaining its approval; ensuring absence of monitoring and control of government spending of the budget; using specific mechanisms for control over investment funds owned by the state; control over policies of privatization of sectors and services; control over mechanisms of allocation and sale of state's land; granting privileges that exploit public resources; control over procurement tenders and public works; and expanding the number of loyalists within the regime.

Based on the above, and in regard to the legal framework in management of public funds in countries covered by the report, most emphasized the submission of the general budget bill to the parliament at the beginning of the each fiscal year. The constitutions also stipulate that approval and endorsement of the budget be issued by the parliament. The same applied to the (end of the year closing account) of the budget as is the case in Egypt in accordance with articles 124-126 of the constitution, and in Morocco, according to chapter 76 of the constitution; in Yemen in accordance with articles 88 and 91 of the constitution; Tunisia in accordance with the Budget Basic Law No. 53 for the year 1976, and Palestine in accordance with articles 31 and 66 of the General Budget Regulating Law.

Lack of efficient parliamentary oversight over public spending provides opportunity for plunder.

Nevertheless, there are lots of gaps in regard to endorsement of budgets and monitoring of public fund spending and of sovereign funds that are not subject to the supervision of parliaments, in many of these countries. These gaps gave a false image to the process as a whole as well as provided the opportunity for corrupt officials to loot the funds and use as they please. In Egypt, estimates indicate that the general budget comprises only 20% of all revenues, which represent taxes and returns from the Suez Canal, petroleum, and investment companies. 80% of the revenues are attributed to special funds. Moreover, many parties present their budgets as a lump sum (one number) such as: the President's office, the parliament, al Shura Council, the armed forces, and judiciary. In addition, there are many funds (number unknown) that consist of resources and monetary fees that are included in the national Budget of the state.³⁵

³⁴ Ahmad Abu-Dayya, effectiveness and immunity the national integrity system in the central election committee. AMAN, 2013.

³⁵ Abd-Alfatah Al-Jabali, general budgets: basic concepts, previous reference.

Use, allocation, or sale of state land to partners of the regime, or granting it to its loyalists.

In Tunisia, expenditures of sovereign funds are not submitted to the parliament or to monitoring bodies. Also in Yemen, allocated funds represent 1/3 of the budget, presented as one total number, and spending is exclusive to high officials of the state, and in particular, the President of the republic.³⁶ Lack of commitment to legal provisions is the major issue relating to submission of the Palestinian General Budget and ratifying it within the legal time allowed. It is worth noting that there was a time when the government did not submit the budget bill for years. Also there was no commitment to submit the final closing account to the PLC for most of the fiscal years according to protocol, hence the council lost an essential tool for accountability.

In regard to granting concessions to benefit from resources, management of public facilities, bids and tenders, and utilizing of state land, most of the public was excluded. These concessions were granted to loyalists of the regime, especially businessmen and other influential people; despite the fact that these resources are considered public hence every citizen should have the opportunity to apply. However, violations of the principle of a just competition is violated, especially since there is absence of transparency in dealing with this issue, as in the case of Egypt, Yemen, Morocco, Tunisia, and Palestine.

In Tunisia, the fact-finding committee on corruption and bribery indicated that, during the former regime, favoritism and bribery were rampant in granting privileges. Most prominent of those privileges was the one granted to the Commercial Naval and Port Bureau where the concession was granted without competition.

In Morocco, despite review of the legal framework relating to management of public property with the aim of ensuring more transparency in that regard, procedures followed in combating corruption remain limited; where economy of revenues is on the rise effecting vital economic aspects of life such as (fishing, quarries for stone, sand and marble, and transport permits ...). Also reports' recommendations put forth by fact-finding committees concerning financial corruption cases of some public institutions were not implemented. Furthermore, judicial procedures were not activated to pursue those involved in embezzlement of public funds. In addition, issue of impunity, which remains

unresolved, is a main concern. The parliament also witnessed an exchange of accusations between the prime minister and some members of both councils. Most of the accusations were concentrated on corruption in general, smuggling public funds outside Morocco, and protection of the corrupt.³⁷

In Egypt, governments expanded its power in dealing with state land, where vast areas were sold for low prices, which was a direct violation of the law.³⁸ And in Yemen, appropriation of state land is considered one of the most important issues of corruption. Often this action was taken with approval of the President under the pretext of promoting investment. This action included Waqf lands where large areas were confiscate and sold.³⁹ And in Tunisia, during the last president's era, status of state land was purposely changed to private ownership in order to give the opportunity to the President's allies the chance to purchase it for low prices. In Palestine, allocation processes of state land was not based on clear legal foundations, nor subject to a well defined standards and criteria, especially during the immediate period following the inception of the PNA. Allocations of state land were granted to

individuals and private companies in clear violation of the law or by maneuvering around it. This can also apply to the way by which the lands were granted to influential⁴⁰ allies of the regime and PLC members, hence complicating the process of accountability in general.

Report results in regard to management of state land in the countries covered by the report reveal a conscious policy on behalf of the regime to employ states resources to buy loyalty and reinforce its authority by increasing the number and wealth of influential decision-making loyalists. At the legislation level, this led to weakening of drafting proper legislations. And at the level of implementation, some resources were not listed in the budget, and some that their budget is given as a lump sum (i.e., one number with no details)giving the executive authority freedom to use it as it sees fit without parliamentary control. Also often, end of the year financial closing accounts, which reflect actual spending, are not submitted to parliaments. This translates into absence of transparency in regard to channeling public funds. Furthermore, concessions granted

37 Ahmad Mofeed, previous reference, P.16.

38 Hussein Mahmoud Hasan, previous reference, P.25

39 Confiscated Waqf land, issued by the Waqf and counseling ministry, documentation of state land and property project, (2002-2006).

40 Ibrahim Huntash, State land in Palestinian territory, AMAN, 2010, Pages 9-13.

36 Abd-Albaqi Shamsan, political corruption in Yemen, previous reference.

for benefitting from resources and management of public utilities as well as allocations of state land were the main manifestations of looting and squandering of public funds. They were also mechanisms for the ruling class and their loyalists to achieve illicit wealth, and in turn, shook citizens' faith in anti-corruption efforts including participation in social accountability or reporting corruption (whistle blowing).

PERSISTENCE IN KEEPING MONITORING AND CONTROL INSTITUTIONS UNDER THE JURISDICTION OF THE EXECUTIVE AUTHORITY PROMOTES IMMUNITY FOR OFFICIALS AGAINST ACCOUNTABILITY

Subordination of control institutions and officials to the ruler voids their role of combating corruption

Monitoring and control institutions as well as anti-corruption institutions are important apparatuses for monitoring spending of public funds, and a guarantee for the smooth running of public administrations and quality services provided. They also serve as assisting apparatuses for parliaments in exposing areas of weaknesses within these areas. Furthermore, based on reports issued by these institutions accountability can be applied by parliaments. Hence in order for these institutions to function properly, it is essential that they enjoy independence preserved in the provisions of constitutions. In this regard, there are several indicators, which define the extent these apparatuses possess criteria mentioned above, some of which: role of the executive authority in appointing and dismissing heads of these bodies; extent of relationships between these heads and the ruling party; extent of effectiveness of these apparatuses in monitoring those that hold senior positions, especially members of the ruling party; existence of an anti-corruption commission; issuance of periodic reports by monitoring institutions that are submitted to related parties and published.

Within the context of the abovementioned indicators, it became clear that these apparatuses are subordinate to the head of the executive authority (king or president) in Arab countries covered by this report. Moreover, in most cases, he alone is the one

who appoints the heads of these bodies. This has many consequences, such as: independence and effectiveness of these institutions are greatly influenced; the executive authority becomes the monitored and the monitoring body, answering in the best of cases to the council of ministers, and excluding many parties from its control and monitoring, and in particular, office of the president and affiliated institutions. At the same time, these apparatuses are subject to many restrictions in applying control over other institutions, some of which is selected with partiality.

In addition, they are not permitted to publish their reports to the public. In Palestine, the head of the ACC is appointed by the President. And in Morocco, the king appoints the head of the High Council for Accounting, and that of the National Commission for Integrity, Prevention, and Combating Corruption. Also in Egypt, the Central Accounting Organization is under the jurisdiction of the President.⁴¹ And the Illicit Gain Organization is under the jurisdiction of the prime minister in accordance with law No. 62 for 1975. Furthermore, it is mandatory for the Administration Control Commission to obtain approval of the Prime Minister when summoning any employee for questioning. In addition, some members working

in the monitoring apparatuses lack sufficient immunity to perform their role properly.⁴²

In Yemen, the Higher Commission for Combating Corruption was established in accordance with Law No. (39) of 2006. However, its members are appointed through nomination of 30 individuals by the Shura Council to the parliament to select 11 of them. It is worthy to note that members of the Shura Council are appointed by the President. Also the majority of parliament is from the ruling party or their partners.

Furthermore, the prosecution for public funds refuses to accept investigations conducted by the Higher Commission for Combating Corruption on bases that this is under its jurisdiction and not the commission's. Moreover, in reference to Law No (6) of 1995, in regard to accusations and trial of officials in senior positions, and specifically the prime minister or any of his deputies, if and when they are called for investigations concerning crimes they commit while in office, a decision by the President would have to be issued, or nominate five members of parliament and the approval of 2/3 of the members. After which the Higher Commission for Combating Corruption would have no business of conducting investigations relating to corruption crimes with individuals

41 For more information, visit the following address: www.cao.gov.eg

42 Hussein Mahmoud Hasan, previous reference, P.35.

who hold senior positions. Its role will be limited to submitting annual reports along with the Central Bureau for Control and Accountability to the President and parliament, without giving accessibility to the public.

In Morocco, and despite the importance of the constitutional and legislative initiatives taken, the role that the public monitoring and control apparatus perform is recorded to be modest. This is exemplified by its lack of ability to ensure sufficient protection for public property and funds. It also does not regularly prepare and issue yearly reports, nor does it properly emphasize the value of these reports.

In Tunisia, the Monitoring and Control Commissions work by a permit issued by the executive authority. Also its reports and recommendations remain hostage to this authority, and it is not allowed to transfer files directly to the public prosecution. In addition, uncovering cases of corruption is not one of its main tasks; its task is to examine public structures and to suggest solutions for improvement. Its annual reports are not submitted to the parliament or published except in the framework of being included as part of the annual reports of the Administrative and Financial Control Commission.

Moreover, the Anti-Corruption Commission, established by decree no 120 dated November 14, 2011, has no independent budget and its head was not nominated nor approved by the founding council, as practiced in other countries. This would have provided him with the necessary assurances in performing his duties as proficiently as possible.⁴³ Monitoring and control commissions and apparatuses, in most of the countries covered by this report, are subordinate to the executive authority. The executive authority is in control of appointing the heads of these apparatuses as well as members of their boards. Moreover, these apparatuses do not have power over influential officials of the ruling class, and if investigations are conducted, the reports can only be submitted to the head of the executive authority (king or president). There is no exposure of the violations included in reports to inform the public, since these reports are kept confidential and unpublished.

■ THE ARMY AND THE SECURITY INSTITUTION:

Security is for the defense of the regime, as demonstrated by the number of security apparatuses and concessions for its officials that has been noticeably increasing; all at the expense of the civil police, the rule of law and the national treasury

“A regime with military background is usually more open to all segments of society, since it covers a large sector of society and posses internal dynamics that allow promotion from a lower rank to a higher one. However, the stringent military thinking and rules do not allow but for a limited degree of democracy, since it demands full obedience from lower ranks to those in higher ones without debate. It is from this point that many call for a separation between the army and rule of the country, because integration of the two poses a threat to democracy.

**Labib Qamhawi,
Jordanian politician
and intellectual**

The military institution sought to develop a state within the state.

The military institution and the security apparatuses constitute the main instrument by which the executive authority exercises oppressive power legitimately with the aim of protecting public security and the internal system of the state. It is restricted by law and other constraints in the practice of this power. Based on the above, abuse of this power represents a deviation of the objective of its establishment. It also intrudes on public rights and freedoms and oppresses political opponents.

Moreover, some authoritarian regimes resort to establishing special security institutions, outside the formal ones that are governed by law, and use it to oppress oppositions and for its own defense. In order to achieve this, the regime grants it concessions, trainings, and recourses at the expense of the formal security institution.

As a norm, duties provided by the security sector in any society are not limited to the protection and survival of that society for a short period of time, but rather it includes assurances that all its components remain competitive and effective for a long period of time. Therefore, the existence of unsuitable security structures and mechanisms leads to tyranny, instability, and igniting of violent struggles.⁴⁴

In order to understand the place of the security institution within the structure of Arab political systems covered in this report, and to what extent it played a role in the closed circle which led to the tyranny and political corruption delineated, we examined the above through the following indicators: relationship between officials of the

⁴³ Tawfeeq Aklimendos, reform of security systems, Arab reform initiative, 2011.

⁴⁴ Mohammad Qadri Sa'eed & dr. Nuha Bakr, reform of security sectors in Egypt, workshop report: Security and development: Egyptian case study, Arab Reform Initiative, March 2-3, 2008.

security institution and the head of the executive authority (king or president); extent of immunity granted to security officials vis-à-vis being held accountable for their actions; subordination of the security institution to the regime, and its leaders to the parliament; budget subordination to the parliament; formation, power and influence of certain apparatuses at the expense of civil police (intelligence services, state security, preventive security, special forces, special guards, etc.). also constraints on transference of security apparatuses officials directly to the civil authority or to the economic public sector or the private sector; interference of the security institution in the electoral process; procedures followed for appointing officials; and duration of service in office for officials.

State of the military and security institution in the Arab countries examined in this report indicate that control over this institution is in the hands of the head of the executive authority (king or president) in his capacity as the commander in chief. He is also in charge of appointing its leaders who became his subordinates and take their orders directly from him. This situation applies to all case studies in this report (Yemen, Egypt, Morocco, Tunisia, Lebanon, and Palestine). This institution's instruments were

used to oppress political opponents, pursue oppositions, oppress public rights and freedoms, and protect and defend the regime and its followers. In return, leaders and officials of this institution received concessions and special privileges since they are considered partners with the regime in controlling the state and its resources. Moreover, other security apparatuses were established and granted all the resources, training, and equipment necessary, all at the expense of the official police institution. In Egypt, all the security bodies were in the service of the last regime. For example, an intelligence service that was under the Ministry of Interior, which was replaced by the National security post revolution, is assigned not only to fight terrorism, but also to control and oppress the opposition. In addition to that, the security institution fell into the trap of "inheritance" (i.e., passing power from father to son) and legitimacy crisis.⁴⁵

The military and security institutions budgets are not subject to actual parliaments or other control bodies' supervision, in most of the cases studied in this report. Also purchase contracts and other business deals are treated the same. Moreover, some of these apparatuses were granted concessions to handle important economic sectors as a privilege, in addition to appointing

its leaders, after retirement from their senior and sensitive positions, in the various civil sectors within the context of loyalty to the regime. A good example is Egypt where the military budget was not subject to parliamentary supervision. The institution alone managed it, especially those related to: tenders and purchases; contracts with the private sector and investment companies; and control of important portion of the civil public sector; all in the name of the privatization process.⁴⁶ In addition, the security apparatuses and its cadre have control over decisions of some sensitive economic and financial issues of the state. For example, the institution was in charge of looking at applications of investors in the tourism sector, and particularly in the Sinai. This was done through the National Center for Planning Use of State Land that was headed by a major general. Also many of the directors of ministers' and high officials' offices, as well as directors and cadres of companies in the public sector, are also former generals, or engineers, most of whom work in sectors of: communications, transportation, media, and the power sector. Others work in the Central Agency for

Mobilization and Statistics.

Moreover, there are military generals and policemen who work in local government bodies, in addition to their representations among governors, where many of them become heads of local councils. They are also present in sports unions. Former generals from the military and the police hold second jobs in the administrative sector, or are directors at private companies that also work with the security apparatuses at times.⁴⁷ And finally, security apparatuses played an important role in selecting the ruling party's nominees for elections.

In Yemen, the Republican Guard was established, trained and armed with advanced weapons in order to protect and defend the regime making it the toughest oppressive power in the country. This is in addition to dividing it to non-institutional sectors subject to the President of the republic. Its appointed leaders are selected from loyalists to the president and are under his direct command, and not the ministry of defense's as should be. The same applies to forces of central security and intelligence. One of the most famous of those appointed as Chief

45 Farouq Jweideh, al-aharam newspaper, 30/11/2011.

46 El fegeiry, Moataz, 2012, "Crunch time for Egypt's civil-military relations". European think tank for global action no.134.

www.fride.org/download/pb_134_crunch_for_Egypt's_military_relations.pdf
 marshal.shana and Joshua stacher, 2012. "Egypt's generals and transnational capital" middle east research and information project 262: 12-18. www.merip.org/mer/mer262/egypts-generals-transnational-capital

47 Tawfeeq Aklimondos, previous reference.

of the Republican Guard and Special Forces based on family, tribal, and personal loyalty to the President is "Ahmad Ali Abdullah Saleh, son of the President". Also: Khaled Ali Abdallah Saleh, son of the president, was appointed as Chief of Mountainous Armed Forces; Yehya Mohammad Abdallah Saleh "President's Nephew", as Chief of Staff of Central Security; Tareq Mohammad Abdallah Saleh, "President's nephew", Chief of Special Guard; Ammar Mohammad Abdallah Saleh, "President's nephew", as Chief of the National Security Apparatus; Mohammad Saleh Abdallah Al-Ahmar, adopted brother of the president, as Air Force Chief of Staff.⁴⁸

Moreover, the security and armed forces budget is presented as a lump sum (one total) in the state's general budget, and is not subject to parliamentary supervision although it accounts for 40% of the general budget.⁴⁹ This led to the emergence of what is known as "ghost soldiers", where heads of apparatuses and districts include names of individuals from their tribes to the list of those receiving salaries and food rations without being enrolled in the army.⁵⁰

Through the intermarriage of the two institutions, the tribal and the military, leaders of the tribes dominated the first line of leaders of the armed forces and security. Both sought to control Yemen's economy by monopolizing bids, tenders, contracting and government trade deals. They also had monopoly over commercial agencies and services; commercial and investment installations (tribal capitalism), in addition having control over a vast areas of land under the pretext of use for military purposes, after which it is sold for the benefit of army leaders and generals.⁵¹

In Palestine, there are no announced or adopted budgets for the security institution, as duly required by the Public Budget Law. Neither is there an official financial system adopted by the Ministry of Finance. Its budgets are presented in the public budget as a lump sum number (one total) without detailing revenues and or expenditures. Also the number of enrolled employees is ambiguous. Moreover, neither the PLC, nor the State Audit & Administrative and Control Bureau (SAACB) ever issued

or published detailed reports in this regard, even though, approximately one third of the Palestinian public budget's expenditures goes to the security sector and the Ministry of Interior.

In addition, the President took charge of appointing the heads of the security apparatuses. According to the law, the duration for these appointments is three years, renewable for one year only. However, many of the officials remain in office for many years.⁵²

By being subordinate to the head of the executive power, king or president, since he is its commander in chief, the security institution is an instrument in the hands of the regime for enforcing its authority, protecting it, and oppressing its opponents. It is worth noting that most constitutions in the Arab world stipulate that the king or president of the country is the commander in chief of the armed forces.⁵³ He is also the chairman of the Security Supreme Council. Furthermore, many of these regimes resorted to establishing special forces for protecting themselves such as the republican guard, state security, and preventive security apparatuses etc.

It is also important to note that the security institution played a vital role in the civic and economic aspects of life, as well as in the electoral process, without being subject or accountable to parliamentary supervision or any other public control body. It was also considered a partner of the regime as it received many concessions from the regime in return for protecting it and for obtaining immunity against being held accountable for its officials. Last, but not least, lots of funds were allocated for apparatuses to protect the regime. These funds amount to 30% of expenditures of the public budget and are usually at the expense of education, health, and social affairs.

■ RESTRICTING FREEDOM TO FORM POLITICAL PARTIES:

Politics is exclusive to politicians

Pluralism is one of the most important pillars of a democratic system; noting that the more active an opposition is the more effective the political system becomes, and the more there is citizens' participation. This in turn will prevent tyranny and political corruption, as a result of political parties monitoring of one another in order to gain citizen's

48 Arab center for research and policies study, previous reference.

49 Arab center for research and policies study, previous reference 2011, the Army and popular revolution in Yemen. www.dohainstitute.org/file/pdfviewer/277c99c6-fb0f-4a33-9104-4d0bbb2425de.pdf

50 Salsbury Peter, 2011. "Yemen economy: oil, imports, and the elite" Chatham house. www.chathamhouse.org/sites/default/files/public/research/middle%20east/1011pp_yemeneconomy_arabic.pdf

51 Achy, Lahcen, 2011, "economic roots of social unrest in Yemen". Carnegie Endowment for International peace. www.carnegie-mec.org/2011/03/10/economic-roots-of-social-unrest-in-yemen/axs2

52 Saeed Zeid, effectiveness and immunity of the integrity system in the security institution, AMAN, 2013, P. 8.

53 Chapter 53 of the constitution 2011

votes. For that reason, authoritarian regimes resort to imposing restrictions on the establishment and activities of political parties. Under these regimes, the one party rule is reinforced, and an effective opposition is absent. The fate of other parties, if existent, would be to become subject to the regime, or pursuit, or just mere formality, or get integrated within the ruling party, where it becomes part of the composition of the prevailing political corruption.

In Arab countries covered by the report, there are many constitutional and legal provisions relating to the establishment of political parties, some of which are: the right to establish and engage in political parties' activities. However, these provisions encompass many restriction and conditions that are incompatible with the principle of equal rights and freedom of opinion. They are also incompatible with the principles of political and intellectual pluralism, such as: lack of conflicting elements of the party's principles, goals, programs, policies, or methods of practicing activities with principles of the Islamic Shari'a, and preserving of national unity and peace, in addition to prohibiting the establishment of any party on sectarian or class bases.

In Egypt, law no. 40 of 1977 imposes conditions on forming political parties that relate to preserving the democratic socialist system and achievements. In Yemen, political parties and groups' law no. (66) of 1991, demands the protection of the republican regime, and the goals and principles of the September and October revolutions and the constitution. Moreover, it also requires the protection of the Islamic and Arab national affiliation in mostly loose conditions, which were exploited to stop the opposition from forming political parties. Evaluating the commitment to those conditions was left to a committee most of its members are from the executive authority, which is controlled by the ruling party, as the case in Egypt. This committee was authorized to grant license to establish parties and dissolve them. For that reason, many of the current political parties were established by judicial ruling after refusal of this committee to grant them license. Similarly, the situation resonates in Yemen as the Committee for Political and Organizations Affairs is granted the same power.

The party system in Egypt was based on the existence of one big party that monopolized the majority of the parliament (National party) with few other small parties.⁵⁴ Also the President is the head of

the ruling party. And often, what happened was an overlapping of the party and the state's apparatuses, where the latter was employed to the interest of the party, especially during elections.

Moreover, many of the political parties in the countries covered by this report lack internal democratization. As it stands, these political parties do not hold their conventions on time, and leadership positions are not based on competence and merit. Also representation of women and youth is very weak in these parties. There is absence of transparency and integrity regarding nomination criteria and in recommendations for positions or when positions are granted by default. Transparency is also absent in spending party's funds, as the case in Morocco,⁵⁵ where out of the 35 political parties that are licensed, only 21 submitted their financial reports to the Supreme Accounts Council in 2011, and only eight parties presented their accounts in due time allowed by law. The Supreme Council also states that only 14 parties who submitted reports had an expert, registered in the Commission of Expert Accountants, attested to their accuracy.⁵⁶

Most Arab countries allowed political parties to function, but under restrictive conditions that leaves them devoid of their goals

Most Arab countries, that allowed political parties to function, placed conditions for their establishment, hence placing obstacles to the emergence of strong oppositions. Furthermore, some of these countries constricted parties' work and prosecuted its leaders, or worked to integrate them within the ruling class, hence become part of the political corruption. These trends contributed to weaken role of the opposition in monitoring and control. They also weakened participation of

54 M.Charif Bassiouni, corruption cases against officials of the Mubarak regime, Depan University College.

55 Central Authority for the prevention of Corruption, combating political corruption in Morocco, diagnosis, evaluation, and recommendations, Sept.22, 2011.

56 Supreme Accounts Council, conclusions reached by the Supreme Accounts Council, October 2013. www.courdescomptes.ma/fileadmin/uploads/Rapport/rapportpartiespolitiquear.pdf

most citizens in public affairs. This in turn provided the opportunity for the ruling elites to control public resources, assets and property, to make it serve their own interest.

■ RESTRICTING AND WEAKENING ROLE OF NGOS

Scaling policy towards civil society and containment of its leaders, in addition to reducing its financial resources weakened social accountability

Civil society organizations (CSOs) are considered a guarantee of a democratic society. These institutions assist the state in conducting some of its tasks, as well as monitor and control over its institutions. Moreover, some intellectual schools of thought see that having a strong SC guarantees proper conflict management in society.

Many of the authoritarian regimes contain these institutions, or establish some that are subordinate to the ruling party. In this regard, there are few indicators that help to examine the effectiveness of these institutions, and in particular, NGOs; such as: restrictions imposed on the establishment and work of NGOs; NGOs chances of obtaining funding from donors; establishing NGOs that are subordinate to the ruling party; relationship between NGOs and the executive authority; and the extent of integrity in NGOs.

Most of the countries covered by this report sought to contain these institutions or restrict its establishment, where most of them required obtaining a license from the executive authority, and in particular from the Ministry of Interior or security apparatuses. And by the way, the latter also has the right to dissolve these institutions as well, as the case in Egypt where law no. 84 of 2002, indicates that the administration has the right to dissolve organizations. This right was granted to the judiciary by the previous law no 153 of 1999⁵⁷. Often, these institutions were viewed as a threat to the security of the regime. Therefore it was always subjected to a stifling security and administrative

control, which hindered initiatives and freedom of decision-making within it⁵⁸. In addition, NGOs were employed to support the ruling party's candidate.⁵⁹

In Morocco, organizations suffer from many obstacles mainly relate to procedures of establishment, where local authorities, in charge of receiving applications, do not respect provisions of the law. They impose conditions and request documents that are not required by law. They also exceed the legal period allowed by law to inform of approval for establishing an NGO. In addition, NGOs face problems related to weak public funding, and subjecting it to unfair standards such as: political affiliation, loyalty, subordination, and mutual exchange of interests.⁶⁰

In Yemen, the supervisory authority has absolute right to grant legitimacy to non-governmental organization through the following means: overseeing its board elections; imposing re-licensing once a year;

imposing conditions to pay fees for every re-licensing, resuming activities, and membership card.⁶¹

In Palestine and despite law provisions stipulated in the Basic Law and Charitable and non-governmental Organizations' Law, which ensured the right of assembly and association as well as establishment of NGOs, violations of these rights, remains a reality. Many of these violations are due to practices by officials of the executive authority and its security apparatuses in Gaza and the WB. In particular, this was more so post the internal split of 2007, where many restrictions were justified against NGOs, hence limiting practice of this right, where each side of the conflict exercised its power to reinforce its influence or to even out score with the other. Since then tens of organizations were dissolved, or were harassed, or its assets and property confiscated⁶², or its chairpersons and or members of boards arrested or prosecuted in, both, the WB and Gaza.

58 Nabeel Abd-Alfatah, civil society in Egypt in a troubled world: structural handi-caps, potential ambiguous questions in: group of editors, Arab NGOs, and condemnations, issues, problems, and situations, (Cairo: center for political and strategic studies, 2004) P. 134.

59 Egyptian center for women's rights: field follow up report of women's committees on the presidential elections, Sept. 7, 2005. www.awfonline.net/oldsite/page

60 Site for: committee on debate around civil society and role of the new constitution. www.hiwarmadani2013.ma/

61 Abd-Albaqi Shamsan, freedom of establishing NGOs in the Yemen republic, (Ta'az: Information and training center for human rights 2008, Pages 65-66, 70. Accounts supreme council, summary reports on political parties, October 2013, www.courdescomptes.ma/fileadmin/uploads/rapport/rapportpartispolitiquear.pdf.

62 The independent commission for human rights, human rights in the territory of the PNA, annual reports for 2008, 2009, and 2010-14,15, and 16th respectively. Also look, commission's report on charitable organizations in Palestinian territory in 2008, series of special reports no 66, Dec. 2008.

57 Ayman As-sayed Abd-alwahhab, law of charitable organizations, priorities and challenges, center for political and strategic studies – Al-Ahram, series of pamphlets no. 121, Cairo 2002 P.2.

Executive authorities, represented by interior ministries, sought to restrict the establishment of NGOs in most of the countries studied. It also perceived NGOs in a negative light, as NGOs are accused of distorting the state's image; held hostage to foreign donors, and specifically to those in defense of human rights, good governance, and combating corruption. Furthermore, ruling parties sought to establish NGOs that are subordinate to it, and in this case to enhance the party's image or to use it against other NGOs. All of the abovementioned made NGOs incapable of combating corruption or part of the political corruption.

■ MEDIA:

Media is considered an effective control tool. It is also defined as the fourth power due to the vital role it plays in society. Therefore, to overcome this "obstacle", authoritarian regimes resorted to imposing their authority over media by transforming it into media for the regime or the ruling party. It also prohibited the establishment of other media outlets, private or factional; imposed strict control over media with the purpose of preventing it from covering any issues that might harm the authority of the ruling party over the country's wealth. Last but not least, it resorted to containing journalists and media professionals recruiting them to the service of the regime, and hence some of them become an instrument for promoting the ruling class.

Exploitation of official media for the promotion of the regime, its policies, and symbols weakened that media's investigative role and reinforced self-censorship within its administrative body.

The state of media in Arab countries covered in this report indicates that the legal frameworks existing in these countries shackle the rights and freedoms of individuals working in the media. It also delineates boundaries that cannot be crossed without risking harassment, arrest, and or trial. Egyptian media is a case in point where the media worked under such legal environment during the previous regime. The regime, during its rule, arrested many journalists related to publishing issues; beleaguered others; exclusion of the majority of those that criticize the regimes policies; imposed control bloggers and internet access in general. At the end all national

media became subordinate to the ruling party. And instead of exposing corruption, it became an instrument to cover up the corrupt from the cadres of the former regime.⁶³

In Palestine, and since the internal split in 2007, exploitation of official and factional media became very apparent in taking sides of the struggle. This led to play a negative role of media funded by the authority and factional media in reinforcing the division and political recruitment at the expense of its role in promoting integrity and fighting corruption. Media funded from the authority's treasury became the forefront of the government and not an effective factor in it, as it does not criticize it, scrutinize it programs, or cover any corruption cases raised in courts with the exception of those political and partisan harassments that are published.⁶⁴

The Moroccan constitution-2011 stated that "freedom of the press is guaranteed, and cannot be restricted or censored beforehand..." And despite these constitutional provisions, media in Morocco suffers from many obstacles symbolized by the following: prosecution of journalists according to the criminal code with penalties inflicted on

them that deny them liberty; making journalists pay high fines; banning journalists from writing; shutting down newspapers.... The regime also monopolized public media, and specifically television networks and ensuring control over certain opinions in public channels. Moreover, the regime lacks respect for pluralism in society; harasses independent press; prosecutes individuals accusing them of disclosing a professional secret, which in fact exposing a corruption act/s. This raises the need to put into effect the right to access to information and protection of whistleblowers.

In Yemen, the press publishing law no (25) of 1990 imposes several restrictions on media.⁶⁵ In addition, article 126- of the Penal Law stipulates "the death penalty shall be applied to all those who intentionally broadcast news items or information, or spread false rumors or tendentious, or deliberately spread dramatic troublesome propaganda with the intent to damage preparations for the defense of the country, or military operations of the armed forces, or to stir panic among the people, or weaken the morale of the people."

Nevertheless, and in some cases, freedom of the press and other forms

63 www.sawasya.net/news_details.aspx?kind=1137

64 Ahmad Abu-Dayya and others, National Integrity System in Palestine, Ramallah 2009

65 Abd-Albaqi Shamsan & others, investing in the future: strategy for developing the professional and legal capacities of Arab media personnel (Amman, center for defending freedom of journalists, 2006) Pages 322-334.

of media are practice freely, as in Lebanon. In Lebanon, it is possible for any citizen to own a media outlet, or express his/her opinion via media means. The state only limited the number of television stations and political papers based on recommendations of the journalists' union; while there is no limitation on the number of other magazines and newspapers. Moreover, all forms of media are subject to the "National Media Council", which is composed of media professionals only, and who are elected by their colleagues. The Council also has the power to hold accountable anyone who violates laws that are in force, such as the law of boycotting Israel, for example.

However, control of the ruling party over official media and exploiting it to serve its interest and to promote its image, in addition to attacking political opposition through it, constituted the most prominent

manifestations of political corruption in most of the Arab countries, and in particular, those that recently witnessed transformation. And despite positive developments achieved recently in regard to utilizing official media, the need to review governing legislations is vital in view of the constraints and prohibitions that prevent freedom of the press in addressing important issues, and in particular corruption cases. Legislations review is also necessary to prevent establishing private media institutions that place its interest above the public's interest by people who take exploit present media openness.

As illustrated, utilizing public resources to serve institutions, especially those that are paid from the public treasury, that benefit a small segment of society that is in power, and not the public is considered official corruption.

CONCLUSIONS AND RECOMMENDATION:

Since 2010, many of the Arab counties have witnessed mass uprisings and protests against political regimes that controlled all joints of the state with an iron fist, and for long periods of time. During that time, management of public affairs was monopolized by the few ruling elites that captured the state and its institutions as well as all centers of decision-making for its own interest. It also looted the state's resources. Moreover, it prevented political, administrative and financial reform processes. However, the transformation process is still on-going in an effort to achieve understanding for a new social contract that will replace the old situation, after the majority of citizens returned to participating in public affairs.

The on-going transformational process Arab countries are going through includes many areas some of which: to build a democratic system; achieve justice; respect for the Arab citizen's human rights and dignity; and combating corruption. For those reasons, anti-Corruption activists see this as an opportunity to begin building a national integrity system (NIS) that is founded on the values of integrity, principles of transparency and systems of accountability. To achieve this, the NIS needs to be part of the new social contract, i.e., constitution, legislations-rules, principles and provisions that would take into consideration the building of the NIS, which will relatively prevent the return of political

corruption which allowed capture of the state and looting of its resources.

Surely this would require a comprehensive analysis and delineation of the reasons which allowed small groups of influential people, in each country to: rule with an iron fist; capture the state and its institutions; limit citizens' participation in public affairs; keep these countries categorized among the most corrupt countries; and made anti-corruption efforts ineffective.

First: The principle of separation of powers:

Despite the existence of constitutions that include reference to the principle of the separation of power, implementation of this principle is ineffective. In that regard, in most of the countries covered in this report, what emerged was the following: absence of balance in the distribution of powers between authorities; predominance of the executive authority (king or president) over the legislative and judicial authorities; exclusion of the head of the executive authority and officials of subordinate institutions from accountability; and re-election of the ruler for life, which converted the ruler into an icon for resistance where partners in the ruling class seek his blessings and protection, where all became immune against being held accountable, not to mention that the principle of separation of powers

does not exist as far as these officials are concerned.

Second: The executive authority:

1. Appointments in senior positions: most Arab countries have not adopted written and approved conditions and procedures for appointing and promoting senior position officials. Appointments in countries covered by the report are conducted based on: consideration of personal loyalty; political, tribal, and sectarian favoritism. Also absence of a supervisory body on procedures followed such as, commitment to specific standards in accordance with the law, and in particular the principle of equality in competing for these positions, goes unabated. These traditional methods of selecting senior officials reinforced the phenomenon of loyalty to officials of this political class and their mediators, as well as reinforcing exchange of mutual interest at the expense of public interest.
2. Submitting of financial disclosures: Despite the existence of legal texts in regard to financial disclosures in most of the Arab countries, the system is ineffective due to the absence of a political will among senior officials. In addition to:

>> Weakness in procedures that obligates submission of disclosures and penalty when failure to do so occurs.

>> Weakness in mechanisms that confirm accuracy of information contained in disclosures, since it is not allowed to open these disclosures without a court order and on rare occasions, hence the assigned body does not conduct inspection of the content, or follow up on changes and developments that might occur.

>> Adoption of the concept of "secrecy" instead of "transparency" in regard to financial disclosures, in most of the Arab countries. This allows those in power to hide enclosed information regarding illicit gains. Moreover, this method also does not allow for exposure of benefitting from overlapping of interests, or avoiding it if and when it is discovered.

3. Conflict of interest:

In most of the Arab countries, there is no comprehensive system or legislations regarding conflict of interest; nor are there adopted and applied procedures that prevent conflict of interest in public institutions. On the contrary, combining a public position or service and a direct or indirect interest in a private company in the private sector is common in a number of countries. This broadens

the possibility of mutual benefits and profiteering, as well as, legalizes and instills the concept of "scratch my back, I'll scratch yours".

4. Freedom of access to information:

The ruling class, in countries covered by the report, was devoted to the absence of the right to access to information from the texts of constitutions and legislations. And in cases where there is legislations in that regard, it is ineffective when applied, either due to the absence of an overseeing body, or because of the prevailing mentality that believes in withholding information. Until now, the culture of open records has not taken root in most of the Arab countries. Hence under the slogan of public interest, national security, and keeping law and order, information is dominated by the ruling class.

5. Public rights and freedoms:

Although texts of most constitutions of Arab countries, especially the new constitutions, do include principles related to public rights and freedoms in their provisions, it is the laws, however, that are issued by legislators that determine putting those principles into practice. And in that regard, most of these laws either have not been issued or existing laws are restrictive of these freedoms and rights, which means that exercising many of these rights and freedoms is either frozen or deferred. In addition,

the ruling class used its influence with parliaments to prevent issuing of legislations that granted the right to establish CSOs, or to exercise the right of assembly, where it often made it conditional upon obtaining a security approval.

Third: The legislative Authority:

The ruling party dominated control over the legislative authority in most of the countries covered by the report. This was executed through the majority of members it enjoyed within these parliaments, which weakened the oversight function of parliaments and made the executive authority immune against any accusations and or questioning. This was also due to the poor representation of the opposition in these parliaments, as well as their limited influence in the decision making process as they were excluded from leadership positions as well.

Fourth: The Judicial authority:

State of the judiciary in most of the Arab countries covered in this report points to the influence and interference of the executive authority in the affairs of the judiciary authority. Manifestations of this interference include playing an influential role in selection and procedures of appointing, dismissing, delegating, promoting, and disciplining judges. Moreover, it often controls the judiciary budget.

This is in addition to its authorization of establishing special courts to try civilians; lack of respect for court decisions; exercising pressure on the judges to influence their decisions when looking into specific cases, either to close the files or to decide in favor of a particular party.

Subordination of the Attorney General is to the executive authority (the president) although he is part of the judiciary. The executive authority interferes in the general prosecution apparatuses through the Minister of Justice. It is also common to see the Attorney General working as the lawyer of the regime, and not the protector of citizens.

Fifth: Representative elections:

In many of the related countries, especially during previous regimes, the ruling party disabled the electoral process or forged election results through violence, bribery, exploiting public funds and property, unjustified security interference in the electoral process, and creating electoral systems that enable this class to control results of elections. This resulted in: loss of credibility and trust in elections among citizens; regression in citizens' participation in political life; change in parliament's image as it became the forefront of the regime. This class also controlled the electoral supervisory body whose members are appointed by the ruling class hence subject to its pressure and influence. It is worth

noting that this body was neither neutral nor independent in many of the related countries, as the report indicated.

Sixth: Management of public funds and property:

>> In regard to endorsement of public budgets, parliaments seem to be short of doing their job. In most cases this process seems a mere formality. Budgets are presented incomplete as much of the revenues and investment funds are not included in these budgets. Also budgets of many of parties present their budget as a lump sum (one total number) with no details hence it is not under the control of parliaments. Moreover, end of the year closing accounts are not presented to parliaments in the majority of cases.

>> Processes of granting concessions for utilizing public resources and utilities, expanding basic citizen's services, and management and distribution of state land constituted direct violations of the law. These processes and mechanisms also symbolized main manifestations of looting of public funds by which officials gained illicit wealth. Policies entailed contributed to reinforcing relationships between the ruling class and high officials in the military and security apparatuses, as well as reaping benefits from the private sector, where exchange of positions and locations in a cooperative fashion was conducted at the expense of the

middle and lower poor classes in society.

Seventh: Public monitoring and control institutions, commissions, and apparatuses:

These bodies, in total, were subordinate to the head of executive authority, which affected its independence. Very often, these bodies worked with permission and supervision of the executive authority leaving its reports' recommendations hostage to this authority. Moreover, its members do not enjoy proper immunity to do their jobs properly and efficiently. In addition, these bodies are unable to submit corruption files directly to the General Prosecution. And the public has no access to these bodies' reports as they are often kept confidential.

Eighth: Security, Police and Military Institutions:

>> In order to impose its authority, facilitate self protection, and oppress opposition, the ruling class used the security institution as its instrument. Based on the above, relationship of the president or king with these apparatuses was direct. He also assumed the position of Commander in Chief of the armed forces. Furthermore, many regimes resorted to establishing special security forces and apparatuses such as the republican guard, state security, preventive security etc., for its own

protection. In many of the related countries, the security apparatuses played a decisive role in the civil and economic lives as well as in the electoral process of these countries.

>> The security institution, in most of the related countries, is not subject to parliaments' supervision, control, or accountability. Its budgets are presented as a lump sum figure (one total number) without details. Moreover, there is no enactment of provisions related to financial disclosures of officials of the security apparatuses.

>> Budget for the security apparatuses accounts for more than a third of public expenditures at the expense of health, education, and social security of the people.

Ninth: Political parties:

Countries that allowed political parties placed restrictions on their formation, activities, and funding. This was done either through passing special governing legislations, or by taking control over the licensing body. This in return, reaped benefits for the ruling party and its members as well as contributed to the existence of a large ruling political party with a majority in parliament with only few other small parties.

Tenth: NGOs:

Many of the Arab countries impose several restrictions related to

procedures of establishing NGOs; most of which are in violations with the law. It arbitrarily imposes conditions and requests documents that are not required by law. It also delays issuance of decisions regarding establishment of NGOs beyond the legal time set by law for that purpose. Furthermore, governments have a negative view of NGOs, and see them as a security threat to the regime. In that regard, the ruling party sought to establish NGOs under its jurisdiction as a way to control CSOs work and activities in any of the Arab countries.

Eleventh: Media

The state of media in most of the countries related indicates the control of the ruling party over official media, and recruiting it to its service including: ignoring stances of political oppositions; exploiting official media in facing opposition forces; ensuring the existence of legal framework that shackles the rights and freedoms of media, civil, and private work, and delineates red lines that cannot be crossed for media personnel and outlets; otherwise will suffer the consequence of being harassed, tried, and or imprisoned, and especially if they cover corruption cases. Direct censorship by official and non-official security apparatuses is imposed on newspapers, media outlets, bloggers, and the internet in general.

RECOMMENDATIONS:

To consolidate efforts of: activists, institutions and organizations, anti-corruption movement, in cooperation with other parties that work towards building a democratic system, which respects human rights and dignity, and strives to achieve social justice, as well as efforts of those involved in re-writing the new social contracts, to include the abovementioned principles in the provisions of the these contracts in the Arab world. This will ensure the success of an anti-corruption plan and the cooperation of all parties, official and civil, when working towards adopting the following principles for combating political corruption:

1. Ensuring a balanced separation of powers among the three Authorities: when drafting constitutions, the texts should include: balanced distribution of powers between authorities, and removal of all areas of possible interventions and ambiguity that provide for the executive authority to have predominance over other authorities. To also

ensure that the subordination of all authorities to mutual supervision so that no official is immune from accountability, and specially those at the top of the executive authority. It is important to note that the parliament is the best system to achieve this; i.e., the government is the owner of the actual power and is held accountable before the parliament within the system, while the president hold a symbolic position, and has no executive power.

2. Ensuring an executive authority that is transparent, fair and is subject to accountability:

- a. In reference to appointments in senior positions: to promote a parliamentary system and not a presidential system; In cases where the presidential system remains, it is vital that the president remains "constricted", and under no circumstances should he exceed two four year terms in office; adopting special legislations for appointments for management of senior positions'. The legislations should define requirements and standards needed for holding these positions. Legislations should also prohibit discriminations on bases on faction or sect affiliation, but on experience and competence. Forming a special

committee on professional bases (Committee for appointments in senior positions). The committee shall take on the responsibility of ensuring that candidates meet the required conditions and standards for the job, and to also examine the extent of commitment to provisions of the related law.

- b. Assets and financial disclosures of high state officials: limiting submission of asset and financial disclosures to those holding high official positions and their families, and to ensure that this is a condition for assuming these offices; in particular, the president, prime minister and ministers, speaker of the house, and parliament members etc. Otherwise they will be stripped of the granted immunity. Moreover, ensure that disclosures are submitted regularly and not for one time only, as well as ensuring that these disclosures are followed up with to confirm accuracy of information entailed and proper use of that money in order to prevent impunity in cases of accumulating illicit wealth. Finally, adopting the principle of revealing contents of these disclosures and not keeping it confidential especially for senior officials.
- c. Preventing conflict of interest

prior to or as it arises: draft and ratify legislations specifically to prevent conflict of interest among those who assume management of public funds, especially for those who assume senior positions; adopt understandable procedures to be implemented in public institutions. Separation of powers between positions of the public and private sectors should be explicitly illustrated. Also to clarify and specify the mandatory period which falls between leaving a civil service, or a position with the security apparatuses and assuming a private sector's position or the opposite. This especially applies to high officials. Moreover, to adopt a code of conduct for public employees that define situations where conflict of interest is more likely to occur, as well as ways to prevent it, in addition to conducting training for better implementation of the code.

- d. Endorsing Legislations on the Right to Access Information: incorporating in constitutions the right of citizens to access information on public affairs. And to also issue "Freedom of Access to Information Laws", and to ensure citizens' right to access it in accordance with international standards in this area. Furthermore, deterrent

measures should also be included against anyone who would hinder citizens' access to public information. In addition, to establish national commissions that will ensure implementation of, and citizens' access to information, and reinforcing of the openness culture among public employees by raising their awareness on citizens' right to information.

3. **Electing the Legislative Authority and granting it legislative powers, and control over the executive authority:** the need to adopt the principle of holding free and fair elections as the only way to form parliaments, and to have all executive institutions subject to its control, and especially the security apparatuses, presidential institution and all executive institutions and apparatuses under its jurisdiction. Equally important for parliaments to incorporate rights for the opposition within its bylaws and systems, and especially in assuming leadership positions in parliamentary institutions, to prevent absolute domination of the majority and exclusion of the opposition.
4. **Ensuring independence of the Judiciary, and granting it necessary resources to insure effectiveness:** removal of all wording in the

constitutions and legislations that allow any meddling in independence of the judiciary, and especially those related to appointing, dismissing, and immunity of judges; ensure the independence of the body that assumes supervision over the Judiciary; to consider refusal to obey implementing provisions of the Judiciary a crime punishable by law, and a reason for firing an employee from his/her job if he/she hinders implementations of these provisions. Moreover, to state clearly that the Attorney General and the General Prosecution apparatus are part of the Judiciary, hence ensuring that the executive authority can no longer interfere in their affairs; to grant the General Attorney the immunity necessary considering that he is the defender of public interest and not the ruling class.

5. **Hold fair and transparent general and representative elections at all levels:** it is vital to incorporate safeguards to ensure that the electoral process is fair and transparent by adopting electoral systems that allow representations of all segments of society and its constituents. The System of proportional representation is the best to achieve this due to: its role in promoting political pluralism; preventing interference of

members of security in the electoral process with the exception of guarding election centers; allowing local CSOs and international organizations parties as it relates to public funding of election campaigns, or benefiting from official media; establish permanent higher commissions that enjoys independence and immunity from pressures that effect the integrity and transparency of elections, to supervise the electoral process. Its tasks regarding supervision of elections should be defined, which mainly to oversee the electoral process at all stages beginning with announcement date and until announcing the results. Also it is essential to provide it with resources and powers needed to perform its job.

6. Management of public funds and property with transparency, while ensuring public oversight over its administration: inclusion of all state's revenues and expenditures in the public budget, and subjecting it to the parliament through the budget and end of the year financial account. Also review of legislations related to concessions in services and benefitting from public resources, public procurement, and disposition of state land. The purpose is to close gaps that allow exploitation and looting of

public funds, hence promoting transparency and competition. Limit the use of state land for the service of the public interest, while disarming the executive authority from granting or selling it under any circumstances, and introduce new legislations that are transparent in regard to public procurement and tenders.

- 7. Ensuring, at the high political level, that the security apparatuses do not interfere in the political life, and civil affairs of citizens; also subjecting it to official and community monitoring and control:** prohibiting the establishment of security services outside the scope of the official state's institution; building the official one on professional bases; subjecting its leaders to the higher political level and its budget to the parliament. Committing to the time allowed by law to appoint leaders in position; prevent security forces from interfering in political and civilian life. Moreover, security officials have to be held accountable for their actions and behavior, and especially when it intrudes on public rights and freedoms.
- 8. Independence and effectiveness of public control institutions:** enhancing the independence and effectiveness of public

monitoring and control institutions, so that it is no longer a subordinate to the control of the executive authority; provide immunity to these institutions in order to resist outside pressure that coerce it to deal with corruption cases selectively or to even out political scores. Moreover, establishing anti-corruption commissions, since they are considered an important factor in combating corruption and in compliance with the UNCAC; ensuring that these bodies are independent and are well equipped and staffed to perform its job properly.

- 9. Safeguarding the freedom to establish political parties which reflects the diversity in society. To also ensure control over its funding and campaigns:** finalizing legislations relating to the right of organizing political parties, and removal of restrictions that hinder practice of this right; adopt policies that forbid exclusion of political activities of some political forces and ensure equal opportunity between them to be elected, obtain funds, and enjoy media coverage by official sources etc. Moreover, include assurances to criminalize behaviors of political parties that effect voters in illegal ways such as buying votes, and bribing voters. Finally

it is also important to control on ceiling of expenditures of election campaigns, and impose mandatory financial disclosure for parties and candidates.

- 10. Safeguarding the freedom to establish NGOs:** To stop putting restrictions regarding establishment of NGOs, and to consider registration, not licensing as sufficient requirement for establishment; to provide government support for NGOs to enable these institutions to play their monitoring role as well as provide services at the community level.
- 11. Approval of law for media freedom and independence:** to stop exploiting official media based on the concept that it is a possession of the executive authority; also to stop exploiting it during elections campaigns for the interest of factional or sectarian interests, and to remember that it is a national media. In addition, it is important to stop censorship of media personnel and journalists when addressing corruption files by terrorizing them and detaining them under the pretext of defamation and slander.

ANNEX (1)

Summary of reports on political corruption in:

- Palestine
- Yemen
- Lebanon
- Egypt
- Tunisia
- Morocco

■ Political Corruption in Palestine

Introduction:

Political corruption means the corruption of politicians, rulers, party leaders, and members of government (ruling elites) regardless of their status or political affiliations. It is when these individuals collide to exploit positions of political influence to steer decision, policies, and legislations, to achieve benefits in the interest of this class, or a related party, or loyalists; or to profit from their position of authority to obtain illicit gains to increase financial and or social influence; or to fund personal, or party's election campaigns; or to facilitate and legitimize bribery in exchange for grants, concession contracts, permits, and or trade agreements. Moreover, it is also when financial disclosures of rulers are mixed with that of the State's, hence the public treasury becomes a special bank account that is exclusive to that elite class. This gap allows for overspending on

personal recreational wants; looting of public funds through secretive bank transactions, and or investing it abroad. Political corruption, therefore, allows for increasing of wealth of officials and the ruling class at the expense of the people.

In many countries, this corrupt group of people does succeed in controlling all state institutions, and the majority of the parliament, some judges, monitoring and control apparatuses, military and security institutions, and important CSOs, including the media and other popular and technical institutions. Their control and interests also extends to intertwine with businessmen from the private sector, which leads to the capture of state institutions by this group in one way or another. This in return, makes the process of change and reform as well as efforts of combating corruption nearly impossible to achieve through traditional efforts, as illustrated clearly in the Arab region during previous regimes.

This report comes as a direct contribution by chapters of Transparency International in Palestine, Morocco, Yemen, Egypt, Tunisia, and Lebanon, to provide a realistic diagnosis of the

phenomenon of political corruption, its forms and underlying reasons in these countries. The report intends to provide a prelude to building an effective political will to achieve the following: develop strategies and intervention plans at the national level of each country to prevent the return of political corruption and to take preventive measures against corruption all together, after which it would be possible to build a national integrity system in each country.

The aim of this report is to present a clearer picture of political corruption in Palestine based on examining a set of indicators that define the main manifestations of political corruption, its underlying causes, and areas it lurks within the state's institutions. It is worth noting that indicators were agreed upon by all researchers, involved in preparation of this report, and focused on the following areas: the principle of separation of powers: **state of the three authorities, executive, legislative and judiciary; integrity of elections; management of public funds, and state of the security institution; monitoring and control institutions; political parties; non-governmental organizations; Media.**

Background on the Palestinian political system

Palestinian political system was established upon inception of the Palestinian Liberation Organization (PLO) in the Diaspora. Similarly, Palestinian political parties and movements were also established in the Diaspora, after which the

PLO embraced all with an apparent majority of FATAH, the largest movement of the PLO. Although the PLO adopted a political system and a national charter, military thinking and secrecy dominated the fashion by which the PLO was run. Contributor to that style and method of management is the late president Yaser Arafat who possessed a charismatic personality and a major role in the organization. After the inception of the PNA, post signing of the Oslo agreement, the authority began to restructure existing institutions and to establish new ones. The newly-born authority inherited many problems that usually accompany transitional periods from revolution to statehood as typified by the sporadic struggle between revolutionary and constitutional legitimacy. In addition, the effects of secrecy and individualism, followed during revolutionary times also emerged at times. This is in addition to the continuing Israeli occupation since 1967, which controls all aspect of Palestinian life.

In December, 1996, the first legislative elections were held, where the newly elected parliament approved several legislations one of which is the Palestinian Basic Law. The Basic Law was to temporarily take the place of a constitution and would govern the PA's work in the WB and Gaza. In 2003, the law was revised whereby the position of prime minister

was founded, and most of the executive power was granted to the government, with term of reference for the president of the PA.

President Arafat died in November of 2004. 60 days after his death, in December of 2005, presidential elections were conducted according to provisions of the basic law and election law. In December 2006, the second legislative elections were also held in accordance with the revised election law. 50% of the seats represented constituencies and the other 50% went for the proportional representation of the electoral lists, making it a mixed system. The presidential elections resulted in appointing a new president from Fatah, Mr. Mahmoud Abbas; while the legislative elections resulted in victory for Hamas, hence further complicating the Palestinian political system. As a result, the two major movements, Fatah and Hamas, struggled for authority and power over institutions. Israel also further complicated the situation by arresting a large number of the PLC in 2006 most of whom are Hamas affiliates. This lost Hamas its majority in the PLC and paralyzed the council all together.

Victory of the PLC elections for Hamas brought about negative reactions from the international community as well on the whole of the political system, included the reform process

which started in 2002. Major international powers, represented by the Quartet Committee (the United States, Russia, The United Nations, the European Union), refused to deal with the new government formed by Hamas, epitomized by stopping all aid to Palestinians and imposing a financial blockade on the government.

At the internal level, Hamas took complete control over the Gaza Strip through a violent armed struggle, while Fatah took control of authority in the WB; a reality that illustrates the failure of the political system in the rotation of power.

Negative ramifications of the internal split were reflected at several levels on the ground, especially on national institutions, symbolized by the emergence of duplication in institutional and legal framework building, in both the WB and Gaza. Hamas began by expanding the government dismissed by president Mahmoud Abbas post Hamas takeover of Gaza in 2007. This government would not recognize the government assigned by president Abbas in the WB headed by Dr. Salam Fayyad. The WB government called on employees of all official institutions in Gaza to go on strike guaranteeing that their salaries will be paid. In retaliation, Hamas appointed new employees and made transfers that ensured its control

of all decision-making positions in these institutions. Furthermore, it began to create a parallel authority to the central authority in the WB, mainly it established: the so-called the Supreme Justice Council as an alternative to the High Judiciary Council in the WB, which is the body in charge of supervision over judiciary. It also appointed an attorney general in Gaza, and officials from Hamas in the security apparatuses.

Indicators of political corruption did not emerge at the inception of the PA. This was because decision-making was executed by a group of individuals within the framework of the PLO, represented by its leadership and few from other factions. These indicators became more astute post inception of the PA and exacerbated after Hamas takeover of Gaza and the internal political split, where each side imposed procedures to restrict political activities of the other. Restriction applied to institutions, freedom of political participation and that of opinion, assembly and association, and freedom to establish organizations. All of the above mentioned restrictions coincided with weakness of monitoring and control apparatuses, first and foremost dysfunction of the PLC.

Results of the report:

1. **Separation of powers:** clearly, there was full control from the central command of the

executive authority, represented by the former president Arafat, over the other authorities, including the elected PLC of 1996. The Palestinian legislator was unable to formulate mechanisms that allow for mutual monitoring and control over institutions and officials, neither within the provisions nor text of the basic law. This was due to refusal of the leadership approval of the Basic Law, which determines the relationship between the three authorities in a manner that ensures a balanced separation of powers and guarantees the principle of mutual oversight. This also applied to a number of laws, and in practice within the authorities. For example, the president and all subordinate institutions under his jurisdiction were exempt from being subject to parliamentary control and accountability. These institutions include: some security apparatuses, some public sector institutions, management of public funds in investment and natural resources; and governors; a clear violation of the principle of the separation of powers.

2. Control over the executive authority:

>>Public employment:

appointments in public positions, especially leadership positions

(deputy ministers and aids, directors and general directors) were selected on political bases, and loyalty to the regime. Also after the internal split, these positions were selected to even out scores between Hamas and Fatah. Moreover, authorities adopted procedures and conditions that override the Basic Law and the Civil Service Law, especially the security clearance condition, which was annulled recently. Procedures lacked clear written instructions and criteria for selection, appointing and promoting high positions. Personal and political affiliation constituted the main criteria for these appointments especially in allocated institutions and ministries namely: the interior and foreign ministries, ministry of finance, general attorney, land authority, petroleum authority, and border crossing authority, that were called sovereign in favor of the ruling class.

>>**Security apparatuses:** most of the security apparatuses are under direct jurisdiction of the president. The president is in charge of appointing its officials and leadership. In the WB and Gaza, loyalists to certain factions were appointed in the various leadership positions. Moreover, although the law stipulates that the duration for these positions is three years renewable for one extra year, many leaders in these positions remained for many years. The institution and its

officials are not subject to the control and accountability of the PLC; its budget is presented as a lump sum figure in the public budget; there is no implementation of provisions related to financial disclosures of officials in the security institution; there are many problems relating to procurement and contracts.

>>**The legislative process:** the PLC has been dysfunctional since the internal split of 2007, hence unable to carry out his legislative and monitoring role. Moreover, its constitutional legitimacy ended more than four years ago. This led the executive authority to take on the PLC role in addition to its own epitomized by issued presidential decrees, endorsement of the public budget, and approval of forming governments.

>>**Financial Disclosures:** there is deficiency in the provisions of the law relating to procedures of submission and maintenance of financial disclosures for groups that do not fall under the jurisdiction of the ACC, namely: the president, prime minister, ministers, PLC Speaker and members. In that regard, the responsible party by which this group is required to submit its disclosure to is not known, neither is the punishment for non-compliance of that procedure.

Moreover, these disclosures are kept confidential and unpublicized,

not to mention that there is no follow up on ensuring that the information contained is accurate; or if any changes occurred on these disclosures over time, since no one is allowed to open it except with a court order and on rare occasions. Hence it is an opportunity for impunity in cases where illicit wealth occurs.

>>**Conflict of interest:** bonding between the regime and some well-known businessmen from the private sector has emerged, as interests meet through granting concessions to establish joint companies. This was made possible due to the absence of legislations, or procedures that prevent conflict of interest at institutions, or a special comprehensive system that prohibit conflict of interest, and include all positions and jobs related to public affairs. This led to actual cases of conflict of interest, especially at the level of high positions, such as transferring from a public position (minister or director of an institution) to apposition in the private sector and vice-versa; all without governing regulations in that regard.

>>**Freedom of access to information:** the absence of a law on the freedom of access to information. The Palestinian society in its experience with the PA, did not know the principle of the "open records", or freedom of access to information. This limited active participation, and

weakened the role of research and media centers, CSOs, and media, in influencing decisions related to public affairs.

>>Rights and freedoms: despite provisions stipulated in the Palestinian basic law regarding protection of public rights and freedoms, there were many attacks on these principles at different stages since the establishment of the PA, with increase in intensity of these attacks after the internal split in 2007. Many restrictions were imposed on these rights and freedoms, and especially those related to: political rights, freedom of opinion and expression, and establishing NGOs. Additionally, the dysfunction of the PLC led to the absence of accountability and impunity for violators of those rights.

3. **The judiciary authority:** the leadership refused to pass the judiciary authority's law until 2002, which contributed to the control of this authority. It also maintains this control by the right granted to the president in appointing the head of the Higher Judicial Council" as well as the general attorney, without the development of specifications and conditions for assuming these positions. Moreover, often, the ruling power did not respect court decisions, especially those related to political detention. In addition, the ruling class also

interferes in selection of judges, hence effecting judiciary's independence. It also grants the power of administrative supervision of the courts to the minister of justice.

4. **Election by representation:** attempts to control results of elections emerged, symbolized by: adopting the-district individual election system; the president's control over announcement of elections' date, which resulted in repeated postponement of holding elections, hence interfering with democratic practices of holding regular periodic elections, as well as deprived citizens from selecting their representatives. It also raised questions regarding legitimacy of official institutions, not to mention that it pushed towards an authoritarian rule. Moreover, assurances for the independence of the election committee remain insufficient despite its management of several electoral processes. This is due to the fact that the president has the authority to appoint members of the committee, as well as to restructure it by replacing any or all its members.
5. **The security institution:** most of the security apparatuses are under direct control of the president. Also, he is in charge

of appointing its officials and leaders. According to the law, the duration of assuming these positions is three years renewable for one year only. However, many of them remain in their positions for a much longer time than permitted by law. Moreover, the security institution and its officials are not subject to parliamentary supervision and control; its budgets are presented in the public budget, as a lump sum (one total) with no details; no commitment by its officials to provisions related to financial disclosures; in addition to problems related to procurement and contracts with others.

6. **Management of public property and funds:** the government has not submitted the public budget's draft law or the end of the year closing account for many years. Also the PLC has not been able to exercise its role in approving the budget since 2006, allowing, in this case, the executive authority to determine and execute spending of the budget single handedly without any parliamentarian monitoring or control. On another note, there have been many violations committed against state land. For example, allocation processes were not conducted on legal basis. Neither were there defined

clear mechanisms and criteria used in that regard. The PA also granted concessions to private companies to manage public utilities such as: fixed and mobile telecommunications, electricity, and cement sectors, without applying proper foundations to ensure fair competition between private sector's companies. The PA also created monopolies over basic services and for long periods of time.

7. **Public control apparatuses:** Palestinian leadership was keen on ensuring that it remains in control of appointing loyalists as heads of security institutions; deferring of SAACB from submitting its reports to related bodies, and weakness of the ability or related bodies to follow up on reports it issues, especially since the PLC has been paralyzed since 2007. Furthermore, the ACC is does not enjoy full independence to resist outside pressures, since its head is appointed by the president.
8. **Political parties:** clearly there is deficiency in the legal framework that governs political parties work in the occupied Palestinian territory. This is mainly due to failure to approve the political parties law, and the PLO's financial support to factions that are under its umbrella.

9. **Non-governmental Organizations (NGOs):** since 2007 and until to date, many restrictions were imposed on NGOs. These organizations and activists were subject to harassment, and legal violations such as, disassembling and confiscating property and assets of organizations in pursuit of evening political scores.

10. **Establishing official media:** official media was negatively utilized in order to achieve political gains at the expense of public interest. In addition, the opposition is not given the opportunity to express its point of view through official media outlets. Moreover, censorship is imposed on media outlets and journalists regarding certain files, especially those that are corruption related. And in that regard, many journalists were subject to harassment and or arrest under the accusation of slander and defamation.

Recommendations:

1. Revising the Palestinian political system aiming at activating the principle of separation of powers. This can be achieved by removing ambiguity from articles related to distribution of powers between the three authorities, and reinforcing

mutual monitoring and control between these authorities.

2. Stopping appointment and dismissal from public positions on political bases, since it is a clear violation of the law. In addition, it is vital to establish a special committee that will assume responsibility of control and supervision of this process, including commitment to the law, and ensuring candidates' fulfillment of requirements for the job.

3. Revising provisions related to financial disclosures to ensure that it becomes a condition to assume senior public positions such as the president, prime minister, minister, speaker and members of the PLC, etc. Also these disclosures should not be kept confidential and unopened, but to be scrutinized for accuracy and updating of information. Disclosers should be submitted regularly and in accordance to the law, as well as to be made available to the public.

4. Approving special legislations to prevent conflict of interest to all those that assume positions related to public affairs, and especially in senior public positions. To also adopt procedures that will ensure enacting of this legislation in

public institutions.

5. Approving freedom of access to information law and citizens' right to access this information, due to the role it plays in promoting transparency in governmental procedures.

6. Activating the PLC in order to put an end to the executive authority's domination of decisions without supervision or accountability. Also to push towards inclusion of the rights of the opposition in the internal by-laws of the PLC, and especially in regard to leadership positions in PLC institutions, to avoid domination of the majority and exclusion of the opposition.

7. Committing to provisions of the basic and judiciary laws in relation to the independence of the judiciary and closing all gaps found in the judiciary law that might hinder independence. Also ensure that the attorney general is part of and is a subordinate to the judiciary.

8. Accelerate procedures for holding presidential and legislative elections, since it is considered to be one of the most important instruments for peaceful transfer of powers. Also, reinforce independence of the Central Election Committee by reconsidering method of

appointment its members and ensuring immunity to the committee against outside pressures that interfere in the integrity of the electoral process.

9. Subjecting security officials to higher level of political leadership and its budget to the control of the PLC. Also: committing to the legal period, defined by law, for officials to serve in office; ending interference in civil life; respecting public rights and freedoms.

10. Committing the government to submit draft budget laws and final closing accounts to the PLC in due time as specified by law; put a limit to violations relating to state land, and in particular those that are done based on sectarian and political affiliation; reinstating state land that was illicitly granted; and approve a law to govern concessions granted for public services; and putting an end to monopoly of benefiting from public resources, hence ensuring obtaining these benefits based on transparency, and fair competition.

11. Promoting independence and effectiveness of the State Audit and Administrative Control Bureau and the Anti-Corruption Commission, and provide them with sufficient expertise and

finances needed. Also ensure immunity for both institutions to enable them to resist pressures that might influence their decisions in selecting corruption cases.

12. Finalizing legislations regarding the right of forming political parties, as it is considered one of the conditions for protecting this right; promote democracy within political parties and forces; put an end to banning of political activities to select political forces, whether in Gaza or the WB.
13. Putting an end to violating provisions of the law and especially those relating to peaceful assembly. Also to ensure the right of establishing NGOs and charitable organizations, and to stop harassing them, and categorizing them on political partisan bases. Finally, to remove restrictions imposed on the right of peaceful assembly.
14. Putting an end to exploiting official media for propaganda campaigns and for the interest of select political faction/s based on the notion that it is a national media. Also, to put an end to censorship on media freedom in dealing with corruption cases, by terrorizing journalists and detaining them on grounds of slander and defamations.



■ POLITICAL CORRUPTION IN YEMEN

The approach to the phenomenon of political corruption in Yemen, which share common grounds in the area of the Arab Spring, and differ in its fate of its “societal protests” against the regime from 1990-2011; a struggle that ended by accepting the Gulf Settlement Initiative and its executive mechanisms in November 2011, which delineated a road map for transfer of authority and materializing change during a transitional phase. What is important here is that this settlement agreement did transfer the authority from the president to his vice president in preparation for his election as consensual president in a non-competitive election. And at the same time, the agreement kept the old system structure to be followed during the transitional phase, hence granting the old regime not only appointing half of members of government, but also domination over the legislative and judiciary authorities, and a large segment of the military, security, and intelligence agencies who are loyalists to the regime.

The above-mentioned agreement contributed to the continuity of the ruling regime from 1990-2011, as a well rooted and intertwined group of political, military, security, social, and trade interests.

Based on the above, we do not consider that the transitional period had caused a rupture in the functioning mechanisms of employment in the political field, and structure of the previous authority, since discrimination is based on political affiliation and loyalty to the regime. Therefore, this study is of great significance due to the prime time of reshaping the relationship between the authority and society at the level of rewriting the social contract, and by considering the approach

of combating corruption a pre-condition to good governance. Therefore, in order to achieve this goal, it is vital to define the concept of political corruption⁶⁶ and state capture, which is the theme of this report.

1. Political corruption is the exploitation of senior political positions for personal benefits by:

>> Lack of rotation of power and employing it for the service of a specific limited group

>> enforcing the principle of separation of power between the three authorities

>> Manipulation of electoral process and forging elections results

>> Control of interest groups over the political process in favor of a particular political party.

2. State capture: capture of the state is a process that is achieved by several methods, one of which is political corruption and its means. This is considered one of the most threatening forms of corruption since it leads to: the exclusion and marginalization of a broad base of the masses; curtailment of citizen's participation in public affairs; directing state policy to serve the interest of the ruling party that is dominating state institutions.

First: Monopoly and centralization of power

The previous regime used systematic methods to control power through a set of laws and in practice following the war of 1994, which never stopped after the removal of the Socialist Yemeni Party-ruling party of Democratic Yemen and partner of the ruling party, the General Popular Congress in integrating the two nations. Therefore, under one international entity, there was an arbitrary exclusion of its political, military, and security, leaders from areas of employment, politics, and media. Moreover, confiscation of the Socialist Party funds, and facilities as well as disengagement with its allies and partners from all political processes and leadership during the period between 1990-1994, in order to impose unilateral control on all aspects of life. To achieve this, the regime executed a number of interim and concurrent operations, first and foremost constitutional revisions. In addition, it ensured control over the three powers, as well as the civil, military and security institutions by appointing loyalists, or family members, or tribal and home town members, or those affiliated to the ruling political party etc.

⁶⁶ For more information, please look corruption index in the Arab world: problems of measurement and methodology (Beirut, Arab Organization for combating Corruption 2010).

Revisions of the constitution since 1994 led to:

>> Granting the president of the republic/ head of the executive authority, the right to appoint and dismiss senior civil and military officials including the vice president.

>> The task of selecting the commander of the armed forces was assigned to the prime minister who will consult with the president before the council of ministers makes the selection.

>> The impossibility of referring the president to trial: indictment directed at the president for high treason, violation of the constitution, or any action that might affect the independence and or sovereignty of the country, will have to be based on a request from the parliament with 50% member agreement. However, a decision is issued only with a 2/3 majority, hence making it a mission impossible, especially since the regime employs his authority, resources, and possibilities to achieve majority vote at the parliament.

>> Monopolizing the right to indict and try senior state officials: law no. (6) of 1995, in regard to measures and indictment procedures of senior officials, granted the head of the executive authority the right to refer and try senior officials.

>> Duplicate representation for the administration: the ruling political party dominates the majority of the parliament and works to maintain this majority by all means. The constitution stipulates the establishment of the Shura Council as a consultation commission to the parliament, except that this council's tasks are legislative, which is also in accordance with the law. Based on the above, it is difficult to speak of the imbalance between the two authorities, but rather of transforming the legislative authority as an extension of the executive authority.

>> Domination of the executive authority on the judiciary authority:

Regardless of provisions in related legal framework for the judiciary, which stresses its independence, the executive authority dominates control over it through many means, such as: appointing the head of the higher judiciary council, and members of the public prosecution from those affiliated to the security apparatuses; and interferes in the appointment of heads of courts, and selection of students of the Higher Judicial Institute.

Peaceful rotation of power:

Ever since the transition from the one party rule to the multiparty system

in 1990 and until November of 2011, Yemen did not witness a peaceful transition of power. In that regard, it is noted that the aim of the presidential elections is to renew legitimacy. Similarly, amendments to constitutions are but manipulations to change the form of the system of government from presidential council system to a unilateral system, or to extend the presidency term of office.

>> Institutions of oversight and accountability are made obsolete: the ruling authority emptied these institutions from their role by making the legislative authority an extension of its own authority. It also established an anti-corruption commission in a legally crippled environment, where its functions overlap with functions of the central organization for control and accountability. This is in addition of lack of neutrality in the selection process of its members where the Shura Council recommends 30 personalities to the parliament, who is dominated by the ruling party, to select nine of them for the membership. It is worthy to note that the higher commission for the anti-corruption commission enjoys limited power. For example, the power to appoint senior position is granted to the president of the republic/head of the executive authority in accordance with the law no. (6) 1995.

Second: State capture

All of the above mentioned systematic measures taken by the regime led to its full control of the state and its institutions as well as: weakening political parties, NGOs, and labor unions. Contrary to that it strengthened reactionary thinking, as well as tribal norms and solving of problems ('asha'ri) at the expense of the rule of law and the well-being of the people. In return, it transformed the military, security and intelligence agencies into non-sector entities with leaders that are directly linked to the head of the executive authority/president without passing through the defense or interior ministries. And in order to ensure loyalty of those institutions and their leaders, corruption became wide-spread amongst its leaders that seize budgets allocated to their direct use, some of which with items under false claims. Moreover, also confiscated and exploited through corruption deals was state land, natural resources, and investment programs and projects. It was either done through undeclared partnership or commissions by the ruling family and party.

It is important to note that these policies and mechanisms implemented in management of state affairs and social affairs succeeded in emptying democratic institutions, legislative, judicial, monitoring and control, as well as elections of their functions. Also the monopoly on rule led to severe crisis in

participation, expressed as follows:

>> Stalled dialog between the regime and opposition parties, which lasted beyond the two year extension for parliament; decision by the ruling party general popular congress to go to the polls on its own to spite political parties for their boycott of it.

>> Emergence of movements in the south and its gradual growing demands to the point of demanding disengagement from the north.

>> The six wars between the regime and Ansar Allah- the Huthis.

>> Absence of peaceful rotation of power 1990-2011.

>> Decline in people's trust in democracy and the politically impotent parties.

>> Decline in human development indicators.

>> Emergence of societal needs in 2011.

Based on the abovementioned, it is safe to conclude that political corruption and state capture are strongly linked in Yemen.

Recommendations:

Based on the abovementioned, it is safe to conclude that political corruption and state capture materialized through conscientiously implemented policies and techniques, put forth by the regime during the period of 1990-2011, epitomized here in two elements. The first is constitutional and legal, and the second is practice on the ground. This resulted in concentration and monopoly of power in the hands of the president who is also the head of the executive authority. In order to remedy the situation, one must take into consideration the cumulative effects which took its toll on society, hence requiring rational and well studied interventions. These interventions must aim at making significant changes in the structures of the governing system and society and be based on several principles: people are the source of power; rule of law; adopting the principle of separation of power and fair distribution between authorities, written and practice; ensuring public rights and freedoms and safeguarding them, and providing institutions for that purpose. In 2011, during the Arab Spring, Yemen witnessed community protests that led to the overthrow of the head of the regime. It also resulted in sharing of the political field equally between the previous regime and protesting forces as specified in the Gulf Agreement, which included passing through a transitional period

where a rewriting of the relationship between the authority and society would be the start. It was conditional that this contract be based on democratic principles and values and to be executed through a comprehensive open national dialogue between the various constituents of society.

Despite the completion of the national dialogue, issuance of the national charter, and forming of a special committee to draft the constitution, we find it necessary to present these recommendations at this critical time. In that regard, we suggest that the constitution and legal framework be terminated and re-written based on democratic values and principles, and good governance standards, emphasizing the following:

- >> The people are the source of power (written and practice).
- >> Limiting presidential term to two years only.
- >> Ensuring fair and equal opportunities for all political constituents and citizens to be nominated in elections, making certain to avoid monopoly of the majority over minority or on independent nominees. To also ensure the same for the legislative authority and local councils, etc.
- >> Rule of law.
- >> Ensuring balance between all three authorities.
- >> Terminating of the present parliament and ensure in writing that the people elect their legislative representatives.
- >> Members of the higher judicial council and higher constitutional court to be elected by the general assembly and lawyers union.
- >> Provision of the constitution should stress the importance of principles included in international covenants on human rights with emphasis on the following:
 - The UNCAC.
 - Right to access to information.
 - Freedom of opinion and expression.
 - Constitutional and legal flexibility regarding procedures of lifting immunity granted to members of the legislative authority and those assuming public senior positions.

>> Subjecting all state employees in the various sectors of military, security, and civil, to be held accountable for their actions and decisions.

>> Annuling the president's right to appoint the vice president, and replace by appointing president and vice-president through elections.

>> Annuling law no. 6 for 2005, on transferring and trying executive authority's senior officials stipulating that the president has the right to transfer officials in senior positions; and to return this right to the National Higher Commission for Combating Corruption.

>> Annuling legal texts regarding state land and real-estate property, which grants the president of the republic the right to award as he pleases. To also revise these laws and followed procedures, between state land and real-estate authority and the investment commission, ensuring better investment and transparency of the granting process. Moreover, revision should take into consideration methods of returning land stolen through legal procedures and in a short period of time, in addition to imposing appropriate fines upon violating revised law. Finally, it is necessary to subject the whole process to monitoring and control, and flow of information.

>> Also in regard to land and real-estate property, we recommend emphasis to recover Awqaf land and property that was confiscated, as well as to maximize its use for public interest. To achieve this, it is vital for the following institutions to intensify efforts in a joint mechanism: the Awqaf, justice, interior ministries, SCOs, media outlets, and supervision and control bodies.

>> It is well known that combating corruption, in all its forms, requires a multi-role institutional structure within a functional system. Therefore, we insist on:

- Annuling all legal framework, laws and legislations, governing the integrity system such as, the Supreme National Authority for Combating Corruption (SNACC), the Central Organization for Control and Accounting-Yemen (COCA), Attorney for Public Funds etc... ensuring that contradicting tasks, specializations, and overlapping, are removed. It is also necessary to revise laws in accordance with international human rights covenants, and good governance standards in order to achieve intended purposes.
- Revising the national strategy for combating corruption taking into consideration the role of CSOs as basic.
- Ratifying Act for protecting whistleblowers, witnesses, expertise working

on corruption cases.

- Issuing the conflict of interest law.
- Amending the name of Central Organization for Control and Accounting-Yemen and its specializations with the aim of removing overlapping of tasks with the (SNACC), suggested name can be-Central Agency for Public Reference.
- Subjecting the integrity system, including (SNACC) to control and accountability, benefiting from international experiences, procedures, and mechanisms in that regard.
- Annuling legal and organizational basis for the following institutions, committees, administrations specializing in fields listed below, and re-establishing it as independent bodies financially and administratively. Also ensuring that its boards are elected based on competence and transparency and integrity:
 1. Supreme National Authority for Combating Corruption (SNACC).
 2. Central Organization for Control and Accounting-Yemen (COCAI).
 3. Political Parties' Affairs Committee.
 4. Civil Society' affairs Committee.
 5. Supreme Committee for Elections and referendum.
 6. National Committee for Human Rights (cancelling the ministry).
 7. National Committee on Media (cancelling the ministry).
- Publish integrity system's periodic, mid-year, and annual reports, especially reports of : Supreme National Authority for Combating Corruption, and Central Organization for Control and Accounting-Yemen.
- Approve the Right to Access to Information Law.
- Cancel the in force law governing Press and publication, and legal duplications related to subjecting workers, in the field of journalism, to the penal code and criminal procedures, and to issue a new law in compliance with democratic values and international related covenants.

- Ensure that transparency in the procedures followed, by the ministry of finance, in the preparation of the public budget. Also ensure that that it, as well as the final closing account, are discussed and approved by the legislative authority.
- Issue a legal system to govern procedures and parties in charge of drafting and approving agreements in the various extractive and investment sectors etc., as well as ensuring transparency in procedures followed, and information issued to control and accountability bodies.
- Adopt an accurate and highly technical data base for military, security, and civil sectors' employees to prevent duplications of functions and "ghost employment", which drains the public budget, not to mention that it is considered a procedure for combating corruption.
- Prepare and adopt a highly advanced electoral register.
- Adopt the proportional open, or closed list system.

■ Political corruption in Lebanon

Introduction:

Political corruption is one of the chronic and rampant diseases in the Arab world. This is attributed either to the existing regimes that prevent citizens from intervening in the states' affairs and administration, or to the low cultural level in general and ignorance in one's civil rights.

Lebanon is affected by corruption as other Arab and third world countries although not quite as severely for the following reasons: its democratic parliamentary system; the rights that are enshrined in the constitution, most important of which is freedom of the press and media in general, which allows for monitoring and exposure of errors in public administration and accusation of officials in general, which in turn mitigates from the level of corruption, contrarily to most of the ruling systems in third world countries.

State and roots of political corruption in Lebanon

Prior to 1975, the political game was run by the Suni Maronite struggle, although behind the scene, and at times it was run by the Durz sect. However, after 1990, a new player was added to the game; the Shi'a sect who created an unprecedented demographic explosion, not to mention that this player was well organized operating under the umbrella of an ideological party.

The reality of this situation made each sect consider, among other concerns, ways to defend its own interest and position toward other dominations, resulting in a unique political system known as the "community leaders" system. Each leader in this system is the defender of his sect's rights within the structure of the system in addition to his concerns for public affairs. These leaders are divided into two categories:

The first type draws his leadership and influence from his strong personality, or from possessing a unique vision for Lebanon, or from his role in the region, since it stems from a philosophical or historical standpoint. This is in addition to his engagement in the public service, where he established many supporters and followers, most of who are members of his own sect.

The second type is the opportunist who continuously needs his sect's support in order to remain a leader. This in turn requires that he turn a closed eye to violators of all kinds: drug dealers, looters of public funds, or any other crime. He is also the type that appoints his loyalists in the most sensitive positions of the state to facilitate his wrong doing and those close to him, in order to remain in power.

This second type of leader mentioned is the source, nutritionist, and protector of corruption, and often is the violator; knowing that he will have impunity as a result of his connections in making deals and exchanging interests.

Outline of the political system in Lebanon

Article (C) - first item of the Lebanese National Accord Document⁶⁷ dictates that "Lebanon is a democratic parliamentary republic founded on respect for public liberties, especially the freedom of expression and belief, on social justice, and on equality in rights and duties among all citizens, without discrimination or preference."

Also article (d) dictates that "The people are the source of authority. They are sovereign and they shall exercise their sovereignty through the constitutional institutions."

Article (H) dictates that "The system is based on the principle of separation of power, balance and cooperation between the three authorities."

The constitution is the practical arena for the political system in Lebanon. It is inspired by the constitution of the third republic in France, even if it underwent many amendments inspired by many circumstances in the country and from natural developments of daily life.

Under this constitution, authorities are divided into an executive authority, undertaken by the council of ministers in its entirety; a legislative authority that is undertaken by the parliament; and a judicial authority. The president of

⁶⁷ The Lebanese National Accord Document concluded during the parliamentary meeting in Ta'if, Saudi Arabia, on 22/1/1989, and approved by parliament in its session held in Qleiat on 15/11/1989; and issued on 21/09/1990

the republic on the other hand is the head of the state and symbol of its unity, the one entrusted with the proper implementation of the constitution, and responsible for the safety of Lebanon.

The constitution also clearly defines the powers of each authority that prevents all interference or contradiction amongst them. In other words, each authority is committed to the limits of its competence. It is worth noting that no disruption has occurred at this level since the independence of Lebanon and until today.

Examples:

Article (16) of the constitution dictates that "The parliament (i.e., house of representatives) is erating an ideological partyer was well organized Marronite onf which is the ard to corruptioncorruption.

the body by which the legislative authority is controlled. Article (17) dictates that "Procedural authority is assigned to the council of ministers."

Enactment of these provisions at the practical level

Since the Taif Agreement, and due to situation on the ground, and opportunist sect leaders, successive complications rolled out in constitutional institutions, especially within the executive authority. For example, whenever a there is a big national project arises, political crises arise with it due to interferences from sectarian political leaders who try to bring the largest possible gain to their sects, or their region, or to themselves. All is executed under different pretexts and excuses, which in turn limits effectiveness of the executive authority, since it is compelled to accommodate to all parties at the expense of intended objectives of the project.

Similar problems also arise upon appointing an individual in a senior position or any other sensitive position, where each sect leader desires to appoint one of his followers.

In this regard, it is worthy to note the following:

In Lebanon there is an official body called Civil Service Council⁶⁸ whose task is to conduct a competition with the purpose of appointing the winners as employees in the various administrative positions as needed.

Upon its inception, this body worked with integrity as it followed rules and regulations stated for employment. However, years later, politicians and sect

⁶⁸ Established by the legislative decree no.150 on 12/06/1959

leaders interfered in its work by maneuvering the process in order to employ their followers in administrative positions.

This resulted in the spread of corruption within its official administrative branches. This is besides the void that plagued most positions⁶⁹ as one began to notice on official documents, statements such as: on behalf of, or acting director, etc... Of course this was due to collisions between politicians and leaders over who will assume a particular position leading, at times, to leaving the position vacant for many years, as in the case of the Supreme Commission for Discipline.⁷⁰

Related conflict of interests

It is worthy to note that conflict of interest related to the above was never extended to the relationship between the public sector, as existing constitutional institutions, and the private sector as prominent bodies. It remained limited to leaders and politicians as individuals and state officials.

Executive authority or the council of ministers

This authority is represented by the government in its entirety. It is headed by the president of the republic, whenever he desires, in his capacity as head of all authorities and protector of the constitution. The president conducts parliamentary consultations to find out the opinion of members of their choice as prime minister. The winner would be the one with the highest votes, where the president would call on him to form the government.

Yet at another stage, the prime minister conducts parliamentary consultations when forming his government, after which he would presented to the president. If both, president and prime minister agree on the formation, approval will come in the form of a decree before it is presented to parliament for a vote of confidence by majority of those present, in the form of a ministerial statement that would become the platform for action.

If this government earned the vote of confidence it becomes legitimate and can resume its responsibilities, otherwise it fails and consultations will begin

⁶⁹ President Miqati issued a decision appointing judge Abd-Alrida Naser as head of the "room" by proxy, to assume duties of the chairman of the audit buearu. www.coagov.com/subject.php

⁷⁰ Judge Marwan Abboud assumed the position of head of the Supreme Commission for Discipline, after the position being vacant in 2009; reported in the 2010 annual report for the central inspection that "no final indictments were issued in cases referred to the supreme commission for discipline due to vacancy in the position of the head of that commission."

again to form another government; it is the subject of the hour⁷¹

The judiciary's jurisdiction is limited to enact the law by issuing provisions for solving conflicts presented to it.

The law obliges the president of the republic, the prime minister, and all those who won in the parliamentary elections, or were appointed as minister from outside the parliament, or general director, or head of an official institution; as well as, commanders, governors, or judges, to submit a financial disclosure for him, his spouse, and minor children, to the constitutional council or to the central bank. The disclosure should be submitted in a sealed envelope that cannot be accessed by the public.⁷²

These statements are to be submitted only once upon resuming office. Upon leaving office, another account is to be submitted to the party that the disclosure was presented to, during which the submitter is given the chance to clarify the difference between the two accounts. In case he/she fails to clarify the difference, he/she will be referred to public prosecution department. It is worthy to note that rumors speak of some wealth that has multiplied several times at the time of departure from one's office, without prosecutions coming to an end for reasons mentioned above.

Awarding projects

Awarding projects is executed in three ways:

1. By mutual consent.
2. By bidding; sealed envelope open to experts in the field with specifications required.
3. Global tender limited to companies with specified qualifications for the implementation of major projects that require high technology such as dam construction.

It is not possible to talk about transparency in awarding projects, whether it has to do with construction projects or buying supplies, or other. This is besides lack of access to information to the people or civil organizations. However, presently the parliament is looking into a draft law in regard to access to information that will enable citizens to access desired information. This draft law is inspired by the finest applicable laws. However, faltering of the council's

work and leaders' fear of losing benefits are the main reasons for not adopting this draft law. Nevertheless, in that regard, an organized civil campaign is presently ongoing to pressure parliament to adopt the mentioned draft law under the slogan "it is my right to know."

The executive authority

Composed of 128 members, the parliament is in charge of the executive authority. It works based on the principle of "the council is master of itself".

Paragraph (a) of the second article of the Lebanese National Accord Document literally dictates: "A. Chamber of Deputies: "The Chamber of Deputies is the legislative authority which exercises full control over government policy and activities." Based on that, legislations are strictly limited to parliament unless it grants some of this power to the government.

All members of parliament are elected by a secret ballot equally between Muslims and Christians. Members of parliament elect a Speaker from amongst themselves for the same designated period for the members. They also elect a deputy Speaker, office committee, and other specialized committees whose tasks include review of projects and submitting it to the general assembly for discussion.

Disadvantages of this system

Adopting of electoral lists constitutes one of the worst disadvantages of this system for the following reason. The leader in a particular district forms a list of candidates, which he heads, that grant him their absolute loyalty. This is followed by his adoption of them during election the campaigns, hence followers of the leader are compelled to vote for the complete list, not knowing sometimes who are they voting for amongst the list, or if these candidates are competent to do the job. Therefore, the accepted candidate in the leader's list is the lucky one and most likely to win, if his leader wins, even if never had experience to qualify him to be a parliament member.

Based on the abovementioned, amendment to the electoral law is to prevent the formation of constituents' lists; to ensure maximum equality between candidates, and no longer allow followers of the leader to obstruct other possible candidates that might exceed them in merit. Other amendments to include when amending the law are: to mitigate sectarian effect on daily life, and to require a higher level of education for candidates.

71 Dr.Hasan Rifa'i, March 4, 2014, copied from "alliwa" newspaper. LebanonDebate.com

72 Law no. 154- 27/12/ 1999

Transparency in the electoral process

The electoral process is conducted in every polling station under the supervision of delegates that represent the candidates and hold the right of to intervene if and when violations occur. Depending on the severity of the violation it can reach up to stopping the electoral process all together until a judge is able to look into the dispute and solve it. These delegates also oversee the process of counting the votes, and announcing the results. If they have any comments or objections, they can submit a complaint/appeal to the constitutional council who determines the final fate of these appeals, not subject to discussion (article 19 of the constitution). It is worth noting that this council has refuted more than once the wining of a certain candidate and replaced it with the true winner, after being certain that violations have occurred in the case. In conclusion, it is safe to say that transparency in the electoral process is ensured and acceptable, and is based on the best available and known standards.

Management of public funds and property

Mechanism for preparing and submitting the public budget to the parliament:

1. Each minister prepares the budget for his ministry.
2. Each minister submits his budget to the Ministry of Finance.
3. the Ministry of Finance integrates all these budgets into one; sends to the council of ministers, who holds the right to discuss, comment and or modify the budget.
4. Added to the main budget is another specialized budget for independent funds, and final closing account. All revenues appear in the public budget and are subject to supervision and control of related official bodies.
5. After approval of the public budget, independent funds budget, and final closing account by the council of ministers, it is referred to the parliament as a budget draft law.
6. Once the office of the Speaker of the House receives the draft budget, the Speaker refers it a sub-committee called the budget committee.
7. The committee reviews the draft law. This committee reserves the right to amend the draft budget law as well as listen to the competent minister upon reviewing it.
8. Once reviewed, the committee returns the draft budget to the office of

Speaker of the House along with any comments or revisions.

9. Speaker of the House would then calls the general assembly to carefully study and discuss the draft budget one item at a time. Once through, he presents it for a vote, again, one item at a time.
10. Once voting is completed, the Speaker returns the draft budget law to the council of ministers along with any modifications if any.
11. The president of the republic approves the budget as received from the parliament. He, the prime minister, and the minister of finance sing the final draft.

In that regard, it is necessary to shed light on the reality of the situation, where political corruption and outside pressures prevented implementation of the mechanisms above. Moreover, in relation to the computerized information system followed at the ministry of finance, it was reported by the World Bank and the Oracle Company, who supervised the investigations on the system, that it has been abandoned with no monitoring, control or and preventive measures taken since 1994, hence allowing manipulations easily.⁷³ Also, "the system which is programmed by the automation center and adopted by the treasury for the purpose of proving and remedying all incoming and outgoing financial transactions, allows for adding, or cancelling transactions documented, which in turn allows for hiding deviations or errors, or violations that require prosecution. This gap in the system is a violation of the simplest and most basic rules for approved designs in general accounting and other legal text."

(official note issued by the public prosecutor of the Audit Bureau on august 20, 2008, in regard to bookkeeping rules followed in the ministry of finance.⁷⁴

In describing the situation, the chairman of the finance budget committee emphasized the following: "There have been no budgets for the past eight years, nor have there been any financial accounts since 1993, hence it is not possible for successive governments and the ministry of finance to remain without budgets.⁷⁵ Also balances for the funds and public institutions as well as others, for 2012, have not been referred to the Bureau. So what do we have at hand at the present time? if we reset our financial accounts to zero, as in 1993, it would lead to our non-existence in the 20 upcoming years, and one

73 Al-akhbar Newspaper, Tuesday, January 17, 2012.

74 Al-Sfeer Newspaper, Ibrahim Kan'an, 27/12/ 2011, copy no. 12070.

75 Al-Sfeer Newspaper, 24/12/ 2011, copy no. 12069

will be left to reset the accounts⁷⁶.

The government's control and accountability regarding spending operations from the public budget

There are two mechanisms:

The first is assumed by the Audit Bureau, where it is presented with the execution of the draft budget and methods of spending allocated funds, as illustrated in the budget items.

In that regard, the first article of the legislative decree no. (118) issued on June 12, 1959, indicated that the Audit Bureau is an administrative judicial body tasked with protecting public funds through supervision and control over its utilization, by ensuring validity of accounts and legality of transactions; to also prosecute those who violate laws and regulations related.

Article (2), paragraph 4 of the legislative decree mentioned above indicated that public institutions, and municipalities under the jurisdiction of the state, are to be subject to the control of the Audit Bureau in accordance with this decree.

Methods of control practiced by the Audit Bureau:

>> Administrative

>> Judicial

The Bureau either takes action on its own, or upon receiving complaint or request from officials.

The second is accountability where the parliament is designated to assume that responsibility with no limitations, with the exception of what reality at times dictates, and as mentioned often in this report.

It is worth noting that the justifications presented, regarding spending based on draft budget laws were not sent to the parliament or it were sent after the fiscal year has ended...this, in the opinion of Kanaan, parliament member and head of the parliamentary finance and budget committee, is constitutional deviation⁷⁷ requesting declassification of minutes of the finance and budget committee.

This is in addition to examining the possibility of enacting the Illicit Wealth

⁷⁶ Al-jumhouriah Newspaper, October 25, 2013.

⁷⁷ Al-Sfeer Newspaper, 27/12/ 2011, copy no.12070.

Law, which constitutes an indirect method of controlling spending operations of the public budget as it stipulates the following:

It is considered illicit wealth:

1. Wealth that is achieved by an employee, public servant, judge, or a partner in wealth, through bribery, or exchange of influence, or obtaining a position, or work assigned to them (articles 351-366 of the Penal Law), or through any illicit means even if not considered a criminal offense.
2. Wealth that is achieved by an employee, public servant, judge, and other normal individuals or renowned, by way of expropriation, or obtaining import and export permits or other various benefits and acts in violation of the law.

The judiciary authority

The judiciary in Lebanon is an independent authority. It has a higher council and three court levels: court of first instance, court of appeal, and court of cassation. The constitutional council issues provisions that interpret the constitution and decisions on elections' appeals. There are also religious courts for each sect that rule in personal status issues such as inheritance, marriages, and divorces.

The security institution

The security institution is not subject to the control of the parliament. However, the parliament does exercise its supervision and accountability on it through the competent minister who bears responsibility towards the parliament; noting that the minister of defense and the prime minister are subject to accountability in regard to the army.

The parliament also supervises the security institution's budget via its control over the state's budget as illustrated earlier.

Appointments begin with promotion from a lower rank to a higher rank, and initially it is done automatically except for two obstacles that hinder the process:

>> The first is sectarian. It is related to senior positions where each sect has its place; hence no one can be appointed in certain positions except those that are affiliated to the sect that occupied that position.

>> The second is caused by politicians who interfere to appoint individuals from their group at the expense of others. This obstacle is susceptible to being fought and is no longer easy to apply.

Duration of service is defined by law and regulations; it either ends with retirement or with rotation of duty.

Direct transfer of officials in the security institution to the political, or civil authorities, or to the economic or private sector, is defined in the constitution and in related laws. For example, article (49) of the constitution does not permit any of these officials to be elected as president of the republic, before two years have passed since their retirement or date of resignation. They also have to be completely cut off from their work for those two years. This also applies to the position of public prosecution. As for the private sector, it is permitted to assume the job immediately after resignation or retirement.

Published periodic reports

1. The Audit Bureau publishes reports irregularly since it depends on the load of work at hand and the pace of productivity, but never because of interference from the authorities. Moreover, these publications have never been delayed for more than two consecutive years. Center for Civil Service and Inspection also publishes its reports. The only hindrance facing its effectiveness is the interference of politicians and leaders in its affairs. The monitoring and control institutions submit these reports to related authority or to the president of the republic, and are published in the official paper.
2. The council of ministers submits to the parliament the closing accounts report for the previous year along with the draft budget law for the following year, at the same time.

Control over special Funds

These Funds are under the supervision of the related minister and are linked directly to the prime minister, like the Central Fund for the Displaced, which was established in accordance with article (8), law no.193, on 4/1/1993. The article states that each fund is linked to a ministry according to its competence; each of these ministries has the right to call on the Audit Bureau or the Public Prosecutor's Office of Finance as it sees necessary. The Audit Bureau also has the right to initiate a visit. The ministry of finance's role in monitoring and control remains valid through its approval of the board's decisions, budget, and financial auditor. Similarly, the parliament's right to control remains valid by holding the minister of finance and the minister of the competent ministry accountable.

However, despite all these authorities corruption exists in these funds as it is "an inexhaustible source of wealth despite repeated attempts to subject

these councils to the control of the parliament. The failure of these attempts is attributed to the "Sultans of this era" who succeeded, not only to abort attempts made, but to also build a state within a state with authority that exceed that of the state's executive and legislative authorities out together⁷⁸ for reasons mentioned in the introduction.

***There is no anti-corruption commission in Lebanon**

Allocation and sale of state land

In principle, the state no longer has large areas of land with the exception of beaches and river banks. State land is divided into two categories: public state-owned and private state-owned land. The public state-land is under no circumstance can be sold or contracted. It is for public use only as in beaches, while private state-land is permissible to sell, although the state can prohibit its sale to the public such as the presidential palace, for example.

Granting privileges to utilize public resources and management is subject to one law, where other applied laws stem from its provisions as in the case of the oil sector. All of these laws allow for monopoly. Presently, and with the discovery of oil, no privileges were granted to any company; the issue was assigned to governmental committees, according to laws drafted by the parliament.

Bids for purchases and public works

All bids are conducted with transparency. All details and conditions are advertised in media sources. However, some ministers do circumvent the law and hold consensual deals that the parliament discovers a bit late. These ministers are not held accountable for reasons mentioned in more than one situation. This is one main entry for corruption.

Political parties

In Lebanon, there are 81 political parties registered at the ministry of interior and municipalities.

Freedom to form political parties in Lebanon is absolute. However, a political party is forbidden to: adopt armed struggle to achieve its goals; threaten the entity of Lebanon; nourish sectarian strife; or disrupt law and order. On the other hand, parties have the right to establish headquarters and branches on Lebanon's soil for meeting purposes. Parties also have the right to own visual, audible, or written media outlets for its own use to promote its principles and political stance.

⁷⁸ Najah Wakeem:Black Hands-a book, P.115, first edition 1998,76.

There is no special law governing political parties in Lebanon. The charitable organizations law for 1909 is the law applied at the present time.

Non-governmental organizations (NGOs)

Freedom to establish NGOs in Lebanon is absolute. It is limited only by respect for public law and order. Establishing of an NGO requires only the submission of its internal by-laws to the ministry of interior. Once approved by the ministry (i.e., it does not violate with laws in force), the ministry issues a document called "for your information". This means that the ministry's role is limited to being informed of the formation of the NGO. However, and in order to ensure that the NGO was not established as a way for illicit gain, such as looting grants funds instead of spending it on projects intended for example, the ministry remains in charge of monitoring and control of the NGO financial affairs.

Media

Media in Lebanon is free. It is only limited by maintaining law and order. A citizen has the right to own a media outlet, or speak his/her mind through any media method. And since media depends on advertisement confined to a small market, the state only limited the number of political television stations and newspapers, which was based on a recommendation by press syndicate. However, there no limits imposed on the number of non-political newspapers and magazines. Moreover, the state owns a radio and a television station, where it is committed to neutrality between all political forces. It also does not promote the state, but limits its broadcasts to provide news regarding official authorities.

Conclusion

The political system in Lebanon was classified among those systems that are considered acceptable, or even good. This classification remained valid until the end of the civil war, after which changes had to take place in order to accommodate the new developments in that arena. And since the political system is a reflection of society, change becomes inevitable and natural. This new system had to take into consideration the new developments in society and the stagnation of the old system by being able to solve problems arising from the loss of harmony between society and the system, ensuring that eradicating corruption is one of the objectives of the new system.

Based on the above, it is not possible to limit reform in Lebanon by searching to eradicate corruption only, but to hold a comprehensive work shop that includes participation of expertise from all walks of life. The purpose of the work shop is to draft a new constitution for the new system that would enable Lebanon to march on the path of the twentieth century.

It is important to note that despite the fact that there is no law for protection of whistle blowers regarding corruption, SCOs including NGOs, journalists, and television programs continue to expose those who commit corruption crimes, even if subjected to harassment and prosecution, as happens regularly. For that reason, it has become compelling to issue the special legislation on the protection of whistle blowers.



■ Political corruption in Tunisia

By Aya Jarad

Introduction:

Misuse of authority entrusted to rulers and active political forces in the state is considered political corruption whether it was in the form of favoritism, bribery, extortion, abuse of influence, fraud, nepotism, or any other suspicious behavior that aims to achieve personal or illicit gains.

Perhaps the Tunisian revolution is the biggest evidence of the extent of pervasiveness of corruption among politicians, the ruling family and its entourage and loyalists. It is a revolution that seeks social justice and eradication of corruption, which has become rampant in society, hence rotted it to the point where criminal behavior became law that is actual and real, as well as natural and semi mechanical. As a result, a class of people became extremely rich at the expense of the misery of the people, where bribery, favoritism, and loyalty became a condition for assuming any position.

This report comes in the framework of a direct contribution from TI chapters in Palestine, Morocco, Yemen, Egypt, Tunisia, and Lebanon, to diagnose the phenomenon of corruption in the Arab region. Recommendations of the report will aim to contribute to the development of strategies and action plans that will prevent corruption and hence contribute to the building of national integrity systems, especially in light of the events and transformation that these countries have witnessed during the past few years. This section of the report will present a clearer picture of the reality of political corruption in Tunisia including its underlying reasons, forms, and parties connected. It will be based on a methodology that will examine a set of indicators that will define main manifestations of political corruption and its causes,

forms, etc., as well as practices within the political system within these concerns: the principle of separation between authorities; reality of the three authorities (executive, legislative and judicial); integrity of elections; management of public funds and property; reality of the security institution; monitoring and control institutions; political parties; NGOs; and media.

Main findings (Tunisia)

Separation of powers: the new constitution was drafted based on mutual accountability. This means that it is possible for the executive authority to interfere in legislative affairs as well as the possibility of conflict over jurisdiction of the two heads of the executive authority to the point it can lead to the dysfunction of the state institutions. The January 2014 constitution came as a response to the present political force without an in-depth review of the possible scenarios that might occur in the future in light of new developments. Moreover, the executive authority can interfere in the work of the minister of justice through extending his control over public prosecution and in the transfer, promotion, discipline, and dismissal of judges. This interference is also apparent in the establishment of the Financial Judicial Section and its structure.

The executive authority

- a. Appointments in public positions: the constitution entrusted appointments of senior officials to the president of the republic. At the same time, it stipulated regulations for that purpose. Moreover, the public service act states conditions and recommendations necessary for assuming public positions, and new criteria relating to age and social status was added after the revolution. However, most of these positions until today are still being taken based on political affiliations or bribery. This is in addition to integrating beneficiaries from legislative clemency into senior positions, hence influencing negatively the efficiency of the Tunisian administration and its neutrality. The present government began to grant clemency to a number of loyalist officials namely heads of bureaus, presidents of other institutions and general directors, etc.

It is worth noting that review of appointing senior officials was one of the articles of the road map, which was agreed upon during the national dialogue, with the purpose of ensuring fairness. However, progress in that regard is noticeably slow.

- b. Financial disclosures: it is important to note that until now there is no effective system followed for financial disclosures although the existing legal text commits specific individuals such as the ruling family, and those

- that occupy certain positions to submit financial and asset disclosures for themselves and their close relatives. However, this legal text is not implemented properly, and even when disclosures are submitted, there is no guarantee that the information it contains is accurate. This due to lack of follow up and audit by the accounting department in charge.
- c. Conflict of interest: Contrary to the private sector where the legislator sought to ensure good governance practices in commercial companies and financial transactions, he neglected to do the same in the public sector. Hence, and until now, there is no legislative or system that prevents conflict of interest in Tunisia in regard to officials and employees in public positions.
 - d. Freedom of access to information: even though freedom of access to information is a constitutional right, in practice, it encounters many difficulties. This is mainly due to the lack of independence of the supervisory body in charge of ensuring exercising of that right. This body also does not have the right to look into conflicts related to exercising this right; an obstacle that prevents it from achieving any level of success.
 - e. Public rights and freedoms: at the time the Tunisian constitution guaranteed several public rights and freedoms in its provisions, it contradicted many of the rights and freedoms included in international covenants such as the "International Covenant on Civil and Political Rights". In any case, the fate of enforcing or lack thereof for these rights remain linked to the details entailed in related laws that will later be drafted.
3. The legislative authority: this authority has been exercised by the "The Founding National Council" and will continue until the parliamentary elections are held. However, it is worth noting that this Council has exceeded the time limit stipulated in the constitution. Moreover, ratification of many laws, such as the transitional justice law, has been delayed. This, if anything, it indicates the absence of defining priorities and the weakness of the efficiency to carry out functions of the foundational and legislative institutions.
 4. The judicial authority: although independence of the judiciary is guaranteed by the constitution, at the practical level, it encounters serious breaches such as the participation of non-judges in the career path of judges; retaining of powers of the minister of justice equal to those of the commission in the career path of judges; and subordination of the general prosecution to the ministry of justice, in addition to the clear breach in the establishment of the "Financial Judicial Section".
 5. Elections by representation: Delay in drafting the constitution resulted in the repeated delay of holding elections. However, the new constitution stipulated in the section on transitional provisions that presidential and legislative elections have be held within four months of decision made by the Independent Electoral Commission to hold elections. In all case, it is not to exceed the end of 2014, which presents practical problems.
 6. The security institution: the security institution in Tunisia is subject to several supervisory powers: ministry of national defense, interior ministry, justice ministry, ministry of finance, and foreign ministry. As for the legal framework for the security institution, it is governed by a 1969 law. Reviewers of this law demand the protection of headquarters and compounds of the security institution from attacks on the one hand, and the preservation of the right to demonstrate on the other hand. It is important to notice the absence of legislations that would impose on the security institution to respect public rights and freedoms.
 7. Management of public funds and property: in this system, there is a certain degree of transparency in outsourcing transactions through the adoption of procedures request for tenders and selection results are publically announced, as well as providing the opportunity for applicants to inquire about their applications.
 8. Monitoring and Control apparatuses: the success of these institutions depends on many factors such as the level of administrative and financial independence, and to ensure more effective powers.
 9. Political parties: political parties remain in need of a better legal framework, and especially as it relates to funding.
 10. Non-governmental organizations (NGOs): NGOs played an effective role during the transitional period, except that its legal framework remains to be better defined.
 11. Official media: even though the current media scene is pluralistic and free, it remains in need of more control in granting permits to new channels, whether for radio or television, in order to protect media from interventions of politicians and businessmen with suspicious agendas. Also to protect it from interference of the executive authority in the editorial line of the

national channels (censorship), in addition to appointing those who are loyal to the regime.

Recommendations:

1. Regarding the executive and legislative authorities

>> It is vital to strive to provide a political system that ensures real balance between authorities, and peaceful transfer of power, with in a setting where the opposition can play an effective role and where authorities can oversee one another and under supervision of CSOs and the media.

2. Granting privileges to utilize public resources; conflict of interest

It is necessary to:

>> Issue legislations to prevent conflict of interest among senior officials assuming public office.

>> Adopt an effective system for asset and financial disclosures, which compels those required to do so, to submit these disclosures regularly and on time as required by law.

>> Ensure credibility of information contained in the above-mentioned disclosures, especially since the accounting department does not scrutinize the documents; also to provide sufficient human and other resources to achieve this task.

>> Provide a code of conduct and measures that compels public employees to inform related authority of any work outside the scope of their official job, as well as investment, assets, gifts, benefits that might lead to conflict of interest with their work in their capacities as public employees.

3. Citizens access to information:

It is necessary to:

>> Expand the concept of what is public to include persons who are not public officials and are entrusted in managing public facilities and functions.

>> Clarify the concept of what public documents mean by linking it to the concept of administrative activities only.

>> Strengthen mechanisms to promote citizens to exercise their right to access information by establishing an independent body consisting of judges,

expertise in the field of documentation and archiving, and representatives from CSOs. This body is to be in charge of examining the extent of feasibility for citizens to access requested documents, and to look into disputes related to this issue, hence it is not left to the administrations discretion. This would preserve the feasibility of access to certain documents, especially in cases where time is of essence, and also contribute to the protection of this right.

>> Enlighten all related individuals that there is no legal obstacle that prevents the accounting department from exposing information upon request in regard to members of government who do not submit asset or financial disclosures.

>> Create electronic websites for all public institutions, and train all concerned staff to use and update these sites.

>> Explore more effective methods to provide information such as social media networks.

4. Political parties

It is necessary to:

>> Include electoral law in relation to the electoral commission ensuring its authority in deterring conflicting violations while ensuring integrity of elections, and requirements that ensure transparency of the commission's activities that are linked to the electoral process.

>> Review the legal framework governing political parties funding and to apply more comprehensive monitoring of its enactment to include review of the Charitable Organizations Law, which might provide for a more convincing method for funding political parties without monitoring. To also review all electoral laws linked indirectly to political parties funding.

>> Conduct extensive national and international consultations regarding the law on political parties funding, to better ensure credibility and understanding of the law.

>> Quarantine the use of funds in the form of cash.

5. Effectiveness of monitoring and control institutions

It is necessary to:

>> Control institutions are to be subject to parliamentary control by

establishing a parliamentary committee that will present programs and results of its work regularly to the parliament.

>> Adopt comprehensive quality standards at the organizational, management, and performance levels. This requires training and preparations of guide books covering control of the various aspects such as supervision over performance, finance, compliance etc., and to continually update these guides according to international standards.

>> Ensure compliance of monitoring and control methods with international best practice taking into consideration national particularity and needs.

>> Develop a strategic plan that includes short, mid and long term objectives; ensuring proper implementation, evaluation of results, and updating.

>> Develop a strategy for internal and external communications between control apparatuses.

>> Develop a continually update a data base of all of list institutions subject to control under the jurisdiction of the apparatus. Develop a second information bank on economic, legal, and financial issues to facilitate control operations.

>> Publish reports regularly and on time.

>> Accelerate the establishment of a fully independent anti-corruption commission; providing it with a special security department especially equipped for its needs and independent from the interior ministry granting it disciplinary measures, not legal.

>> Seek out for an effective approach to combat corruption internally, as in bureaucracy, for example, and evaluation of the salary system.

>> Unify all three public oversight bodies (Oversight Commission for Public Interest, Oversight Commission for Financial Affairs, Oversight Commission for State Property and Real-Estate Affairs).

>> Evaluate the system for public procurements with the aim of moving from prior control towards adopting a post-control system, while reinforcing auditing, follow up, and evaluation within a reasonable time.

>> Adopting the principle of the "independent administrative body" for the Higher Commission for Public Requests same as other independent bodies, where its budget is included in the public budget and is discussed directly

with the finance ministry.

>> Strengthen participation of the private and civil sectors within the Higher Commission for Public Requests by increasing the number of its members in the National Council for Public Requests, as well as re-enforce the structure of the follow up and review commission by including its representatives.

6. NGOs

It is necessary to:

>> Strengthen capacity of NGO in combating corruption, and especially in mastering knowledge of adopted international and national covenants with emphasis on pressuring governments for political will to combat corruption.

7. Freedom of the press

It is necessary to:

>> Provide the Higher Commission responsible for supervising the audio-visual sector with necessary means to improve this sector hence ensuring the quality of work among its craftsmen.

>> Ensure compliance of the guidebook issued by the Higher Commission responsible for supervising the audio-visual sector.

8. The Security institution

It is necessary to:

>> Reform legal framework for the institution taking into consideration efficiency at work without violating public freedoms. This requires the adoption of set of approved mechanisms, hence ensuring neutrality and fairness in appointments, as well as subjecting security officials to accountability.

■ Political corruption in Morocco

By Dr. Ahmad Mofeed

Introduction:

Political corruption is one of the most threatening phenomena that hinders political and human development, makes attaining democracy impossibility, and weakens the political system. It is also a violation of human rights and freedoms and contributes to the absence of social justice.

Due to the negative effects political corruption enfold and its enormous legal, economic, social and political cost on societies, the United Nations gave it special attention, embodied in a special covenant, which included several legislative, procedural, and organizational measures to eradicating it. This issue received a lot of attention from local, regional, and international CSOs, first and foremost, Transparency International (TI)⁷⁹.

To shed light on political corruption in Morocco, this report will attempt to analyze the various causes, manifestations, procedures taken to fight it, as well as recommendation to eradicate it, based on examining and analyzing several indicators related to the issue.

Based on the abovementioned, the report will cover the following areas:

First: reality of political corruption.

Second: diagnosis and description of major indicators of political corruption as well as measures taken to remedy the situation.

Third: conclusions recommendations

First: state of political corruption

In accordance with the Moroccan constitution

⁷⁹ www.transparency.org

for 2011⁸⁰, the first chapter dictates that “the ruling system in Morocco is a constitutional, parliamentary, democratic social monarchy. The constitutional system of the kingdom is based on the separation, balance and cooperation between powers. It is also based on democratic, citizenship, participatory and good governance principles, as well as linking responsibility to accountability”.

Second: Diagnosis and description of the most prominent indicators related to political corruption

1. The principle of separation of powers

As indicated above, the Moroccan constitution for the year 2011 stipulates in its second paragraph of the first chapter that “The constitutional system of the kingdom is based on the separation, balance, and cooperation between powers...” However, and despite this clear constitutional provision, many other provisions of the constitution in several chapters illustrate that the principle of separation of powers is a matter of a superficial formality typified by the powers exercised on the ground by the king. In reality, the king controls many legislative, executive and judicial authorities. For example, the king is in charge of a appointing the prime minister who is a member of the political party that issues results of the parliamentary elections. He is also the one who appoints members of the governments based on recommendations from the prime minister. Once appointed, he has the right to dismiss one or more of its members in consultation with the prime minister. He also has the right to dismiss one or more member based on a request of the prime minister⁸¹.

Moreover, the king has the right to dismantle either or both councils of the parliament based on conditions stipulated in the provisions of the constitution in chapters 96,97,98,⁸². He is also the commander in chief for the royal armed forces⁸³, as well as chief of the high security council⁸⁴, and head of the high judicial council⁸⁵. In addition, “the king has the right to formally request from the two parliamentary councils to conduct a new reading for every draft law.

⁸⁰ The constitution was issued in 2011, during what became known as “the Arab Spring”, where Morocco witnessed many protests led by the February 20 Movement, supported by some political parties, labor unions, and legal organizations. The Moroccan regime dealt wisely with these protests symbolized by the King’s speech on March 20, 2011, which was considered an important and historical speech. During his address, he announced the opening of constitutional and political reform workshops in respect to the regional events.

⁸¹ Chapter 47-2011 constitution

⁸² Chapter 51- 2011 constitution

⁸³ Chapter 53-2011 constitution

⁸⁴ Chapter 54-2011 constitution

⁸⁵ Chapter 56-2011 constitution

This reading cannot be rejected under any circumstances⁸⁶.

The king, in compliance with the constitution, appoints six of the twelve members of the constitutional court amongst them one member who is recommended by the secretary general of the science supreme council, where the head of the constitutional court is selected from the 12 members⁸⁷. Finally, the king has the right to initiate review of the constitution as he desires⁸⁸.

As illustrated above, it is perfectly clear that the royal institution is the one with the power, and the principle of separation of powers does not exist as the executive authority is shared by the king and his prime minister.

2. Methodology used for preparing the constitution

It is worthy to note that despite many researchers and followers views that the constitution was prepared democratically, the methodology by which it was prepared raised many questions based on the following. As it was, the king was contended by addressing the issue during his March 9 speech and by appointing an advisory committee to draft the 2011 constitution. The committee was instructed through memos to use a participatory approach which was carried out by holding a variety of sessions to discuss the different issues.

This view was contested by many who felt that the constitution was not prepared democratically, since the committee assigned was appointed by the king and not elected. More importantly, this committee did not take into consideration the principle of pluralism since all its members consisted of loyalists to the regime⁸⁹.

In view of these stands on the constitution, it has been documented that the vast majority of the Moroccan political parties, trade unions, legal, women, and charitable organizations... all voted in agreement with the 2011 draft constitution. It noted that the draft contains new gains and changes that can be considered basis for building a democratic system, and lays the foundation for the rule of law as well as for protection of human rights and freedoms.

3. Holding rulers accountable

Chapter five of the 2011 constitution included many provisions that govern the relationship between authorities in the Moroccan system, especially between the king and the legislative authority, and the executive and legislative authorities. It also contains provisions that govern the relationship between the king and the government, stipulated in many chapters of the constitution, and in particular in chapter three, which is related to the royal institution, and chapter five, which is related to the executive authority.

It is worthy to note that the constitution had specified in its various provisions that the government and parliament are subject to supervision and control of certain parties also specified in the constitution. By the same token, there is no provision that relates to supervision or control on royal decisions.

4. Public rights and freedoms in the constitution

The 2011 constitution contains many provisions related to requirements of protecting public rights and freedoms, hence making it a basic reference for these rights and freedoms.

In going back to provisions of the 2011 constitution, the issue of public rights and freedoms is very well covered at the level of rhetoric as well as the level of chapters and articles. The legislator dedicated part two of the constitution in its entirety to the civil, political, economic, social, cultural, and environmental public rights and freedoms. In its 12th chapter, the constitution included a section on good governance and human rights institutions.

However and despite the beautifully phrased constitutional rhetoric and provisions drafted by the constitutional legislator, practice on the ground was directly linked to laws drafted by the parliamentarians in their capacity as a "general" legislator. Principles such as fairness, right to life, right to access information, right to assemble and hold peaceful demonstrations, right to establish NGOs, right to be affiliated to unions and political parties, right to go on strike, right to challenge the constitutionality of laws, right to protest through petitions etc... It is worthy to note that until today, laws that would grant the right to practice these rights and freedoms mentioned, have yet to be issued due to delay in activating the constitutional provisions of 2011. Responsibility of this delay is attributed to the government and the parliament.

86 Chapter 95-2011 constitution

87 Chapter 130-2011 constitution

88 Chapter 72-2011 constitution

89 This opinion was expressed by the political parties who boycotted voting on the 2011 constitution: the unified socialist party; Al-Talee'a political party; national congress party

5. Integrity in the 2011 constitution

Once more, in going back to provisions of the 2011 constitution, one would discover that it covered issues such integrity, including integrity of elections, combating corruption, abuse of position and influence, conflict of interest, asset disclosure, as well as principles that ensure good measures for management of public utilities based on good governance principles, and the establishment of constitutional institutions based on good governance and integrity.

However and despite the importance of the constitutional provisions mentioned, political corruption in Morocco is prevalent at the practice level. These provisions are not utilized to end this type of corruption. For instance, many officials, especially politicians and elected officials do not submit asset disclosures, and conflict of interest is still rampant in practice, since many circumvent their way around it. Also the right to access information remains at the theoretical level as the law in that regard has yet to be issued in addition to the many violations on the ground that continue to occur. Moreover, the role of good governance institutions, as well as that of the National Commission for Integrity and Prevention of Corruption, remains limited due to delay in issuing the related law. Adding to limitations of their role is weakness in knowledge of the subject, modesty of their financial and human resources, and lack of seriousness by the executive authority to the role played by these institutions symbolized by ignoring reform and other recommendations presented to the authority.

6. The executive authority

In relations to the executive authority, being in Morocco, it is distributed between the king and the prime minister. Reality indicates that access to senior positions in public administrations, and public institutions raises many problems related to the absence of the principle of equality, and fair opportunities between qualified men and women, and nepotism, and clientelism, as well as some manifestations of corruption.

Taking the above situation into account and the legislator's desire to correct it, on July 17, 2012, the organizational law no. 02,12, was issued. This law is to govern appointments in senior positions including defining principles and standards to be complied by when appointing individuals in those positions.

However, in practice, nothing is further from the truth. Appointments for senior positions are often conducted based on loyalty to the regime, nepotism

and political affiliation...while using the law superficially.

7. The legislative authority

It is worth noting that the Moroccan parliament is composed of two councils: the House of Representatives, renewed after the issuing of the 2011 constitution, and the House of Councilors, which was not renewed hence raises many questions in terms of its constitutional status.

The 2011 constitution strengthened competence of the parliament. Chapter 70 states that the parliament is the power to execute the legislative authority; "the parliament shall vote on laws, monitor government, and evaluate public policies". However, despite that its competence remains limited since most laws are government originated (draft laws). Moreover, the parliament does not have the right to question the government or any of the ministers. In addition, strict conditions are imposed on the parliament when asked to form investigative committees while at the same time neglecting findings despite the fact many of them are related to financial corruption⁹⁰; legal corruption⁹¹. Also the method by which evaluation of public policies is conducted seems to bring about limited effects and weak impact.

The constitutional legislator granted the opposition many rights in the 2011 constitution⁹² However, exercising these rights requires governing laws, which have not been issued.

The Judiciary authority

In reference to the 2011 constitution provisions that guaranteed the independence of the judicial authority, the Higher Judicial Council, and rights of litigants. The present constitution is considered a progressive constitution when compared with previous Moroccan constitutions⁹³

According to several reports, the judicial system in Morocco is facing many problems that stem from corruption and bribery in the judicial body, the complexity of the judicial system, slow procedural system, delay in decisions and court orders, weakness in analyzing provisions, lack of good governance practices, weakness in human resources whether in the number of judges or

90 Examples include the following cases: regarding mortgage loans and tourism; the national fund for social security; and the case of marketing and export.

91 Examples include: Fass events, the camp of Khdeim Azeek.

92 Chapter 10 of the 2011 constitution.

93 All previous Moroccan constitutions (1962,1970,1972, 1992, 1996) did not stipulate that the judiciary is an authority, and did not include a clear provision in regard to the rights and duties of judges, and preventive security...

clerks.

Judges suffer from many restrictions related to exercising their rights and freedoms. They are forbidden to go on strike, and many obstacles are imposed that prevent them from exercising their freedom to assemble as in establishing a group or demonstration...⁹⁴

8. General elections

As mentioned previously, the Moroccan constitution of 2011 included several provisions related to the integrity of the electoral process, as well as the inclusion of many penalties, in a number of laws, relating to electoral corruption, reality reveals that the difference between the legal framework and practice is vast. In that regard, it is safe to say that the phenomenon of electoral corruption has become rampant in all poll stations. Most prominent manifestations is bribery and favoritism, abuse of public funds and property, and unjustified interference of the government⁹⁵.

Moreover, neutrality and fairness of the administrative electoral body is a subject for discussion, since all elections are supervised by the interior ministry. In addition, this is the same body that prepares the draft decree on electoral decisions.

9. Management of public funds and property

In regard to the management of public funds and property, we are proud to record the review and revision of the legal framework for that system, which aimed at increasing the level of transparency. Despite that improvement, procedures followed to combat corruption in this area were limited, as illicit economy continues to witness a steady growth, hence effecting vital economic areas such as (fishing, stone, marble, and sand quarries, etc.).

10. The security institution

In regard to the security institution, the constitution stipulated the establishment of the Higher Security Council headed by the king, in accordance with provision 54. Moreover, the king is in charge of appointing, with recommendations from the prime minister, senior position, officials, and

⁹⁴ The Moroccan judges' club- a club that houses many women and men judges-denounced the oppressive measures used against its members on certain occasions. It also denounced its denying its members to participate in the national dialogue on reform of the justice system.

⁹⁵ Central Authority for the prevention from corruption.

employees assigned to internal security⁹⁶. The king is also the commander of the royal armed forces, and has the right to appoint military posts⁹⁷.

The Parliamentary power in regard to monitoring and control of security policies and security officials is considered very weak, considering the importance of the security apparatuses in Morocco.

11. Monitoring and control apparatuses

Morocco has known several reform efforts in the financial arena that targeted development of monitoring and control over public finances. This was manifested in the constitutional status of the Supreme Council for accounts in its capacity as the highest council for monitoring and control of finances in Morocco; establishment of nine regional councils accounts in nine different locations in the country, hence embodying the decentralization policy adopted by government; developing and issuing a code of conduct for financial courts in accordance with law no. 62, 99. This is in addition to the number of provisions in the 2011 constitution that emphasized the importance of the role of financial courts describing these bodies as apparatus controlling public funds.

However, despite all of these legislative and constitutional initiatives, it is important to note the modest role the monitoring and control apparatuses play in that regard epitomized in: the general inspectorate of finance, and the general treasury of the kingdom, the accounts supreme council, and the regional councils accounts.

12. Political parties

In regard to political parties, chapter seven of the 2011 constitution emphasized the freedom to establish political parties as well as rules to govern related work, in addition to issuing the organizational law on political parties⁹⁸, which emphasized the same principles mentioned in the constitution.

In spite of the above mentioned, many of the political parties in Morocco do not respect or abide by democratic standards and principles exemplified by the following: Political parties do not hold their conferences on time; transfer of leadership/power does not allow renewal of elites; youth and women representation is weak, as well as lack of transparency and integrity in many parties' criteria for candidacy, appointments; also spending party's funds with

⁹⁶ Chapter 49 of the 2011 constitution.

⁹⁷ Chapter 53 of the 2011 constitution.

⁹⁸ Law no. 29-11 issued on October 22, 2011.

extreme secrecy. In addition, there is lack of observance of the principle of congruence between electoral programs that are similar and characterized by being general and lack quantitative and qualitative control tools for evaluation; and between qualified candidates that can carry out the job professionally and efficiently⁹⁹.

In regard to political parties, the Higher Council for Accounts issued a report stating that out of the 35 registered political parties, only 21 submitted their financial report to the council in 2011, and only eight were submitted in due time. Furthermore, the council attests to 14 parties whose reports were audited and accuracy confirmed by an external auditor, licensed by the Expert Accountants Commission¹⁰⁰.

13. Non-Governmental organizations (NGOs)

There are many NGOs in Morocco. Its activities are distributed among educational, developmental, and legal fields among other fields. Many of these NGOs suffer from lack of good governance practices in its administrative and financial management of their institutions. Furthermore, NGOs in Morocco face many problems most of which are related to procedures, rules and regulations related to the establishment of these NGOs. Basically it is directly tied to the local authorities, in charge of registering NGOs, non compliance to the law. For example, these authorities request documents from an applicant NGO that are not required by law. It also refuses to immediately provide an applicant NGO with the temporary deposit receipt, as well as violates the maximum time allowed to provide the NGO with it. All of these violations occur despite the constitutional stipulation that "Civil society organizations including NGOs have the right to be established and to practice its activities freely within the scope of the constitution and the law, and it is prohibited to disassemble any of these organizations or institutions or to prevent it from work except by a court order/ judicial decision".

Media

In regard to media, the Moroccan 2011 constitution stated that "Freedom of the press is guaranteed and cannot be restricted by any form of prior censorship..." chapter 27 also dictates that "citizens, male and female, have the right to access information.."

Despite the importance of the above mentioned constitutional provisions, media in Morocco encounters many obstacles first and foremost in statute of limitation of the press law, and its lack of compliance with international standards and covenants. It also suffers from the absence of a law that governs electronic journalism; treating journalists according to criminal law; impose punishments on journalists that deny them freedom along with high fines and prohibition from writing. Other obstacles faced by media personnel and outlets include shutting down newspapers, and monopoly over official media by the state, as well as control over certain opinions in television channels, and lack of respect for pluralism in society.

It is also worth noting that despite the strong influence of the regime in Morocco in regard to media, there are many private radio channels that enjoy large audiences and a large margin of freedom, where political corruption and other issues are discussed. Moreover, electronic media in particular enjoys a vast audience, where no subject is taboo including issues related to governance, management of public funds and properties as well as other public affairs.

Third: Conclusions

In order to remedy the situation described above, it is vital to have political will that is put to practice. This means moving forward from slogans to practice on the ground by enacting laws and related measures on the corrupt. It also means enforcing the principle of no impunity, protection of the whistle blowers, and witnesses of corruption; ensure the right to access to information; work towards enforcing the independence of the judiciary, as well as combating political and electoral corruption.

It is also equally important to support and promote the role of judicial and non-judicial institutions that are concerned with combating corruption by ensuring compliance of national laws with the UNCAC. To also activate judicial authority's provisions and decisions, as well as decisions and reports of the Higher Council of Accounts and the Regional Councils of Accounts, Central Authority for the Prevention of Corruption; investigative committees formed by the parliament; reports by the Public Inspectorate of Finance as well as other inspectorates.

And for the purpose of combating corruption, it is vital to respect democratic principles and promote its standards in state institutions as well as other institutions; to preserve public rights and freedoms; combat illicit gains; adopt the participatory approach in management of public affairs. it is also vital to: combat all manifestations of corruption including abuse of power

99 Central Authority for the Prevention of Corruption, combating political and electoral corruption in Morocco, analysis, evaluation, and recommendations, Sept.22, 2011.

100 Higher Council for Accounts, reports' summery on political parties, October 2013. www.courdescomptes.ma/fileadmin/uploads/Rapportpartispolitiquear.pdf

and influence; conflict of interest; prevent accumulation of wealth and power; apply the principle of linking responsibility with accountability; respect for the principle of the rule of law; ensure equality and equal opportunity between citizens, male and female.

Despite criticism directed at the 2011 constitution, whether in regard to methodology or to context, it constituted many positive provisions that are sufficient enough to combat corruption. Therefore, success depends greatly on implementing of those provisions. Hence is vital to base it on democratic principles jointly with other corresponding legislative, executive, judicial, political, educational and civil procedures that aim at combating manifestations of corruption in Morocco, since corruption has become one of the most important obstacles to achieving development, democracy, and protection of human rights.

■ Political corruption in Egypt

By Yusra Al-Azbawi

Introduction:

There are many reasons that lead to the spread of political corruption, some of which are: weakness of political parties and their leaders; lack of democracy in many of the countries; outbreak of bureaucracy and over centrality in the system; absence of political participation; lack of political integration; imbalance of judicial apparatuses; and political instability. These causes are considered the most threatening of all, according to many experiences, reports and studies. These sources confirm that corruption at the summit is quickly transmitted to lower levels that is sheltered and protected by its collaborative leadership, where the corrupt has monopoly over public property and the power which allows them to exploit it to their personal interests. Political corruption also occurs within the electoral process, recruitment of supporters, collecting donations, and attempts to gain votes through methods that meet the need of a specific segment of society, which begins by promises made by the candidate and ends with buying votes. This in return threatens public interest and spreads chaos and disorder as a result of the injustice and unfairness inflicted on the people.

In revolutionary Egypt, January 2011- 2013, political corruption was the main concern of all Egyptians. Discussing corruption was no longer limited to intellectuals, political activists, or political affiliates, and or interested in public affairs; it became the subject matter for public discussion among all citizens. This was due to media exposure of corruption as well as courts' consideration of corruption cases after the onset of the revolution.

Based on that, the compelling and more frequently asked questions were: what are the causes that led to accumulation of corruption in Egypt, before and after

the January 25th revolution? And what can be done to prevent it in the future?

It is from this context that a set of proposals was initiated from the premise that: the spread of corruption is mainly due to disruption in the relationship between the three authorities, the legislative, executive and judicial authorities. It is also due to the flaw within the monitoring and control agencies symbolized by lack of independence of these agencies as well as lack of coordination between them, in addition to lack of competence amongst its employees and shortage of funds; and the legislative conflict, which was the result of conflict of interest. In this paper, attempts were made to present applicable short and long term ideas and recommendations that may lead to diminish the phenomenon of political corruption in the future.

First: adopting the principle of separation of powers

The first suggestion this paper introduced is the acceleration of establishing and independent anti-corruption commission that would include in its formation representatives from: the various control agencies, civil society, political parties, academicians, and experts in combating corruption. This commission's first task would be to collect and revise all laws relating to combating corruption into one law or regulation that would be applied to all according to his/her position or violation of the law. Also for CSOs and official and private media outlets to carry out organized and continuous awareness campaigns informing citizens of their rights and duties.

Second: the executive authority and absence of transparency

The set of suggestions were grouped into one package of standards that revolved around four points: prevention of conflict of interest, transparent procedures in appointments, publishing of information and data, and procedures relating to trust the government.

Third: effectiveness of the legislative authority

This report put forward a recommendation to the parliament and that is to activate its role in the fight against corruption, not only through scrutinizing reports submitted by the various apparatuses, but through exercising accountability means known to the governments and heads of independent agencies. Also to activate its role in review of regulations issued by the executive authority, especially those related to the public budget's expenditures approved for each governmental entity; finally, activating the role of parliament in holding those in executive positions accountable.

Four: the judicial authority

In this regard, this report suggested that the statute of limitation be accelerated by increasing the use of technology in the court system. The report also suggests that the economic courts' experience in this area is worth duplicating, since it has proven to be effective in reducing the time needed to issue an order to six months. In addition, it was able to resolve disputes through conciliation between adversaries; an excellent mechanism created by these courts. Other suggestions included: to cancel the subordination of the judicial inspection to the minister of justice, who is part of the executive authority, hence has the opportunity to pressure some judges; to cancel delegating judges to work with the executive authority; to reduce centralization within the public prosecution.

Five: management of public funds and property

Supervision over public funds is considered one of the basic and most distinctive roles the parliament possesses in all modern societies. As a matter of fact, parliaments were created for that purpose. For that reason, it is recommended that the principle of a unified budget for the state be applied. At the same time, it is vital to give attention to the mechanisms by which the public budget is submitted and being approved by the parliament, in addition to activating parliament's role in monitoring and control over government spending operations as well as holding it accountable. Also important is citizens' participation in this process, which will need simplifying the budget and publishing it in official media means. Furthermore, it is necessary to cancel: private investment funds and to activate control over it, and the one item budgets. Also, it is necessary to re-visit procurement and supplies laws, as well as laws for public works. And finally, it is vital to pay special attention to article 32 of the new constitution, which discriminates between public funds and that privately owned by the state, which serves as new avenues for corruption in Egypt.

Six: transparency and general elections

In light of the new constitution, it was suggested to accelerate the establishment of a permanent election commission immediately. It was also suggested to re-visit all constitutional provisions governing the work of this commission, and especially article 229 relating to the assignment of its board, which is composed of ten members from judicial institutions, where the president is assigned from the parliament and cannot be dismissed from his position. In addition, it is important to: unify legislations governing the electoral process, and resolving

of all problems relating to procedures of electoral process followed up by NGOs; issue codes of ethical conduct relating to transparency in management of election campaigns between candidates, and one for political parties.

Seven: Political parties

In Egypt there is a great imbalance in the pluralist party system where there is a large party monopoly on power and parliamentary majority. Besides that party are small political parties most of them are unknown. Based on that, it is vital to review the legal framework governing political parties. In addition, it is necessary to find alternatives for funding political parties such as allowing parties to invest their resources in trade interactions, hence enabling them to establish headquarters in the various districts, or to establish special projects exclusively for that purpose. On another note, it is necessary to make it mandatory that all political parties have to submit annual financial reports to the monitoring and control institutions.

Eight: Media and limiting government control

In this regard, the report suggested that a code of honor be drafted for media personnel; announce funding sources; reorganize official media and grant it freedom to enable it to expose corruption instead of covering it up; draft a code of conduct for social media means; accelerate the establishment of the Media Higher Council and the National Press Commission conditional to include in its composition a range of disciplines and representatives from the various community groups. In this regard, it is suggested that TI share its international experience by assisting in providing methods and information on the formation of these commissions as well as governing laws, or to conduct training sessions for staff in charge of running such institutions, in participation with CSOs.

Nine: The security institution

For Egyptians, security is considered a key factor for improving their everyday life and for alleviation of poverty as well as for promoting economic and social development. Responsibility for security file, with all its components, is assigned to the government in the first place. In examining tasks of the security sector in any society, one would discover that it is not limited to the short term protection and survival of that society only, but that it includes ensuring the competitiveness and effectiveness of its components in the long run. Therefore, having inappropriate security structure and mechanisms leads to weakening of the regime and political instability as well as igniting of violent conflicts.

Based on the above, it is necessary to change the mental image of the police among citizens by attaining security from the perspective of service, where security and stability are attained in the framework of protection of human rights, and by respecting the rule of law and the constitution. Moreover, limiting the relationship between security officials and the president of the republic is vital to improve the image mentioned. Additional recommendations include: security reports to be submitted to the National Defense Council; prisons and detention centers to be placed under the supervision of the judiciary and the National Council for Human Rights; immunity is not to be granted to security officials; annulling the system which allows transfer of security officials to civil authority after leaving service; and finally, to re-visit related law for whistle blowers.

Ten: Public monitoring and control institutions-independence and effectiveness

The bureaucratic governmental system in Egypt is characterized as rigid as well as prolonging governmental procedures to the point of frustration in order to blackmail those dealing with governmental institutions to pay bribes in exchange of a rightful service. The reason may not be caused by the law or regulations, but from the employee in charge of providing the service. Based on the above, there is a compelling need to review laws and regulations governing these institutions, as well as re-visiting all structures, and investigative parties that have been prepared long ago and had never been updated or reviewed, hence making them useless in reflecting facts on the ground. Moreover, it is important to standardize terms of reference and organize work between the various governmental agencies. This is important because disputes on competencies disrupt governmental work and works against citizens' interest. Also it is vital to separate powers between the executive authority, control parties, and investigative parties, because its subordination means lack of independence.

Eleven: Non-governmental organizations (NGOs)

Some intellectual schools of thought believe that it is conditional to have strong CSOs if conflicts are to be solved peacefully within society, and for governments to use the method of consensus rather than forced distribution of values. Similarly, some schools of thought went beyond the dimensional concept of a state by linking democracy to development and good governance to solve local and regional conflicts.

This report suggested going back to understanding the history of an

authoritarian regime, which created a group of elites and lots of bureaucracy as well as negative security in the face of voluntary initiatives in the political, social and cultural fields. With that in mind, this type of regime viewed all civil activities that are independent from the government as a source of threat to security. On another note, it is important to encourage NGOs to practice principles of transparency, and values of integrity in managing its own institutions, as well as to adopt programs that would promote these principles in society. Equally important is to end animosity between NGOs and the executive authority through NGOs adoption of developmental agendas and for the executive authority to end hostile statements towards CSOs and to diligently work to issue related laws that would support CSOs work.

Basic comments on combating political corruption in Egypt

The process of facing political corruption must begin by a clear understanding of the relationship of corruption with other political and social phenomenon in society, as well as the level of political and economic development of the society.

In this context, we note three main comments:

1. The existence of a strong relationship between the prevalence of corruption on the one hand, and high poverty level, on the other hand. Hence, the more corruption is widespread, the poorer the country and vice versa.
2. There is a strong relationship between the prevalence of corruption and level of democratic development. In other words, non-democratic countries with authoritarian regimes tend to be more corrupt and vice versa. Also, it seems that countries that have chosen to work towards a democratic change have become less corrupt.
3. Relationship of corruption to disorder and political instability, especially during civil wars, weakness of central authority in facing local groups and militias etc... where these groups take over governmental duties as well as CSOs work, including services and public goods. All of this is not possible without a large degree of corruption.

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