

Overall Score:

52 - Very Weak

Legal Framework Score:

74 - Moderate

Actual Implementation Score:

30 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁴³Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

Iraqi Constitution, Article 45 states: The State shall seek to strengthen the role of civil institutions" but, in practice, no leading former Baath party member could establish one.

The job of the Ministry for Civil Society is to overlook the activities of CSOs. All CSOs, according to the draft law, are obliged by law to register with the Ministry of Civil Society and only those who register are eligible for grants.

After reviewing the draft law on NGOs presented by the Iraqi Ministry of Civil Society, the UN made the following recommendation: "In order to ensure compliance with Iraq's international human rights commitments, Article 2 of the UN Draft should be reinserted into the Ministry Draft. The effect of reinserting the article would be to guarantee a fundamental aspect of the right of freedom of association: to ensure that groups of individuals who choose to work together towards a lawful purpose cannot be compelled to register and form an NGO if they do not wish to do so." The report went on to state: "Space should be made in the draft Iraqi NGO law to permit such informal groups to exist. By remaining unregistered, groups forego the privileges of registration (such as legal personality and, in some cases, tax-free status) and the increased status that comes with being a registered NGO. Under international best practice, it is acceptable for the Iraqi Government to require NGOs to register in order to obtain such privileges. International experience has shown that the vast majority of citizen groups will choose to register with the state in order to obtain such privileges."

References:

Iraqi Constitution, Article 45.

Accountability and Justice (De-Baathification) Law, Ministry of Civil Society Directives.

The New York Times, May 23, 2006.

Comparative Analysis of Iraqi NGO Legislation Between UN Model Draft (Version: 19 March 2007) and Iraqi Ministry of Civil Society Affairs Draft for (Version: 8 January 2008)" Prepared by Iraqi National Centre for Consultation and Administrative Development (NCCMD), the United Nations Office for Project Services (UNOPS) and the United Nations Assistance Mission for Iraq (UNAMI). http://www.ncciraq.org/IMG/pdf_Comparative_Analysis_of_NGO_Legislation_-_Final_version.pdf

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

References:

No law was passed in this regard.

Elbayan, Kareem, NGO Laws: Selected Arab States,” International Journal for Non-Profit law, Volume 7, Issue 4, (Sept. 2005).

www.icnl.org/knowledge/ijnl/vol7iss4/special_1.htm.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

A law concerning this question is being considered.

In their analysis of draft CSO legislation presented by the Ministry of Civil Society, the UN reported:

The Ministry Draft adopts almost all of the requirements for an NGO Governing Document set out in the UN Draft, but then adds one further requirement. Article 13.10 of the Ministry Draft requires that the governing document include the Organization Finance which includes statement of the organization income and funding sources. This information does not relate to the governance of the NGO, it relates to the organization s financial resources.

A NGO s governing document is supposed to set out a permanent structure for the organization, whereas an NGO s sources of funding will be constantly shifting. NGOs are also already subject to strict financial reporting requirements under this legislation. For all of these reasons, this article should be removed from the Ministry Draft.”

References:

No law in this respect has been passed.

Elbayan, Kareem. NGO laws: Selected Arab States”, International Journal for Non-Profit Law, Volume 7, Issue 4, (Sept. 2005).

www.icnl.org/knowledge/ijnl/vol7iss4/special_1.htm.

“Comparative Analysis of Iraqi NGO Legislation Between UN Model Draft (Version: 19 March 2007) and Iraqi Ministry of Civil Society Affairs Draft for (Version: 8 January 2008)” Prepared by Iraqi National Centre for Consultation and Administrative

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

50

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

There is no law prevent the establishment of CSOs, but the lack of cooperation from the government side makes their work redundant and ineffective. No ministry feels obliged to cooperate with such organizations. As matter of fact, no Iraqi CSO has been effective in exposing any cases of corruption, when the official ministries failed to successfully investigate such cases.

In an analysis of legislation on CSOs, the Iraqi National Centre for Consultation and Administrative Development (NCCMD), the United Nations Office for Project Services (UNOPS) and the United Nations Assistance Mission for Iraq (UNAMI) recommended that the Iraq Ministry for Civil Society make registering a CSO optional under law to allow for the formation of informal citizen groups. However, the report said benefits should be provided to those CSOs who do register.

The most important problems and obstacles relate to the vague concept of civil society” among civil society activists and the inability of the media to communicate a firmer sense of “civil society” to the public.

Resources available to CSO groups are limited and shrinking. This dynamic has been further hampered by the establishment of “CSOs” by foreign entities, sectarian leaders, and others looking to use CSO groups as a means to their personal ends.

Iraqi CSOs have also been hampered by spread of administrative and financial corruption among many non-governmental organizations, particularly those that rely on funding and support from international organizations, including the United Nations (according to critics). This is made worse by the weakness in the regulatory role of government, including the Directorate of the Office of Public Integrity.

The majority of activities and of Iraqi non-governmental organizations consist of conferences, seminars and educational workshops. A lack of initiative and/or weak level of practical experience hinders many groups.

For all of the above reasons, CSOs cannot play an active role in the policymaking process. The idea of “CSOs” themselves in Iraqi society is still too new. Most CSOs organized by Iraqi citizens are organized under the following principles: first, for personal benefits, second, for political party benefit, and third, for obtaining funds from donors and then disappearing. Many of CSOs actively work to promote their parties political goals and objectives. The Ministry of Civil Society did not play an active enough role to support young CSOs.

References:

Interview with Durgham Fadel, Basra University, Lecturer

Interview with Mohammad Atwan, CSO expert

Transparency International, Annual Report 2007.

Al-Radhi, Hamza Radhi, Commissioner, The Status of Corruption in the Iraqi Government,” Testimony before U.S. House of Representatives, Committee on Oversight and Government Reform (Oct. 4, 2007).

Arab media (Elaph.com).

BBC.

“Comparative Analysis of Iraqi NGO Legislation Between UN Model Draft (Version: 19 March 2007) and Iraqi Ministry of Civil Society Affairs Draft for (Version: 8 January 2008)” Prepared by Iraqi National Centre for Consultation and Administrative Development (NCCMD), the United Nations Office for Project Services (UNOPS) and the United Nations Assistance Mission for Iraq (UNAMI). http://www.ncciraq.org/IMG/pdf_Comparative_Analysis_of_NGO_Legislation_-_Final_version.pdf

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

A blog called "Vote for Iraq" has been set up by Iraqi CSOs with the support of the International Election Assistance Team (IEAT) in Baghdad. The aim of the blog is to encourage citizen debate and discussion prior to the January 2009 elections.

The most important problems and obstacles relate to the vague concept of "civil society" among civil society activists and the inability of the media to communicate a firmer sense of "civil society" to the public.

Resources available to CSO groups are limited and shrinking. This dynamic has been further hampered by the establishment of "CSOs" by foreign entities, sectarian leaders, and others looking to use CSO groups as a means to their personal ends.

Iraqi CSOs have also been hampered by spread of administrative and financial corruption among many non-governmental organizations, particularly those that rely on funding and support from international organizations, including the United Nations (according to critics). This is made worse by the weakness in the regulatory role of government, including the Directorate of the Office of Public Integrity.

The majority of activities and of Iraqi non-governmental organizations consist of conferences, seminars and educational workshops. A lack of initiative and/or weak level of practical experience hinders many groups.

For all of the above reasons, CSOs cannot play an active role in the policymaking process. The idea of "CSOs" themselves in Iraqi society is still too new. Most CSOs organized by Iraqi citizens are organized under the following principles: first, for personal benefits, second, for political party benefit, and third, for obtaining funds from donors and then disappearing. Many of CSOs actively work to promote their parties' political goals and objectives. The Ministry of Civil Society did not play an active enough role to support young CSOs.

References:

Interview with Durgham Fadel, Basra University, Lecturer

Interview with Mohammad Atwan, CSO expert

Al- Radhi, Hamza Radhi, Commissioner, "The Status of Corruption in the Iraqi Government," Testimony to U.S. House of Representatives, Committee on Oversight and Government Reform (October 4, 2007).

Press Release. NGO Coordination Committee in Iraq. <http://www.ncciraq.org/spip.php?article2861>

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

Al- Radhi, Hamza Radhi, Commissioner, "The Status of Corruption in the Iraqi Government," Testimony to U.S. House of Representatives, Committee on Oversight and Government Reform (October 4, 2007).

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Al- Radhi, Hamza Radhi, Commissioner, "The Status of Corruption in the Iraqi Government," Testimony to U.S. House of Representatives, Committee on Oversight and Government Reform (October 4, 2007).

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

Al- Radhi, Hamza Radhi, Commissioner, "The Status of Corruption in the Iraqi Government," Testimony to U.S. House of Representatives, Committee on Oversight and Government Reform (October 4, 2007).

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Al- Radhi, Hamza Radhi, Commissioner, "The Status of Corruption in the Iraqi Government," Testimony to U.S. House of Representatives, Committee on Oversight and Government Reform (October 4, 2007).

"Death of Head of the Journalist Union, Feb 2008," Elaph.com, July 19, 2008.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

63

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Workers interested in forming unions must apply with the Ministry of Planning but submitting a budget, number of members, and some information about the union's members. Unions cannot not formally operate without registration from the Ministry.

But in practice, the government dissolved several unions, including the Oil Union in Basra and the Athletic Union (which led the Olympic Committee to deny Iraq the right to participate in the Beijing Games).

References:

Article 37, Iraqi Constitution: "The freedom to form and join associations and political parties shall be guaranteed."

Article 23, clause 3, Iraq Constitution: "The State guarantees the right of forming and . . . professional associations and unions, this will be regulated by law."

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

The Iraq Olympic Committee was denied participation in the Beijing Olympics because of the government's interference in sport affairs.

The Solidarity Center, a nonprofit backed by U.S. government organizations such as AFL-CIO, the State Department and the National Endowment for Democracy, has recently worked with oil workers in Iraq. From their 2008 Annual Report: In March 2008, Iraqi workers joined hands to form a strategic alliance between the workers who produce oil and those who transport it. Together, they plan to confront an increasingly hostile Iraqi government crackdown on trade union organizing in their sectors. Backed by the International Transport Federation and the International Federation of Chemical, Energy, Mine and General Workers' Unions and their Iraqi union affiliates, and with support from the Solidarity Center, this new alliance will draw on workplace organizing and joint policy initiatives that will give Iraqi trade unionists unique access to industry-specific conflict resolution and global bargaining models. By building worker solidarity, it aims to counter anti-union laws and restore trade union rights."

Workers interested in forming unions must apply with the Ministry of Planning but submitting a budget, number of members, and some information about the union's members. Unions cannot not formally operate without registration from the Ministry.

References:

Iraq Wants Spot in Games," New York Times (July 26, 2008).

Article 22, clause 3, Iraqi Constitution guarantee this right.

http://www.solidaritycenter.org/files/solidarity_annualreport.pdf

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

The Iraqi Constitution, Article 38: The State shall guarantee freedom of press, printing [etc].” Also freedom of expression using all means, and freedom of assembly and peaceful demonstration.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

But the Baathists are excluded from this as stipulated by the De-Baathification Law.

The IREX Media Sustainability Index for Iraq confirms that a law on freedom of expression exists, but it questions the existence of an effective system of laws to support this principle.

References:

Coalition Provisional Authority, Order Number 1, Section 1, Clause 1.

The Iraqi Constitution, Article 38: The State shall guarantee freedom of press, printing [etc]. Also freedom of expression using all means, and freedom of assembly and peaceful demonstration.

Iraq 2006/7 Report. Middle East and North Africa (MENA): Media Sustainable Index. IREX. http://www.irex.org/programs/MSI_MENA/2006/MSIMENA06_iraq.asp

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

56

6a. In practice, the government does not create barriers to form a print media entity.

100 | **75** | 50 | 25 | 0

Comments:

No license is needed for print media outlets. However, the Baathists are not allowed to have their own newspapers.

References:

Coalition Provisional Authority, order Number 1, Section 1, Clause 1.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media

entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | **NO**

Comments:

Non-Iraqi media are required to have licenses, but Iraqi newspapers are not.

References:

The Iraqi Constitution, Article 38: The State shall guarantee freedom of press, printing. Also freedom of expression using all means, the freedom of assembly and the right to hold peaceful demonstrations.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

Non-Iraqi media are required to have licenses, but Iraqi newspapers are not.

References:

The Iraqi Constitution, Article 38: The State shall guarantee freedom of press, printing. Also freedom of expression using all means, the freedom of assembly and the right to hold peaceful demonstrations.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Non-Iraqi media are required to have licenses, but Iraqi newspapers are not.

The Al-Jazeera TV office in Baghdad was ordered to close. The Al Sharqiyah TV office was attacked and forced to close.

Newspaper of the Al Sadr group was forced to close by order of Paul Bremer in 2004.

References:

CNN.com (www.cnn.com/world/meeast/08/07/iraq.aljazeera/index.html) (Aug. 8, 2004).

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

The offices of Shariqia TV, Al Jazeera and Al Arabiya in Baghdad were closed.

From the IREX Media Sustainability Index for Iraq 2006/7: The National Communications and Media Commission was established by Order 65 of the US-led Coalition Provisional Authority (CPA) in March 2004 to regulate broadcasting, among other tasks. The commissioners were charged with coordinating use of the radio broadcast spectrum, regulating and licensing broadcast outlets, and developing regulatory policy for the government, although their duties also extended to telecommunications and other areas unrelated to the media. The commission controls the licensing of radio and television stations, and does so largely without political interference, the panel concluded."

References:

Sharqiya TV Moves to London," Iraq Updates, September 3, 2007 (www.iraqupdates.com/p-articles.php/article/2/3/07) (Sept. 3, 2007).

"Al-Arabiya Ordered Out of Baghdad," BBC News, news.bbc.co.uk/1/hi/middle-east/5325290.htm (Sept. 8, 2006).

Iraq 2006/7 Report. Middle East and North Africa (MENA): Media Sustainable Index. IREX. http://www.irex.org/programs/MSI_MENA/2006/MSIMENA06_iraq.asp

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

References:

The Iraqi Constitution, Article 93: Section 3. The Federal Supreme Court settles such issues.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

A Sunni could not obtain a license in a Shia Area. Nor could an Islamist obtain one in a Kurdish area.

Digla Radio obtained a license within 5 months.

References:

Republic of Iraq Communications and Media Commission Policy Recommendations concerning Broadcasting in Iraq", Stanhope Centre for Communications Policy Research (Jan. 2007, p 29-31).

Interview with Ahmad al Rikabi, owner, Digla Radio.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Republic of Iraq Communications and Media Commission Policy Recommendations Concerning Broadcasting in Iraq”, Stanhope Center, Communications Policy Research Jan. 2007).

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

88

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

The government is weak about enforcing any regulations.

From IREX's Media Sustainability Index for Iraq 2006/7: Discussion of media independence was seen as more vigorous than previously, and panelists observed an increasing number of free press support groups. They also said more websites convey factual information and reserve space for citizens to voice opinions and make comments and that the public has a lower tolerance for media outlets working only to justify the actions of special interests. Panelists also described a higher degree of awareness about the concept of public broadcasting as a system that should work in citizens' interests without being politically influenced."

According to the Brookings Institute's Iraq Index, as of April, 2007 there were 261,000 internet subscribers in Iraq. This number does not include individuals who access the internet from internet cafes.

References:

Iraq Media Sustainability Index," United Nations Educational, Scientific, and Cultural Organization, Washington DC (2004, p 10).

Iraq 2006/7 Report. Middle East and North Africa (MENA): Media Sustainable Index.

IREX. http://www.irex.org/programs/MSI_MENA/2006/MSIMENA06_iraq.asp

Iraq Index:Tracking Variables of Reconstruction & Security in Post-Saddam Iraq. Brookings Institute. July 31,

2008. <http://www.brookings.edu/saban/~media/Files/Centers/Saban/Iraq%20Index/index20080731.pdf>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

Censorship does not take place mainly due to weakness of the government

However, because of recent development in some provinces (such as Karbala and Najaf), the local authorities censor what they consider immoral. As Iraqi officials become more powerful, their censorship activity increases as witnessed in Karbala and Najaf.

From IREX's Media Sustainability Index report for Iraq 2006/7: Discussion of media independence was seen as more vigorous than previously, and panelists observed an increasing number of free press support groups. They also said more websites convey factual information and reserve space for citizens to voice opinions and make comments and that the public has a lower tolerance for media outlets working only to justify the actions of special interests. Panelists also described a higher degree of awareness about the concept of public broadcasting as a system that should work in citizens' interests without being politically influenced."

References:

Iraq Media Sustainability Index", United Nations Educational, Scientific, and Cultural Organization, Washington DC (2004, p. 10).

Interview with local resident in Karbala.

Iraq 2006/7 Report. Middle East and North Africa (MENA): Media Sustainable Index.

IREX. http://www.irex.org/programs/MSI_MENA/2006/MSIMENA06_iraq.asp

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

50

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

From Freedom House's 2008 Report on Iraq: Legislation passed in 2006 criminalized the ridicule of public officials, and a number of Iraqi journalists have been charged with the offense. "

References:

The Iraqi Constitution, Article 38: The State shall guarantee freedom of press, printing etc) also freedom of expression using all means, and freedom of assembly and peaceful demonstration.

Iraq Media Sustainability Index," United Nations Educational, Scientific, and Cultural Organization, Washington DC, International Research & Exchanges Board (IREX), (2006).

"Iraq Country Report" Freedom in the World. Freedom House. 2008. <http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7414>

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

Muhamad Abdul Jabbar, the editor-in-chief of the semi-official Sabah newspaper, was forced to resign, partly because of his criticism of government corruption.

Iraq ranked 157th in the Reporters without Borders Worldwide Press Freedom Index released in October 2007. This places Iraq within the bottom 20 countries evaluated in the index.

From the IREX Media Sustainability Index report for Iraq 2006/7: The MSI panelists described a situation where figures in government work against press freedom, whatever their publicly presented positions may be, and an unfinished legal environment throws the media sector into confusion. The panel contends that although Iraqis now are informed about dissenting voices and disagreements among political parties and other groupings, in fact much more information is kept secret or covered up. The panelists contrast the pre-2003 situation, when media was politicized and focused totally on one track the glorification of the regime with now, when the media is politicized but pulled in many different directions. The media is largely governed by the often conflicting dictates of those in power, including politicians, religious leaders, media owners, and advertisers. This means that Iraqi society is far from fully benefiting from a professional and responsible media, and that the prospects for the sector reaching this goal soon are not bright, according to the MSI panel."

References:

Iraq Media Sustainability Index", United Nations Educational, Scientific, and Cultural Organization, Washington DC, International Research & Exchanges Board (IREX), 2006.

Iraq 2006/7 Report. Middle East and North Africa (MENA): Media Sustainable Index. IREX. http://www.irex.org/programs/MSI_MENA/2006/MSIMENA06_iraq.asp

Worldwide Press Freedom Index. Reporters without Borders. October 2007. http://www.rsf.org/IMG/pdf/index_2007_en.pdf

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

From IREX's Media Sustainability Index for Iraq 2006/7: With most newspapers and satellite channels financed by political parties or persons with political interests, journalists at all levels are exposed to the financiers' influences. This is true to such an extent that journalists may find that their stories appear containing material that they did not report or write."

References:

Iraqi and Western press; no examples cited.

Iraq 2006/7 Report. Middle East and North Africa (MENA): Media Sustainable Index.
IREX: http://www.irex.org/programs/MSI_MENA/2006/MSIMENA06_iraq.asp

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

60

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

References:

Iraqi law require all registered companies to name their owners.

Republic of Iraq Communications and Media Commission Policy Recommendations Concerning Broadcasting in Iraq, Stanhope Centre for Communications Policy Research, (Jan. 2007).

CPA Order 65, Media Commission,
<http://www.stanhopecentre.org/PDFs/CPAORD65.pdf>, (March 20, 2004).

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

Comments:

This rule is not implemented due to government ineffectiveness.

References:

Lochrane, Paul, "The Lebanonization of the Iraqi Media: An Overview of Iraq's Television Landscape," *International Broadcasters Studies*, Issue 16 (Fall 2006).

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

From IREX's Media Sustainability Index for Iraq 2006/7: "With most newspapers and satellite channels financed by political parties or persons with political interests, journalists at all levels are exposed to the financiers' influences. This is true to such an extent that journalists may find that their stories appear containing material that they did not report or write."

References:

"Iraq Media Sustainability Index" United Nations Educational, Scientific, and Cultural Organization, Washington, D.C., International Research & Exchanges Board (IREX), (2006).

Iraq 2006/7 Report. Middle East and North Africa (MENA): Media Sustainable Index. IREX. http://www.irex.org/programs/MSI_MENA/2006/MSIMENA06_iraq.asp

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

Parties published their own newspapers and also advertised in general publications. However, the small political parties were greatly out-advertised by the major parties.

References:

Iraqi and Western Press

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | **50** | 25 | 0

Comments:

The ruling parties control the state-owned media outlets and use them to their benefits. In many cases they disallow the non-ruling parties from using the state-owned media.

In theory, there should be equitable access to state-owned media outlets, but in practice this is limited.

References:

Interview with Mr U. Nujafi, the Iraqi List, opposition party.

Interview with Salih Mutlak, Hiwar Party, opposition party.

Iraq Press: Sharqalawsat, <http://asharqalawsat.com/details.asp?section=4&issueno=10628&article=452429&feature=> (Jan 3, 2008).

BBC Arabic Report, http://news.bbc.co.uk/hi/arabic/middle_east_news/newsid_4530000/4530316.stm (Dec. 24, 2005).

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

0

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | **NO**

Comments:

From IREX's Media Sustainability Index report on Iraq 2006/7: Iraq was the deadliest country in the world for the media for the fifth straight year in 2007. According to the Iraqi Journalist Rights Defense Association (IJRDA) annual report, Violations of Freedom of the Press and Freedom of Expression in Iraq for 2007, 54 journalists were assassinated during the year. In addition, 31 journalists were arrested, 10 were abducted, and 10 media outlets raided."

References:

Iraq 2006/7 Report. Middle East and North Africa (MENA): Media Sustainable Index. IREX. http://www.irex.org/programs/MSI_MENA/2006/MSIMENA06_iraq.asp

Committee to Protect Journalists, www.cpj.org (2008).

Dagher, Sam, Panel Finds Iraq still the Deadliest Place on Earth for Journalists," Christian Science Monitor (Dec. 28, 2007).

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

Comments:

Iraqi reporter Soran Mama Hama was killed last July 2008.

From IREX's Media Sustainability Index report on Iraq 2006/7: Iraq was the deadliest country in the world for the media for the fifth straight year in 2007. According to the Iraqi Journalist Rights Defense Association (IJRDA) annual report, Violations of Freedom of the Press and Freedom of Expression in Iraq for 2007, 54 journalists were assassinated during the year. In addition, 31 journalists were arrested, 10 were abducted, and 10 media outlets raided."

Many journalists have gone missing in Iraq and some claim to have undergone torture during this time. One example of a disappearance can be found in a statement released by Amnesty International in June 2008: "Journalist Rezgar Raza Chouchani has not been seen since 3 June, when he was summoned to the headquarters of the Zeravani intelligence agency in the region of Iraqi Kurdistan. He had written about corruption in the agency, and its officials had apparently threatened him."

References:

Committee to Protect Journalists, www.cpj.org.

United Nations Educational, Scientific and Cultural Organization. Washington DC, International Research & Exchanges Board (IREX) 2004.

Iraq 2006/7 Report. Middle East and North Africa (MENA): Media Sustainable Index. IREX. http://www.irex.org/programs/MSI_MENA/2006/MSIMENA06_iraq.asp

Amnesty International Press Release. June 2008. <http://www.amnesty.org/en/library/info/MDE14/014/2008/en>

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault on a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | **NO**

Comments:

From IREX's Media Sustainability Index report on Iraq 2006/7: Iraq was the deadliest country in the world for the media for the fifth straight year in 2007. According to the Iraqi Journalist Rights Defense Association (IJRDA) annual report, Violations of Freedom of the Press and Freedom of Expression in Iraq for 2007, 54 journalists were assassinated during the year. In addition, 31 journalists were arrested, 10 were abducted, and 10 media outlets raided."

The Brookings Institute's July 2008 edition of the Iraq Index reported 5 journalists killed so far in 2008 and 32 killed in 2007.

Soran Mama Hama was killed in Kirkuk. It is believed he was killed because of his recent report that the police in Kirkuk were in charge of some prostitution rings.

In a press release from September 2007, Amnesty International reports: "Several journalists and writers from the Kurdistan region of Iraq have received death threats in recent days. One of those threatened, Souran Omar, was named on a list of journalists at risk of being killed, apparently for their criticism of political parties in the region. Two others named on the list have been killed."

References:

Reporter is Slain in Kirkuk," Committee to Protect Journalists, www.cpj.org/news/2008/mideast/iraqzzjul08na.html (New York, NY, July 22, 2008).

Iraq 2006/7 Report. Middle East and North Africa (MENA): Media Sustainable Index. IREX. http://www.irex.org/programs/MSI_MENA/2006/MSIMENA06_iraq.asp

<http://www.amnesty.org/en/library/info/MDE14/020/2008/en>

Iraq Index: Tracking Variables of Reconstruction & Security in Post-Saddam Iraq. Brookings Institute. July 31, 2008. <http://www.brookings.edu/saban/~media/Files/Centers/Saban/Iraq%20Index/index20080731.pdf>

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

59
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

0

12a. In law, citizens have a right of access to government information and basic government records.

YES | **NO**

Comments:

The constitution does not take a position about the matter.

References:

Absent from Iraqi Constitution.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

References:

Absent from the Iraqi Constitution and other relevant laws.

Some of the records are available on the websites of the Board of Supreme Audit and the Iraqi Council of Representatives.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

Comments:

There is no established mechanism. But some government offices, such as the Board of Supreme Auditing, publish reports on their websites.

References:

Absent from relevant laws.

www.bsairaq.net.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

0

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

No such requirement exists in law.

U.S. Government Accountability Office study, www.gao.gov/newitmes/d071195.pdf.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

No such requirement exists in law.

U.S. Government Accountability Office study, www.gao.gov/newitmes/d071195.pdf.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

No such requirement exists in law.

U.S. Government Accountability Office study, www.gao.gov/newitmes/d071195.pdf.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

No such requirement exists in law.

U.S. Government Accountability Office study, www.gao.gov/newitmes/d071195.pdf.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

References:

Interview, Radhi, 60 Minutes, CBS News, www.cbsnews.com/stories/2008/04/11/60minutes/main4009328_page4.shtml (April 11, 2008).

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁴⁹Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Article 20, Iraqi Constitution.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Article 56, Iraqi Constitution.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

50

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

References:

Iraqi Evidence of Voting Irregularities Clouds Mostly Successful Elections," Radio Free Europe/Radio Liberty (Mosul, February 2005).

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

In a press release from the UNAMI and the IHEC, the Chief Electoral Officer Judge Qasim Sachit was quoted as saying: The 2009 elections will see for the first time the use of a voter list printed at the polling station level, one of the most significant anti-fraud measures to prevent multiple voting." Obviously, this new system is yet to be tested.

References:

Struck, Doug, Iraqi Parties Complain of Vote Irregularities," Washington Post (Dec. 18, 2005).

"62 days separate Iraq from the crucial provincial elections on 31 January 2009" Press Release from the IHEC and UNAMI. November 30, 2008. <http://www.unirag.org/newsroom/getarticle.asp?ArticleID=881>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Disagreements occurred in the Iraqi legislature over a draft election bill's proposal for the formulation of the provincial council of Kirkuk. Although the law passed in the legislature, the President rejected of the draft election law in July 2008 saying that the majority of votes was not enough and demanding a better consensus from legislators. Subsequent delays in legislative debates led to the rescheduling of the October 2008 provincial level elections.

The provincial elections are now scheduled to be held on January 31, 2009.

References:

U.S. Government Accountability Office Study, www.gao.gov/newitmes/d071195.pdf.

Iraq provincial elections risk delay." Middle East Online. July 24, 2008. http://www.iraqupdates.com/p_articles.php/article/34189

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

35

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Both laws limits and bans former Baathist Party members from running in elections.

References:

The De-Baathification Law, Coalition Provisional Authority (CPA).

The Accountability and Justice Law, Iraqi Council of Representatives (2007).

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | **NO**

Comments:

No leading member of the Baath party has the right to run for political office.

References:

The De-Baathification Law.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | **75** | 50 | 25 | 0

Comments:

Both laws prohibit former Baath party members from running or forming political parties. However, more than 300 political parties registered for the 2005 national elections.

References:

The De-Baathification Law, Coalition Provisional Authority (CPA), (2003).

The Accountability and Justice Law, Iraqi Council of Representatives (2007).

Iraq Index: Tracking Variables of Reconstruction & Security in Post-Saddam Iraq. Brookings Institute. July 31, 2008. <http://www.brookings.edu/saban/~media/Files/Centers/Saban/Iraq%20Index/index20080731.pdf>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | **0**

Comments:

The party-list system also prevents individuals from effectively entering politics without the strong support or patronage of political parties themselves.

References:

De-Baathification law.

Moore, Solomon, Uncertainty Surrounds New Iraq De-Baathification Law,” www.iht.com/articles/2008/01/14/africa/baghdad.php (Jan. 14, 2008).

Allawi, Ayad. “How Iraq’s elections set back democracy.” <http://www.iht.com/articles/2007/11/02/opinion/edallawi.php> (2 Nov 2007)

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

As of November 2007 the make-up of the representation of coalition parties in legislature looked like this:

The United Iraqi Alliance had 83 seats, the Kurdistan Coalition had 53, the Iraqi Accordance Front had 44, the Sadrist Movement had 30, the Virtue Party (Fadhila) had 15 and the National Iraqi List had 25. There were also smaller coalitions represented such as: Iraqi National Dialogue Front (11), Islamic Union of Kurdistan (5), Liberation and Reconciliation Bloc (3), Message Carriers (2), Mithal Alousi List for the Iraqi Nation (1), Iraqi Turkoman Front (1), Yezidi Movement for Progress and Reform (1) and Al Rafadeen List (1).

In a report before the U.S. Senate’s Committee on Foreign Relations in September 2007, the Government Accountability Office discussed concern over the role of ethnic factions in party formation in Iraq:

The Iraqi government has not fulfilled commitments it first made in June 2006 to advance legislative, security, and economic measures that would promote national reconciliation among Iraq’s warring factions. Of particular concern is the lack of progress on de-Ba’athification legislation that could promote greater Sunni participation in the national government and comprehensive hydrocarbon legislation that would distribute Iraq’s vast oil wealth. In late August, Iraq’s senior Shi’a, Sunni Arab and Kurdish political leaders signed a Unity Accord signaling efforts to foster greater national reconciliation. The Accord covered draft legislation on de-Ba’athification reform and provincial powers laws, as well as setting up a mechanism to release some Sunni detainees being held without charges. However, the polarization of Iraq’s major sects and ethnic groups and fighting among Shi’a factions further diminishes the stability of Iraq’s governing coalition and its potential to enact legislation needed for sectarian reconciliation.”

The report also states that minority party legislators are protected even if the rights of citizen participants in minority parties remain “unprotected”

References:

Iraq Index:Tracking Variables of Reconstruction & Security in Post-Saddam Iraq. Brookings Institute. July 31, 2008. <http://www.brookings.edu/saban/~media/Files/Centers/Saban/Iraq%20Index/index20080731.pdf>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

80

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

All employees of the IHEC must sign a code of conduct which states: "I shall not be affiliated to, cooperate with or be biased towards any entity or political party as long as I am working for the Commission."

References:

The Election Commission Law.

Iraqi Constitution, Article 102.

IHEC Employee Code of Conduct. Adopted July 2007. http://www.ihec.iq/content/file/ihec_codes_conduct/ihec_code_conduct_employees_en.pdf

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

Comments:

According to the UNAMI report on the selection process for the IHEC Board of Commissioners, the 9 commissioners were chosen by a subcommittee of the Council of Representatives. This subcommittee was made up of members of the council with various backgrounds and other sub-committee affiliations. The application was open to the public and a strict timeline was followed in selecting the IHEC commissioners. The UNAMI monitored the appointments and concluded that the Council of Representatives followed best practice" methods in their selection process.

References:

Elaph.com, www.iraqupdates.com/p_articles.php/article/3935.

Report of IHEC Commissioner Nomination Process: Observations and Conclusions. Prepared by UNAMI. April 2007. http://www.ihec.iq/ihec/content/file/ihec_commissioner_nomination_report_en.pdf

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

Comments:

The official election commission has a permanent staff, but they expressed the need for increased staffing.

In an article in April 2008, Iraqi newspaper Voices of Iraq reported: UN representative for Iraq Staffan Di Mistura on Saturday welcomed submitting candidate names for electoral office directors in provinces, conceding a delay in submitting candidates to Baghdad two major bureaus chiefs despite an extension to the deadline." This delay is one of the reasons that the Iraqi regional elections had to be pushed back to January 2009.

References:

Report about selections of local directors for the election commission, Asharqalawsat newspaper, <http://www.asharqalawsat.com/details.asp?section=4&issueno=10699&article=462604&feature=>

Iraqi Council of Representatives.

UNAMI chief urges Parliament to select Baghdad electoral office directors." Voices of Iraq. April 2008. http://www.iraqupdates.com/p_articles.php/article/30350

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

In the past, the Election Commission has released regular reports. The current commission, the IHEC, has not presided over an election yet. The next election is scheduled for January 2009.

References:

Reported on investigations about misuse of funds by the Commission, The Election Commission, <http://www.iraqcenter.net/vb/23123.html>.

Report about provincial election, http://www.moheet.com/show_news.aspx?nid=174676&pg=1.

BBC Arabic report, http://news.bbc.co.uk/hi/arabic/middle_east_news/newsid_4244000/4244031.stm (Feb. 7, 2005).

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Articles 38-45 of Law No. (36) of 2008 outline the punishment criteria for different election crimes. There has not been an election to date which the IHEC has presided over. The next election is scheduled for January 2009.

References:

Law No. (36) of 2008 http://www.ihec.iq/content/file/cor_laws/cor_law_36_2008_elections_law_en.pdf

The Iraqi press.

Press publications of Al Wifaq party.

Press publications of the parliamentary group of Al Iraqia list.

Interviews with representatives of the above list:

Mr Usama Nujaifi, member of parliament, (Amman, June 2008).

Interview with Dr Salih Mutlak, head of Al-Hiwar Party.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

67

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | **50** | 25 | 0

Comments:

Though officially there is voter registration system, the fact is that two million Iraqis are now displaced inside Iraq in addition to another two millions who live abroad and who are not yet registered. Plans are set to register them.

In the 2005 election, there was an attempt to include Iraqis living outside Iraq in the election, but no similar effort has been made for the provincial election that should take place before January 2009.

All Iraqis can take part in the elections provided they present the relevant personal documents, but some did not register, both out of fear and to boycott the process.

Only Iraqis living inside Iraq can register and take part in the provincial elections scheduled to take place before January 2009.

A voter has the right to object about the registrar of voters.

Voters' registrars were burned and looted in the City of Mosul.

It was reported that 100 thousand non-Iraqi names were deleted from the 2005 election registrars.

References:

Iraqi Independent High Electoral Commission.

<http://www.asharqalawsat.com/details.asp?section=4&article=278627&issueno=9551>).

http://www.ihec.iq/Register-to-Vote-Ihec/A1_2008.htm.

<http://www.zowaa.org/nws/ns7/n180708-3.htm>.

http://ninanews.com/elections/Arabic/News_Details.asp?ar95_VQ=EHI).

<http://www.alarabnews.com/alshaab/2004/26-11-2004/n3.htm>.

http://www.albasrah.net/pages/mod.php?mod=art&lapage=../ar_articles_2008/0808/sabah_150808.htm (Aug. 15, 2008).

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

Order 2 regulates objections and applies to election results.

References:

Independent High Electoral Commission website and laws.

<http://www.uniraq.org/aboutus/ElectoralSupport.asp>.

Independent High Electoral Commission, Order 18, disciplinary code for the Electoral Commission (June 19, 2004).

<http://www.alsabaah.com/paper.php?source=akbar&mlf=cqpy&sid=7555>.

Independent High Electoral Commission Order 2, <http://www.ihec.iq/Shkawee&Of=lhec/Shakawe-lhec2008.htm> (2008).

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The Election Commission deals with all types of election complains and issues judgments. One example is the case of the ex-Prime Minister Ead Alwai, who filed an objection against the Supreme Islamic Party campaigning with religious figures in parliamentary elections.

References:

Elaph.com.

Several western media outlets.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

Several press reports described how the Iraqi military and interior ministry forces used their influence and authority to sway voters and influence the vote.

Recently, the new provincial election law stated that the armed forces would have separate places to vote. They will be influenced by their commanders and will tend to abide by their wishes.

The first website article states that in regards to the forthcoming provincial elections to take place January 31, 2009, members of the election commission complained on August 16 that the Iraqi armed forces are interfering with government parties.

According to the second article, the Armed forces were neutral in the 2005 elections.

Arabic.people.com article states that spokesman from the Independent Election Commission confirmed the positive role of the armed forces in preparing for the 2005 elections.

The final report states that the Electoral Commission also confirmed the neutrality of the armed forces in 2005 elections.

References:

<http://almaalafpress.net/?d=143&id=66952>.

<http://ebaa.net/khaber/2005/01/16/khaber005a.htm>.

<http://arabic.people.com.cn/31662/3129833.html>.

<http://www.uniraq.org/documents/ElectoralMaterial/150708/Fact%20sheet%20on%20security%20for%20electoral%20events%20Arabic.pdf>.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

According to the law, it is left to the commission to supervise the elections and no provision is made for international observers, though domestic ones have to be assigned by the Commission, .

But the final decision remains in the hands of the Independent High Commission (IHEC), which will decide who can monitor. The monitors can report to the commission, but they are not allowed to act independently.

References:

Law No. 92, Article 3, section E, Establishment of the Higher Independent Election Commission (May 13, 2004).

www.uniraq.org/aboutus/electoralsupport.usp.

<http://www.uniraq.org/aboutus/ElectoralSupport.asp>.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | **50** | 25 | 0

Comments:

During the last elections, the monitors came from outside the country, making it less effective.

The United Nations along with other groups who are granted permission by the Independent High Electoral Commission (IHEC) can report any irregularity to the Commission. In addition, the IHEC has encouraged members of Iraqi civil society groups or political parties to apply to be election observers in the 2009 elections. A press release from the IHEC quotes Chairman Faraj Al-Haydari as saying, "observation is key and will provide the people of Iraq the confidence to come out and vote."

However, a lack of security renders it almost impossible for outside observers to monitor the elections.

References:

<http://www.uniraq.org/aboutus/ElectoralSupport.asp>.

62 days separate Iraq from the crucial provincial elections on 31 January 2009" Press Release from the IHEC and UNAMI. November 30, 2008. <http://www.uniraq.org/newsroom/getarticle.asp?ArticleID=881>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

From the IHEC Regulation No. 1 of 2007: The Independent High Electoral Commission (IHEC) of Iraq was established according to law No. 11 of 2007, issued by the Council of Representatives to be the exclusive electoral authority in Iraq. The IHEC is a professional, governmental, independent, neutral and autonomous body, subject to the supervision of the Council of Representatives”

The process of creating a sustainable election monitoring agency, with a full-time staff, regulations and jurisdictional powers has occurred in 2007-2008. According to a GAO testimony as of September 2007, a national election commission (IHEC) had been established but it had not yet been supplemented with supporting laws regulating local level elections.

References:

The Election Commission established by the CPA and the subsequent Independent High Electoral Commission.

GAO Testimony presented to the U.S. Committee on Foreign Relations. September 4, 2007 <http://www.gao.gov/new.items/d071220t.pdf>

Independent High Electoral Commission Regulation No. 1 of 2007. Rules and Procedures of the Board of Commissioners. http://www.uniraq.org/documents/ElectoralMaterial/211208/IHEC_Regulation_No._1_IHEC_rules_of_procedure_2007_English.pdf

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

82
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

14

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

References:

Coalition Provisional Authority Order 97: No political entity may be directly or indirectly financed by any armed force or militia.”

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

This presents problems for the political process.

References:

These limits are absent from election law.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | **NO**

Comments:

This presents a problem for the political process.

References:

These limits are absent from election law.

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | **NO**

References:

These limits are absent from election law.

YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | **NO**

References:

The election law does not mention these requirements.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | **NO**

References:

The election law does not mention these requirements.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | **NO**

References:

No agency of this kind is mentioned in the election law.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

0

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | **NO**

References:

There is no mention of these regulations in the election law.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | **NO**

References:

There is mention of these limits in the election law.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | **NO**

References:

No reference to limits on corporate donations to individual political candidates in the election law.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | **NO**

References:

No reference to requirements for the disclosure of donations to individual political candidates in the election law.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | **NO**

References:

No reference to requirements for the independent auditing of the campaign finances of individual political candidates in the election law.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | **NO**

References:

No reference to an agency or entity that monitors the financing of individual political candidates' campaigns in the election law.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | **0**

References:

Such limits on individual donations to political parties do not exist.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

References:

Limits on corporate donations to political parties do not exist.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:

No reference to limits on total party expenditures in the election law. Such requirements do not exist.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or

accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Independent High Electoral Commission (IHEC) does not supervise or initiate such laws.

References:

No reference to agencies that monitor the financing of political parties in the election law.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

No reported cases of penalties being imposed.

References:

There is no reference to an agency or entity monitoring the financing of political parties in the election law.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

References:

No reference to auditing of political parties in the election law or even any mention of such reports.

100: Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

References:

There is no reference to limits on individual donations to political candidates in the election law.

Walter, Pincus, Shhhh . . . There Is Corruption in Iraq," Washington Post, <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/24/AR2007062401301.html> (June 25, 2007).

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

References:

Walter, Pincus, Shhhh . . . There Is Corruption in Iraq," Washington Post, <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/24/AR2007062401301.html> (June 25, 2007).

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

No regulations in the law.

The media has not reported any investigations.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

The law does not regulate financing of individual candidates' campaigns.

The media has not reported instances of these offenses.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

Auditing is not done in practice.

References:

There is no reference to the auditing of campaign finances in the election law.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

0

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

There is no reference to political parties disclosing data relating to financial support and expenditures in the election law. There are no such reported instances.

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Access to these records is not possible in practice.

References:

There is no reference to citizen access to financial records of political parties in the election law.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

There is no reference to citizens accessing the financial records of political parties in the election law.

www.freedomhouse.org/inc/content/pubs/fiw/inc-country-detail.cfm?year=2007country=7197&pf.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

No reference in the election law to individual political candidates disclosing data relating to financial support and expenditures within a reasonable time period.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

There is no reference in the election law to citizens accessing the financial records of individual candidates within a reasonable time period.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

So far, such records have not been available for access in Iraqi elections.

References:

No reference in the election law to citizens accessing the financial records of individual candidates at a reasonable cost.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ~~59~~ Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

50

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The prime minister holds press conferences as well as attends some parliamentary meetings to explain his program, but he has not been officially questioned by the parliament.

The Al Malki press release discussed the media and the need for reform.

References:

Al Malki Meets with Baghdad Provincial Counsel to Discuss Reforms," http://eyeiraq.com/show/13158.html?action=results&poll_ident=39. (Oct. 30, 2008).

Interview with Al Maliki, Al Iraqiya TV (May 29, 2005).

"Al Tawfiq Block Threatens to Withdraw Because Al Maliki Is Not Responding to Their Requests," <http://mazyonal3in.ios.st/Front/NewsNet/sections.asp?sectionId=75775>.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Article 90:

The Federal Supreme Court shall have jurisdiction over the following:

First: Oversight of the constitutionality of laws and regulations in effect.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | **25** | 0

Comments:

Though the Judiciary can theoretically review the actions of the executive, in practice yjr review is very limited judging from the experience of the Iraqi Integrity Commission.

References:

Interview, Radhi Al Radhi (Oct. 2007).

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Article states: Two days after former Iraqi Judge Radhi al-Radhi testified in Congress about the rampant corruption within the Iraqi government, Prime Minister Nouri al-Maliki struck back. On Saturday, Maliki, who weeks ago forced out Radhi as Iraq's anticorruption chief, announced his government will prosecute Radhi for smuggling documents, for libeling Maliki, and for engaging in corruption himself."

The prime minister limited the action of the Integrity Commission by passing an executive order that no minister can be questioned without his approval. From a report by the Office of the Special Inspector General For Iraq Reconstruction: "On April 1, 2007, the Prime Minister's Office issued an order to all Ministries including the CoI that effectively limited their authority. To illustrate, the memo stated that the CoI was not to refer any personnel in the Presidential Office, the Council of Ministers, or current or previous ministers to court without approval of the Prime Minister."

References:

Corn, David, Judge Radhi Testifies on Iraqi Corruption; GOPers Attack—UPDATE," <http://www.thenation.com/blogs/capitalgames?pid=240234>, (Oct. 5, 2007).

Testimony by Al-Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

"Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCAAB827.pdf

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

But no law regarding prosecution of government officials has been passed yet.

References:

The Constitution, Article 93, section 6: re settling accusations directed against the President, the Prime minister and the Ministers; this shall be regulated by law.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

So far, most prosecutions center around the main issue of corruption.

In practice, several ministers were prosecuted and sentenced but only after they left office. Among these ministers were Hazim Al Shalan (Minister of Defense) and Ayham Sammurai (Minister of Electricity).

According to a report from the Office of the Special Inspector General For Iraq Reconstruction, there is a loophole that allows ministers to protect their employees from being investigated or prosecuted: Paragraph 136(b) of the Iraq Criminal Procedure Code: This code allows ministers to halt a corruption proceeding and thereby prevent the arrest of their employees. DoS reported in its 2007 Human Rights Report that in 2007 ministers used this provision at least 67 times to halt the adjudication and arrest of employees, well above the 15 or more times it was used in 2006. DoS also noted that unlike 2006, in 2007 no new high-profile cases were brought to court."

References:

The Iraqi Penal Law, No.111, year 1969, and Criminal Law, year 1971: both still effective and give the right to prosecute ministerial low-level officials for their crimes.

Section 91, Iraqi Constitution: gives the Supreme Federal Law the authority to prosecute any government senior official for crimes committed by him.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCAA827.pdf

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

56

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

The Commission on Public Integrity issued a Code of Conduct for all government officials (No (1) 2006). This theoretically covers all state employees.

The Commission On Public Integrity also issued a Regulation of Financial Interests (No (1) 2005) directing officials such as the president, his deputies, members of Parliament, ministers, all Commission on Public Integrity staff, general managers of state-run companies, judges, and certain military and police officers to file personal assets disclosure forms. These forms were to contain personal information detailing personal assets such as land, bank accounts (both inside and outside Iraq) and other information which related to officials income.

Covered officials were to have submitted a financial disclosure report to the Commission on Public Integrity directly after their appointment to office. They were also required to file subsequent annual reports as well as file a final report thirty days after leaving government service.

In practice, officials have not followed the financial disclosure requirements or other conflicts of interest provisions laid out by the Commission.

References:

Testimony, Al-Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done” Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCAAB827.pdf

Code of Conduct (No (1) 2006)

Regulation of Financial Interests (No (1) 2005)

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

The Commission on Public Integrity issued a Code of Conduct for all government officials (No (1) 2006). This theoretically covers all state employees.

The Commission On Public Integrity also issued a Regulation of Financial Interests (No (1) 2005) directing officials such as the president, his deputies, members of Parliament, ministers, all Commission on Public Integrity staff, general managers of state-run companies, judges, and certain military and police officers to file personal assets disclosure forms. These forms were to contain personal information detailing personal assets such as land, bank accounts (both inside and outside Iraq) and other information which related to officials income.

Covered officials were to have submitted a financial disclosure report to the Commission on Public Integrity directly after their appointment to office. They were also required to file subsequent annual reports as well as file a final report thirty days after leaving government service.

In practice, officials have not followed the financial disclosure requirements or other conflicts of interest provisions laid out by the Commission.

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done” Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

Code of Conduct (No (1) 2006)

Regulation of Financial Interests (No (1) 2005)

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Iraqi Criminal Law, Articles 442-3.

Code of Conduct (No (1) 2006)

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

The Commission on Public Integrity issued a Code of Conduct for all government officials (No (1) 2006). This theoretically covers all state employees.

The Commission On Public Integrity also issued a Regulation of Financial Interests (No (1) 2005) directing officials such as the president, his deputies, members of Parliament, ministers, all Commission on Public Integrity staff, general managers of state-run companies, judges, and certain military and police officers to file personal assets disclosure forms. These forms were to contain personal information detailing personal assets such as land, bank accounts (both inside and outside Iraq) and other information which related to officials' income.

Covered officials were to have submitted a financial disclosure report to the Commission on Public Integrity directly after their appointment to office. They were also required to file subsequent annual reports as well as file a final report thirty days after leaving government service.

In practice, officials have not followed the financial disclosure requirements or other conflicts of interest provisions laid out by the Commission.

References:

Integrity Law, Article 55, part V, 2004.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

Code of Conduct (No (1) 2006)

Regulation of Financial Interests (No (1) 2005)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

Apart from the de-Baathification Law, no.

References:

Absent from the Iraqi Constitution.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

References:

Both the Iraqi Constitution and the bylaws are silent on the matter.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | **50** | 25 | 0

Comments:

Article claims that Talabani gives away gifts himself. No case of this was presented to a court of law.

The Code of Conduct is simply not followed in practice or enforced regularly.

References:

New Yorker, Jalal Talabani," (Feb 5, 2007).

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Code of Conduct (No (1) 2006)

Interview with Durgham Fadel, Lecturer, Basra University

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

The Integrity Commission tried to implement audits, but were faced with refusal. A report from the Office of the Special Inspector General for Iraq Reconstruction describes the inability of the Commission on Integrity to enforce the submission of audit reports: although the organization is required by law to enforce officials' filing of financial disclosure reports, [U.S.] DoS concluded it was not powerful enough to enforce the requirement."

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Interview with former Chief Integrity Commissioner (Nov. 3, 2008).

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCAAB827.pdf

Interview with Durgham Fadel, Lecturer, Basra University

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

33

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

Theoretically, yes. An electronic disclosure program was adopted to make such disclosures available to the public (were they ever to be filed). The program was initiated by the Ministry of Finance but was halted because of the kidnapping of some of the program managers.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The only way to access the records of a head of state or other senior officials was through the Electronic Government project which was halted when the Ministry of Finance was raided by militias and the people responsible for the project were abducted.

With the closure of the electronic program, there is no way for citizens to access any information about official assets.

A report from the Office of the Special Inspector General for Iraq Reconstruction describes the inability of the Commission on Integrity to enforce the submission of audit reports: although the organization is required by law to enforce officials' filing of financial disclosure reports, [U.S.] DoS concluded it was not powerful enough to enforce the requirement." The issue is not that citizen access is denied, but that the audit reports are not submitted by members of the executive branch.

References:

Interview, Judge Radhi (Nov. 3, 2008).

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCAAB827.pdf

Interview with Durgham Fadel, Lecturer, Basra University

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The only way to access the records of a head of state or other senior officials was through the Electronic Government project which was halted when the Ministry of Finance was raided by militias and the people responsible for the project were abducted.

With the closure of the electronic program, there is no way for citizens to access any information about official assets.

A report from the Office of the Special Inspector General for Iraq Reconstruction describes the inability of the Commission on Integrity to enforce the submission of audit reports: although the organization is required by law to enforce officials' filing of financial disclosure reports, [U.S.] DoS concluded it was not powerful enough to enforce the requirement." The issue is not that citizen access is denied, but that the audit reports are not submitted by members of the executive branch.

References:

Interview, Judge Radhi (Nov. 3, 2008).

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCAAB827.pdf

Interview with Durgham Fadel, Lecturer, Basra University

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. Can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

This refers to administration law.

References:

The Iraqi Constitution, Article 84, section 3: Third: Settle matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law shall guarantee the right of each of the Cabinet, the concerned individuals and others of direct contest with the Court."

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

50

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | **50** | 25 | 0

Comments:

The first reference is in Arabic and discusses the use of official positions to promote party interests.

Political leaders do sometimes make use of the state facilities for party purposes.

References:

<http://www.iraqihome.com/tayseer-alaloosi68.htm>.

Police Must be Held Accountable for Killings,” Human Rights Watch News, <http://www.iraq-amsi.org/news.php?action=view&id=28755&efd87f76970a5f45eb30d1abc6a4d1de> (Oct. 29, 2006).

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

67

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

From the UNDP-POGAR website: The Supreme Federal Court will have the following duties: overseeing the constitutionality of

federal laws and standing regulations; interpreting the text of the constitution; ruling in cases that emerge from the implementation of federal laws; ruling in disputes between the federal government and the governments of the regions, provinces, and local administrations; and endorsing the final results of parliamentary general elections. The rulings and decisions of the Supreme Federal Court are final and all authorities should abide by them. "

One benchmark for the Iraqi government by the U.S. government detailed the need for a Constitution Review Committee to be established by legislature. According to this benchmark, a constitutional review was set to occur by August 2007. As of September 2007, a Constitutional Review Committee had not been established by the Iraqi Legislature and no review had been completed.

References:

Iraqi Constitution. Article 93, Section 1: The federal Supreme Court shall have jurisdiction over overseeing the constitutionality of laws and regulations in effect". This includes laws passed by the Council of Representatives.

UNDP-POGAR Analysis of Democratic Governance in the Arab Nations. <http://www.pogar.org/countries/theme.asp?th=9&cid=6>

GAO Testimony presented to the U.S. Committee on Foreign Relations. September 4, 2007 <http://www.gao.gov/new.items/d071220t.pdf>

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

As of September 2007, a Constitutional Review Committee had not been established by the Iraqi Legislature and no review had been completed. This failed to meet a benchmark requirement with the U.S. Senate. However, there is a commission in existence whose purpose is focused on reviewing anti-corruption law. The list of goals for the Commission on Integrity includes: to review and amend laws and draft laws to counteract corruption."

References:

Elections Law Might go to Supreme Court," www.iraqalaa.com (July 24, 2008).

GAO Testimony presented to the U.S. Committee on Foreign Relations. September 4, 2007 <http://www.gao.gov/new.items/d071220t.pdf>

"Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCAAB827.pdf

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

However, according to a report from the Office of the Special Inspector General for Iraq Reconstruction, there is a loophole in the constitution: The Iraq Constitution provides immunity from arrest to members of the Council of Representatives (CoR) unless the member is caught in a criminal act or charged with a felony and the immunity is overturned by a majority vote of the CoR.”

References:

Iraqi Constitution, Article 63, section 2, clause B.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done” Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCAAB827.pdf

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

46

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

The Commission on Public Integrity issued a Code of Conduct for all government officials (No (1) 2006). This theoretically covers all state employees.

The Commission On Public Integrity also issued a Regulation of Financial Interests (No (1) 2005) directing officials such as the president, his deputies, members of Parliament, ministers, all Commission on Public Integrity staff, general managers of state-run companies, judges, and certain military and police officers to file personal assets disclosure forms. These forms were to contain personal information detailing personal assets such as land, bank accounts (both inside and outside Iraq) and other information which related to officials income.

Covered officials were to have submitted a financial disclosure report to the Commission on Public Integrity directly after their appointment to office. They were also required to file subsequent annual reports as well as file a final report thirty days after leaving government service.

In practice, officials have not followed the financial disclosure requirements or other conflicts of interest provisions laid out by the Commission.

According to a report from the Office of the Special Inspector General for Iraq Reconstruction, the Commission on Integrity’s mandate includes the enforcement of complete disclosure of the financial interests of governmental officials.”

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done” Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCAAB827.pdf

Code of Conduct (No (1) 2006)

Regulation of Financial Interests (No (1) 2005)

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

Apart from the de-Baathification Law, no

References:

There is no such a law.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

Talabani was accused of giving away cash himself.

The Commission on Public Integrity issued a Code of Conduct for all government officials (No (1) 2006). This theoretically covers all state employees. It is not enforced in practice.

References:

Talabani Profile, The New Yorker, (Feb 5, 2007).

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Code of Conduct (No (1) 2006)

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

According to a report from the Office of the Special Inspector General for Iraq Reconstruction, the mandate for the Commission on Integrity includes enforcing: complete disclosure of the financial interests of governmental officials.”

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done” Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

Regulation of Financial Interests (No (1) 2005)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

There are no such laws regarding regulations restricting post-government private sector employment for national legislators and so nothing is enforced in practice.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Talabani was giving cash to members of the Council of Representatives while on a flight to Tehran.

The Code of Conduct is not enforced with any regularity.

References:

Talabani Profile, The New Yorker (Feb 5 2007).

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Code of Conduct (No (1) 2006)

Interview with Durgham Fadel, Lecturer, Basra University

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

A report from the Office of the Special Inspector General for Iraq Reconstruction describes the inability of the Commission on Integrity to enforce the submission of audit reports: although the organization is required by law to enforce officials filing of financial disclosure reports, [U.S.] DoS concluded it was not powerful enough to enforce the requirement.”

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done” Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

Interview with Durgham Fadel, Lecturer, Basra University

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Regulation of Financial Interests (No (1) 2005)

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Radhi's testimony suggests there is a Financial Disclosure requirement, at least theoretically, in law.

A report from the Office of the Special Inspector General for Iraq Reconstruction describes the inability of the Commission on Integrity to enforce the submission of audit reports: although the organization is required by law to enforce officials' filing of financial disclosure reports, [U.S.] DoS concluded it was not powerful enough to enforce the requirement." The issue is not that citizens can't access the audit reports, but that the reports are not submitted.

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Radhi's testimony suggests there is a Financial Disclosure requirement, at least theoretically, in law.

A report from the Office of the Special Inspector General for Iraq Reconstruction describes the inability of the Commission on Integrity to enforce the submission of audit reports: although the organization is required by law to enforce officials' filing of

financial disclosure reports, [U.S.] DoS concluded it was not powerful enough to enforce the requirement.” The issue is not that citizen access is denied, but that the audit reports are not submitted by legislators.

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done” Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

83

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Citizens can access and process documents, since they are available on the Council's website. However, the documents not very comprehensive.

References:

www.parliament.iq.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The records of legislative processes and documents are not complete or comprehensive.

References:
www.parliament.iq.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
What records of legislative processes and documents are available are online.

References:
www.parliament.iq.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49
III-3. Judicial Accountability

36. Are judges appointed fairly?

83

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

On the federal level, the judicial appointments have to be approved by parliament; the mid-level judges are nominated by the Minister of Justice and approved by the cabinet.

As of June 2008, there were 1,180 trained judges in Iraq.

An institution called the Judicial Institute (JI) belongs to the Ministry of Justice and has the responsibility for preparing Iraqi judges.

References:

Iraqi Constitution

Article 88:

The Higher Juridical Council shall exercise the following authorities:

First: To manage the affairs of the Judiciary and supervise the Federal Judiciary.

Second: To nominate the Chief Justice and members of the Federal Court of Cassation, the Chief Public Prosecutor, the Chief Justice of the Judiciary Oversight Commission and present them to the Council of Representatives to approve their appointment.

Iraq Index:Tracking Variables of Reconstruction & Security in Post-Saddam Iraq, Brookings Institute. July 31, 2008. <http://www.brookings.edu/saban/~media/Files/Centers/Saban/Iraq%20Index/index20080731.pdf>

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Judges are always under pressure if they fail to follow party laws or regulations.

The Judicial Institute generally follows a selection process that is more technical than political, but as with everything in Iraq, there is a political backdrop to all appointments.

References:

Freedom in Iraq,” Freedom House (2007).

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

Iraqi Constitution, Article 88. The Higher Judicial Council presents names to the Council of Representatives which then have to confirm candidates.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

42

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

While the Iraqi Constitution is supposed to regulate such issues, it has not done so yet.

References:

Article 93, Iraqi Constitution: The law shall regulate the establishment of courts...service of judges, their discipline and their retirement."

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

While the Iraqi Constitution is supposed to regulate such issues, it has not yet.

References:

Article 93, Iraqi Constitution: The law shall regulate the establishment of courts...service of judges, their discipline and their retirement."

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The agency is known as the Supervisory Board and consists of a President and two Vice-Presidents and a sufficient number of forensic supervisors, judges. It is based in Baghdad and was created under the auspices of Law No. (124) in 1979. The Board has the task of monitoring and supervising the work of Iraqi courts except the Court of Cassation. It also deals with investigations into judicial impropriety and can report allegations to the Council of the Judiciary.

References:

Article 93, Iraqi Constitution: The law shall regulate the establishment of courts...service of judges, their discipline and their retirement."

Law No. (124) (1979)

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

The agency is known as the Supervisory Board and consists of a President and two Vice-Presidents and a sufficient number of forensic supervisors, judges. It is based in Baghdad and was created under the auspices of Law No. (124) in 1979. The Board has the task of monitoring and supervising the work of Iraqi courts except the Court of Cassation. It also deals with investigations into judicial impropriety and can report allegations to the Council of the Judiciary. The Board is ostensibly free from interference from the executive or legislative branches.

References:

Article 93, Iraqi Constitution: The law shall regulate the establishment of courts...service of judges, their discipline and their retirement."

Law No. 124 (1979)

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

According to old Judicial Authority Law and the new Law of the Judicial Council (Judicial Organization Law, No. 160, year 1979, article 58; Law for the Re-organization of the Judicial Council, No. 53, dated Sept. 13, 2003, which states the Code of Conduct for the judiciary), it is the responsibility of this body to enforce discipline, but its work is still in early stages and accused judges seek protection from ruling political parties.

References:

Interview with Judge Radhi (Nov. 12, 2008).

Interview with Durgham Fadel, Lecturer, Basra University

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Judicial Council is still new and has yet to truly take on its full responsibilities, including the investigation and punishment of judges.

References:

Article 93, Iraqi Constitution: The law shall regulate the establishment of courts...service of judges, their discipline and their retirement."

Interview with Durgham Fadel, Lecturer, Basra University

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

50

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

The Commission on Public Integrity issued a Code of Conduct for all government officials (No (1) 2006). This theoretically covers all state employees.

The Commission On Public Integrity also issued a Regulation of Financial Interests (No (1) 2005) directing officials such as the president, his deputies, members of Parliament, ministers, all Commission on Public Integrity staff, general managers of state-run companies, judges, and certain military and police officers to file personal assets disclosure forms. These forms were to contain personal information detailing personal assets such as land, bank accounts (both inside and outside Iraq) and other information which related to officials' income.

Covered officials were to have submitted a financial disclosure report to the Commission on Public Integrity directly after their appointment to office. They were also required to file subsequent annual reports as well as file a final report thirty days after leaving government service.

In practice, officials have not followed the financial disclosure requirements or other conflicts of interest provisions laid out by the Commission.

According to a report from the Office of the Special Inspector General for Iraq Reconstruction, the mandate for the Commission on Integrity includes enforcing: complete disclosure of the financial interests of governmental officials."

References:

Article 93, Iraqi Constitution: The law shall regulate the establishment of courts...service of judges, their discipline and their retirement."

Interview with former Judge Al Radhi, however see comments below

"Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

Code of Conduct (No (1) 2006)

Regulation of Financial Interests (No (1) 2005)

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

Rarely enforced in practice, however.

References:

Article 93, Iraqi Constitution: The law shall regulate the establishment of courts...service of judges, their discipline and their retirement."

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

The Commission On Public Integrity also issued a Regulation of Financial Interests (No (1) 2005) directing officials such as the president, his deputies, members of Parliament, ministers, all Commission on Public Integrity staff, general managers of state-run companies, judges, and certain military and police officers to file personal assets disclosure forms. These forms were to contain personal information detailing personal assets such as land, bank accounts (both inside and outside Iraq) and other information which related to officials' income.

Covered officials were to have submitted a financial disclosure report to the Commission on Public Integrity directly after their appointment to office. They were also required to file subsequent annual reports as well as file a final report thirty days after leaving government service.

In practice, officials have not followed the financial disclosure requirements or other conflicts of interest provisions laid out by the Commission.

According to a report from the Office of the Special Inspector General for Iraq Reconstruction, the mandate for the Commission on Integrity includes enforcing: complete disclosure of the financial interests of governmental officials."

References:

Article 93, Iraqi Constitution: The law shall regulate the establishment of courts...service of judges, their discipline and their retirement."

"Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

Regulation of Financial Interests (No (1) 2005)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

There is no such law in relevant legislation.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

There is no such law in relevant legislation.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

The Code of Conduct is simply not enforced with any regularity.

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Code of Conduct (No (1) 2006)

Interview with Durgham Fadel, Lecturer, Basra University

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

A report from the Office of the Special Inspector General for Iraq Reconstruction describes the inability of the Commission on Integrity to enforce the submission of audit reports: although the organization is required by law to enforce officials' filing of financial disclosure reports, [U.S.] DoS concluded it was not powerful enough to enforce the requirement." The issue is not that citizen access is denied, but that the audit reports are not submitted by members of the judiciary.

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

Regulation of Financial Interests (No (1) 2005)

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

33

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

Theoretically, yes.

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Code of Conduct (No (1) 2006)

Regulation of Financial Interests (No (1) 2005)

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

A report from the Office of the Special Inspector General for Iraq Reconstruction describes the inability of the Commission on Integrity to enforce the submission of audit reports: although the organization is required by law to enforce officials' filing of financial disclosure reports, [U.S.] DoS concluded it was not powerful enough to enforce the requirement." The issue is not that citizen access is denied, but that the audit reports are not submitted by members of the judiciary.

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

A report from the Office of the Special Inspector General for Iraq Reconstruction describes the inability of the Commission on Integrity to enforce the submission of audit reports: although the organization is required by law to enforce officials' filing of financial disclosure reports, [U.S.] DoS concluded it was not powerful enough to enforce the requirement." The issue is not that citizen access is denied, but that the audit reports are not submitted by members of the judiciary.

References:

Testimony, Rahdi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

83

40a. In law, the legislature can amend the budget.

YES | NO

References:

Iraqi Constitution, Article 59, Section one.

First: The Council of Ministers shall submit the draft general budget bill and the closing account to the Council of Representatives for approval.

Second: The Council of Representatives may conduct transfers between the sections and chapters of the general budget and reduce the total of its sums, and it may suggest to the Cabinet to increase the total expenses, when necessary.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

Expenditures as stated in the budget, should be approved by the legislature, according to article 59.

References:

Iraqi Constitution, article 59, Section 2.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Due in part to massive migration of the professional classes, Iraqi government faces a shortage of personnel with budgetary and procurement training and/or experience. The U.S. government has made budget oversight a priority in recent capacity building projects for the Iraqi government.

From a GAO report: USAID has trained 500 ministry officials in procurement or budget execution. USAID also led the effort to implement an automated financial management information system for the government of Iraq, although this program was suspended in June 2007 following the kidnapping of five contractors involved in the project. U.S. advisors also work directly with key Iraqi ministries to assist with budget execution and procurement, among other responsibilities. It is difficult to determine the impact of these efforts on the capacity of the government of Iraq to spend its capital projects budget, given the limitations with available data, and because new programs specifically designed to improve Iraq's budget execution were established too recently for U.S. agencies to evaluate them. "

References:

Parliament Approves Budget, Vote, Amnesty Law," Washington Post (Feb. 14, 2008).

"Iraq Reconstruction: Better Data Needed to Assess Iraq's Budget Execution" U.S. Government Accountability Report to Congressional Committees. January 2008. <http://www.gao.gov/new.items/d08153.pdf>

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

42

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

There is an extensive and relatively transparency budgetary process led by the Ministry of Finance that concludes with formal Parliamentary hearings, debates, and amendments to the budget.

References:

Parliament Approves Budget, Vote, Amnesty Law," Washington Post (Feb. 14, 2008).

Interview with Abedel Ameer Jasim, an expert on fiscal management

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

The Council of Representatives is the only body that participates in the budget process. Neither citizens nor CSOs have formal access to provide input.

References:

Iraqi Constitution, Article 59, Section 1.

Interview with Abedel Ameer Jasim, an expert on fiscal management

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

References:

Iraqi Parliament website, www.parliament.iq.

Interview with Abedel Ameer Jasim, an expert on fiscal management

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

50

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

When there are reports, they are either incomplete or out of date.

The GAO reports: According to U.S. officials, the budget is appropriated and tracked at too high a level of aggregation to allow meaningful tracking of decisions because multiple projects can be combined on a single line. Reconciliation of budget accounts is often impossible as budget execution reports are submitted late or with incomplete information.”

References:

Iraq Reconstruction: Better Data Needed to Assess Iraq’s Budget Execution” U.S. Government Accountability Report to Congressional Committees. January 2008. <http://www.gao.gov/new.items/d08153.pdf>

Interview with Abedel Ameer Jasim, an expert on fiscal management

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

Most members and members occupying influential positions on the committee are from the ruling parties. The local Iraqi press dealt with this issue.

In allocating the 2008 Budget, the Kurdish block used its influence to delay the passage of the Bill until they were granted 17 percent of the budget while they used to be allocated only 13 percent under UN resolution before the U.S. invasion of Iraq.

The GAO reported on general budgetary practices across ministries: Further, a 2006 Department of Defense (DOD) report stated that Iraq’s government also confronts significant challenges in staffing a nonpartisan civil service and addressing militia infiltration of key ministries. The report noted that government ministries and budgets are sources of power for political parties, which staff ministry positions with party cronies as a reward for political loyalty.”

References:

<http://www.aljazeera.net/NR/exeres/D6527DC3-4D04-408D-8DFA-2ACFC93FE158.htm>

Iraq Reconstruction: Better Data Needed to Assess Iraq's Budget Execution" U.S. Government Accountability Report to Congressional Committees. January 2008. <http://www.gao.gov/new.items/d08153.pdf>

Interview with Abedel Ameer Jasim, an expert on fiscal management

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | **50** | 25 | 0

Comments:

Iraqi officials repeatedly said they lacked the qualified personnel to deal effectively with such investigations into financial irregularities.

In January 2008, the U.S. General Accountability Office reported: U.S. and Iraq reports show widely disparate rates for Iraqi government spending on capital projects. Accordingly, GAO cannot determine the extent to which the Iraqi government is spending its 2007 capital projects budget. In its September 2007 Iraqi benchmark assessment, the administration reported that Iraq's central government ministries had spent 24 percent of their 2007 capital projects budget, as of July 15, 2007. However, this report is not consistent with Iraq's official expenditure reports, which show that the central ministries had spent only 4.4 percent of their investment budget as of August 2007. The discrepancies between the official and unofficial data highlight uncertainties about the sources and use of Iraq's expenditure data."

References:

Dar Al-Hayat, <http://www.aljazeera.net/NR/exeres/D6527DC3-4D04-408D-8DFA-2ACFC93FE158.htm> (March 22, 2008).

Iraq Reconstruction: Better Data Needed to Assess Iraq's Budget Execution" U.S. Government Accountability Report to Congressional Committees. January 2008. <http://www.gao.gov/new.items/d08153.pdf>

Interview with Abedel Ameer Jasim, an expert on fiscal management

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

Financial Parliamentarian Committee.

Integrity Parliamentarian Committee.

www.parliament.iq.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁵¹ Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

The Civil Service Law, 2008 amendment.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

However, the De-Baathification Law limits the hiring of senior Baath Party members.

References:

Iraq's Enemy Within," The Guardian (2004).

The Civil Service Law, 2008 amendment.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

References:

Civil Service Law, 2008 amendment.

<http://www.alsabaah.com/paper.php?source=akbar&mf=interpage&sid=19973>.

<http://www.alnajafnews.net/najafnews/news.php?action=fullnews&id=65739>.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Regulations of Board of Supreme Audit.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

28

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In testimony before the Committee on Oversight and Government Reform, House of Representative, the Comptroller General of the US David Walker noted that Iraq's government confronts significant challenges in staffing a nonpartisan civil service and addressing militia infiltration of key ministries. In June 2007, DOD reported that militias influenced every component of the Ministry of Interior. In particular, the Ministry has been infiltrated by members of the Supreme Islamic Council of Iraq⁶ and its Badr Organization, as well as Muqtada al-Sadr's Mahdi Army.⁷ Furthermore, the Iraqi civil service remained hampered by staff whose political and sectarian loyalties jeopardized the civilian ministries' abilities to provide basic services and build credibility among Iraqi citizens, according to U.S. government reports and international assessments. DOD further found that government ministries and budgets were sources of power for political parties, and staff ministry positions were rewarded to party cronies. The use of patronage hindered capacity development because it led to instability in the civil service as many staff were replaced whenever the government changed or a new minister was named, according to U.S. officials" (GAO Report 2007: p. 6).

References:

Testimony, Judge Radhi Al-Radhi, U.S. House Oversight Committee (Oct. 4, 2007).

Testimony, David M. Walker, "Stabilizing and Rebuilding Iraq: Serious Challenges Confront U.S. Efforts to Build the Capacity of Iraqi Ministries," GAO Report, October 4, 2007: p. 6 (<http://www.gao.gov/new.items/d08124t.pdf>).

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Many appointments in the Ministry of Foreign Affairs were based on patronage, and some of the appointees did not have the basic qualifications.

In testimony before the Committee on Oversight and Government Reform, House of Representative, the Comptroller General of the US David Walker noted that Iraq's government confronts significant challenges in staffing a nonpartisan civil service and addressing militia infiltration of key ministries. In June 2007, DOD reported that militias influenced every component of the Ministry of Interior. In particular, the Ministry has been infiltrated by members of the Supreme Islamic Council of Iraq⁶ and its Badr Organization, as well as Muqtada al-Sadr's Mahdi Army.⁷ Furthermore, the Iraqi civil service remained hampered by staff whose political and sectarian loyalties jeopardized the civilian ministries' abilities to provide basic services and build credibility among Iraqi citizens, according to U.S. government reports and international assessments. DOD further found that government ministries and budgets were sources of power for political parties, and staff ministry positions were rewarded to party cronies. The use of

patronage hindered capacity development because it led to instability in the civil service as many staff were replaced whenever the government changed or a new minister was named, according to U.S. officials” (GAO Report 2007: p. 6).

References:

Alsabah (February 2006).

<http://www.alrashead.net/index.php?prevn&id=1844&typen=2>.

<http://www.asharqalawsat.com/details.asp?section=4&issueno=10761&article=470838&feature=>.

Testimony, David M. Walker, Stabilizing and Rebuilding Iraq: Serious Challenges Confront U.S. Efforts to Build the Capacity of Iraqi Ministries,” GAO Report, October 4, 2007: p. 6 (<http://www.gao.gov/new.items/d08124t.pdf>).

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | **25** | 0

Comments:

Appointments to the Police force are achieved through bribes.

Some appointments in the Ministry of Education are based on sectarian affiliation.

References:

Alsabah (February 2006).

<http://www.shafaag.com/pdf/araa9/34.pdf>.

<http://www.annabaa.org/nbanews/67/369.htm>.

<http://alressd.blogspot.com/>.

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

References:

Cheated of Future, Iraqi Graduates Want to Flee,” New York Times, <http://www.nytimes.com/2007/06/05/world/middleeast/05college.html> (June 5, 2007).

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person’s authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position’s responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

References:

Nonstop Theft and Bribery Stagger Iraq,” New York Times, <http://www.nytimes.com/2007/12/02/world/middleeast/02baghdad.html>(Dec. 2, 2007).

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants’ bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

There is no such law in the relevant legislation.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | **50** | 25 | 0

References:

New York Times (January 16, 2008).

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

There are no official and non-official reports of the government not paying civil servants on time.

According to the interviews, salaries are traditionally paid promptly and no government had failed to do that, especially now that the present government is awash with oil revenue.

References:

Civil Service Law, 2008 amendment.

Interviews with several Iraqi MPs.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

There have been no such cases.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

53

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

Comments:

The Commission on Public Integrity issued a Code of Conduct for all government officials (No (1) 2006). This theoretically covers all state employees.

The Commission On Public Integrity also issued a Regulation of Financial Interests (No (1) 2005) directing officials such as the president, his deputies, members of Parliament, ministers, all Commission on Public Integrity staff, general managers of state-run companies, judges, and certain military and police officers to file personal assets disclosure forms. These forms were to contain personal information detailing personal assets such as land, bank accounts (both inside and outside Iraq) and other information which related to officials income.

Covered officials were to have submitted a financial disclosure report to the Commission on Public Integrity directly after their appointment to office. They were also required to file subsequent annual reports as well as file a final report thirty days after leaving government service.

In practice, officials have not followed the financial disclosure requirements or other conflicts of interest provisions laid out by the Commission.

According to a report from the Office of the Special Inspector General for Iraq Reconstruction, the mandate for the Commission on Integrity includes enforcing: complete disclosure of the financial interests of governmental officials.”

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

Code of Conduct (No (1) 2006)

Regulation of Financial Interests (No (1) 2005)

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

The Commission on Public Integrity issued a Code of Conduct for all government officials (No (1) 2006). This theoretically covers all state employees.

In practice, officials have not followed the financial disclosure requirements or other conflicts of interest/recusal provisions laid out by the Commission.

References:

Testimony, Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Code of Conduct (No (1) 2006)

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

There is no such legal requirement.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Criminal Law 151,1970, forbids acceptance of any gift.

Code of Conduct (No (1) 2006)

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

Comments:

According to the interviews, the Committee on Public Integrity requests disclosure forms of senior members of the civil service for auditing. Upon the termination or resignation of those same officials, the ministries they work for demand that they submit an integrity form.

References:

Interviews with former Judge Nasser Shadher and Judge Al Radhi (Nov 2008).

Disciplinary Law for Government of employees, No 69, 1963.

Integrity Law No. 55, Section 8, 2004: Disclosure of assets for senior officials is required. Failure to do so could lead to fine and dismissal.

Regulation of Financial Interests (No (1) 2005)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

There are no such legal requirements.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

In practice, officials have not followed the financial disclosure requirements or other conflicts of interest provisions (including gift restrictions) laid out by the Commission on Public Integrity.

References:

Interview, Judge al-Radhi (Nov.3, 2008).

Code of Conduct (No (1) 2006)

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

The Code of Conduct's recusal requirements are not always enforced.

References:

Interview, Judge al-Radhi (Nov. 3 2008).

Code of Conduct (No (1) 2006)

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

A report from the Office of the Special Inspector General for Iraq Reconstruction describes the inability of the Commission on Integrity to enforce the submission of audit reports: although the organization is required by law to enforce officials filing of financial disclosure reports, [U.S.] DoS concluded it was not powerful enough to enforce the requirement." The issue is not that citizen access is denied, but that the audit reports are not submitted by members of the civil service.

References:

The Board of Supreme Audit.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

www.bsairaq.net.

Section 8, Integrity Law, 2004.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

33

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

Theoretically, yes. An electronic disclosure program was adopted to make such disclosures available to the public (were they ever to be filed). The program was initiated by the Ministry of Finance but was halted because of the kidnapping of some of the program managers.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although there is no law that prevents public access, access for citizens has been difficult since the establishment of the electronic government system was halted in 2007. By law, access is allowed.

A report from the Office of the Special Inspector General for Iraq Reconstruction describes the inability of the Commission on Integrity to enforce the submission of audit reports: although the organization is required by law to enforce officials filing of financial disclosure reports, [U.S.] DoS concluded it was not powerful enough to enforce the requirement." The issue is not that citizen access is denied, but that the audit reports are not submitted by members of the civil service.

References:

Al-Radhi, <http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Though in theory, senior civil servants should make asset disclosures, the rule is not fully implemented.

A report from the Office of the Special Inspector General for Iraq Reconstruction describes the inability of the Commission on Integrity to enforce the submission of audit reports: although the organization is required by law to enforce officials filing of financial disclosure reports, [U.S.] DoS concluded it was not powerful enough to enforce the requirement." The issue is not that citizen access is denied, but that the audit reports are not submitted by members of the civil service.

References:

<http://oversight.house.gov/documents/20071004103646.pdf>.

Anti-Corruption Efforts in Iraq: U.S. and Iraq take actions but much remains to be done" Office of the Special Inspector General For Iraq Reconstruction. July 29, 2008. http://pdf.usaid.gov/pdf_docs/PCA

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

25

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Iraqi Council of Representatives, Rewarding Whistle-Blowers' Law, 2007

http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwqjjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta

See also Coalition Provisional Authority Rule 59, entitled "Protection and Fair Incentives for Government Whistleblowers." The rule allows an award of up to 30% of all funds recovered as a result of the assistance of a whistleblower.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

The Office of Accountability and Transparency concluded in July 2007 that Iraq's Joint Anti-Corruption Committee was ineffective because the committee's only purpose was to provide a forum for complaints against Judge Radhi Hamza al-Radhi, a top anti-corruption official in Baghdad whom many U.S. officials have hailed as the most effective in exposing fraud and abuse" ("Ex-State officials allege corruption in Iraq," USA Today, 2008).

Radhi has also stated that 31 members of his staff were killed because of their work in fighting corruption.

References:

Testimony, al-Radhi, U.S. House Oversight Committee (Oct. 4, 2007).

Ex-State officials allege corruption in Iraq," USA Today: http://www.usatoday.com/news/washington/2008-05-12-iraqi-corruption_N.htm

Interview with Abedel Ameer Jasim, expert on fiscal management and Iraqi law

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

References:

There is lack of regulations regarding the private sector.

Business Attitudes Towards Political and Economic Reconstruction in Iraq," The Center for International Private Enterprise, http://www.cipe.org/regional/mena/iraq/pdf/IraqPoll_08.pdf (Feb. 29,2008).

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

Comments:

No such protections exist in the private sector.

References:

Business Attitudes Towards Political and Economic Reconstruction in Iraq," The Center for International Private Enterprise, http://www.cipe.org/regional/mena/iraq/pdf/IraqPoll_08.pdf (Feb. 29,2008).

Interview with Abedel Ameer Jasim, expert on fiscal management and Iraqi law

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

13

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The staff is usually appointed through nepotism and partisanship.

References:

<http://www.iraggreen.net/vb/archive/index.php?t-5150.html>.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Al-Mada newspaper, <http://www.almadapaper.com/sub/03-343/p05.htm> (2005).

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Complaints can also be brought to the Public Integrity Commission.

References:

Al-Mada newspaper, <http://www.almadapaper.com/sub/03-343/p05.htm> (2005).

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Inspectors General system was stripped of much of its independence and top leadership in 2008, unfortunately.

References:

Al-Mada newspaper, <http://www.almadapaper.com/sub/03-343/p05.htm> (2005).

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

There are Inspectors General in every ministry.

References:

Board of Supreme Audit, www.bsairaq.net.

Administrative Order no.57.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

46
IV-3. Procurement

51. Is the public procurement process effective?

50

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Law no. 87, created by the Coalition Provisional Authority (CPA), provides a set of public procurement guidelines and creates an Office of Government Public Contract Policy within the Ministry of Planning and Development Cooperation to oversee the implementation of the guidelines. There is also provision for an independent administrative tribunal to have jurisdiction over complaints and disputes arising under or relating to the award of public contracts. Reform is currently being undertaken in the second phase of the World Bank's Capacity Building program, which targets Public Procurement Reform" (<http://www.pogar.org/countries/theme.asp?th=13&cid=6>).

CPA law no 87, however, was not implemented and was not reinforced by the following government.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all

civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Conference for General Inspectors in Basra, http://www.iraqinterior.com/inspector_general_ar.htm.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | **0**

Comments:

Enforcement of most conflicts of interest regulations in Iraq remains a major challenge.

References:

Iraqi Ex-Minister Sentenced for Graft," <http://www.presstv.ir/detail.aspx?id=11623§ionid=351020201> (Thursday, May 31 2007).

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

References:

No such mandate exists.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

Government Procurement and Auctions Law: All major procurements require competitive bidding.

Interview with Mr. Sahib Ali, member of Iraq Chamber of Commerce, longstanding Iraqi contractor (London, Nov. 12, 2008).

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Investment Law, Iraqi Council of Representatives (Oct. 8, 2007).

http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwgqjasdba46s7a98das6dasda7das4da6sd8asdsawewqegw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | **NO**

References:

There is no such clause in the Investment Law passed by the Iraqi Council of Representatives on October 8, 2007.

http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwgqjasdba46s7a98das6dasda7das4da6sd8asdsawewqegw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | **NO**

References:

There is no such clause in the Investment Law passed by the Iraqi Council of Representatives on October 8, 2007.

http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwqjjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

Despite the existence of a law, the enforcement of it is pretty weak and almost non-existent. According to a report issued by the U.S. embassy in Baghdad the IG has alleged poorly drafted contracts, lack performance standards and no enforcement.”

In addition the ministries concerned usually have what is known as a blacklist for defaulting or corrupt companies.

References:

Report, U.S. Embassy.

The Law of Governmental Procurement and Auctions regulates these matters.

Interview with Mr. Sahib Ali , member of Iraq Chamber of Commerce, longstanding Iraqi contractor (London, Nov. 12, 2008).

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | **0**

Comments:

Texas-based Raman International inc. was convicted of bribery to influence the awarding of US Dept of Defense contracts in

2008. It was prohibited from participating in future procurement/business ventures with the US government for three years. However, according to POGO, this case is just the tip of the iceberg, with several previous and ongoing procurement abuses yet to be investigated and penalized.

References:

Tate, Deborah, Bush Administration Accused of Ignoring Corruption in Iraq," Voice of America, <http://www.voanews.com/english/archive/2008-05/2008-05-12-voa57.cfm?CFID=22661661&CFTOKEN=20269583> (May 12, 2008).

<http://www.pogo.org/pogo-files/alerts/contract-oversight/co-fcm-20080604.html>

http://www.usdoj.gov/atr/public/press_releases/2008/233774.htm

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

63

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

Yes. It is limited to those concerned and qualified, namely members of chamber of commerce or industrial chamber, and contractors listed and certified by the Ministry of Planning.

References:

The Law of Governmental Procurement and Auctions.

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

The ministries concerned are required to announce the results.

References:

Law of Governmental Procurement and Auctions.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Procurement offices within most ministries and public institutions are generally responsive in providing procurement regulations.

References:

Al-Shibani, Ahmed Abdu Al-Hamza, Administrative Corruption is a Breeder of Terrorism," AlNajaf AlAshraf website, <http://www.alnajafalashraf.net/twenty/n20takr20.htm>.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Regulations are usually posted in newspapers whenever a project is being advertised. Procurement offices within most ministries and public institutions are generally responsive in providing procurement regulations.

References:

Regulations are usually posted in newspapers whenever a project is being advertised.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Major projects are usually advertised although not always very efficiently and on short notice.

References:

Al-Shinbani, Ahmed Abdu Al-hamza, Alnajaf Alashraf website, <http://www.alnajafalashraf.net/twenty/n20takr20.htm>.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

There is no information available.

Al-Shinbani, Ahmed Abdu Al-Hamza, Alnajaf Al-ashraf website, <http://www.alnajafalashraf.net/twenty/n20takr20.htm>.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

53. Is the privatization process effective?

33

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

The Investment Law, Iraqi Council of Representatives, http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwqjjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta2007).

Private Investment Law for refining Crude Oil, Iraqi Council of Representatives, http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwqjjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta2007).

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

There are no formal regulations.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

The regulations are ineffective. A survey conducted by CIPE in late 2007 among Iraqi business leaders revealed that the lack of legal and regulatory enforcement is one of the most significant impediments to economic development in the country.

References:

Al-Shibani, Ahmed Abdu Al-Hamza, AlNajaf AlAshraf website, <http://www.alnajafalashraf.net/twenty/n20takr20.htm>.

CPIE: Iraq Business Survey 2007 (<http://www.cipe.org/regional/mena/iraq/pdf/IraqPoll.08.pdf>)

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

60

54a. In law, citizens can access privatization regulations.

YES | NO

References:

The Investment Law, Iraqi Council of Representatives, http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwgqjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta2007).

Private Investment Law for refining Crude Oil, Iraqi Council of Representatives, http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwgqjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta2007).

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Al-Shibani Ahmed Abdu Al-Hamza, AlNajaf Alashraf website, <http://www.alnajafalashraf.net/twenty/n20takr20.htm>.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

Yes, the ministries concerned are required to announce the results.

References:

Law of Governmental Procurement and Auctions.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

The Investment Law, Iraqi Council of Representatives, http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwqjjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta2007).

Private Investment Law for refining Crude Oil, Iraqi Council of Representatives, http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwqjjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta2007).

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

References:

The Investment Law, Iraqi Council of Representatives, http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwqjjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta2007).

Private Investment Law for refining Crude Oil, Iraqi Council of Representatives, http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwqjjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta2007).

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ~~57~~ National Ombudsman

56. Is the national ombudsman effective?

50

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Testimony, Radhi Al-Radhi, U.S. House Government Oversight Committee, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

After Radhi's departure, the ombudsman's office has become more partisan.

The set of agencies entrusted with investigating government actions on behalf of ordinary citizens – the Inspector General (IG) within the ministries along with the BSA and CPI – are not immune from political interference. The Prime Minister's Office has undermined their independence, although it is more difficult to gauge the level of interference in the IGs. One example comes from the selection of personnel and leadership of these agencies, which is frequently politicized and therefore weakens the legitimacy of their investigations (Iraq Corruption Report). Furthermore, those inspectors who have carried out their responsibilities and pursued investigations have been dismissed by the Prime Minister (NY Times).

References:

<http://oversight.house.gov/documents/20071004103646.pdf>.

'Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

NY Times (November 17, 2008): <http://www.nytimes.com/2008/11/18/world/middleeast/18maliki.html>

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Although, by law, these officials are protected, in practice it is different. Judge Al-Radhi's life was threatened and he had to accept the offer to leave Iraq. The threat to the ombudsman does not necessarily come from other officials, but could come from political groups. The fear of reprisal from al-Qaeda or the Mahdi Army is a good example.

References:

<http://oversight.house.gov/documents/20071004103646.pdf>.

The New York Times has a useful summary of the firings of many key inspectors general: http://www.nytimes.com/2008/11/18/world/middleeast/18maliki.html?_r=2&hp

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Testimony, Radhi Al-Radhi, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The set of agencies entrusted with investigating government actions on behalf of ordinary citizens – the Inspector General (IG) within the ministries along with the BSA and CPI – are not immune from political interference. The Prime Minister's Office has undermined their independence. The selection of agency personnel and leadership is frequently politicized and has therefore weakened the legitimacy of their investigations (Iraq Corruption Report). Furthermore, those inspectors who have carried out their responsibilities and pursued investigations independent of personal/party loyalties have recently been dismissed by the Prime Minister (NY Times).

References:

Testimony, Radhi Al-Radhi, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

'Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

NY Times (November 17, 2008): <http://www.nytimes.com/2008/11/18/world/middleeast/18maliki.html>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

CPA order 2004.

Interview with former Prime Minister Allawi.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The Integrity Commission, which plays the role of ombudsman, should present an annual report on its activities to the Council of Ministers and Parliament who should respond within three months if they have any objections; otherwise, the report will be published. This process was implemented in 2005 only; no report has been made since then.

References:

Interview with Judge Radhi (Nov. 12, 2008).

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The agencies (such as the Commission for Public Integrity, the Board of Supreme Audit, and the general inspection offices) do work on those issues and try to impose some penalties. However, they are usually influenced by partisanship and unable to pursue high-ranking officials.

References:

Al-Mada newspaper, <http://www.almadapaper.com/sub/03-343/p05.htm>.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The agencies (such as the Commission for Public Integrity, the Board of Supreme Audit, and the general inspection offices) do work on those issues and try to impose some penalties. However, they are usually influenced by partisanship and unable to pursue high-ranking officials.

References:

Al-Mada newspaper, <http://www.almadapaper.com/sub/03-343/p05.htm>.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The Commission on Public Integrity is usually influenced by the corrupt politicians of corruption who may even be the head of it.

Judge Radhi AlRadhi had to leave the country because of threats against his life.

References:

Al-Sharqiya program, <http://www.alsharqiya.com/print.asp?fname=incomplete%5C2007%5C009.htm>.

Testimony, Judge Radhi Al-Radhi, U.S. House Oversight Committee, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Anti-Corruption Activities Not Successful," Annabaa News Network, www.annabaa.org/nbanews/66/289.htm/.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

50

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

However, the reports are usually out of date.

References:

The Board for Supreme Audit (BSA), www.bsairaq.net/pages/r1-o.htm.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

However, the ombudsman reports are usually out of date.

References:

The Board for Supreme Audit (BSA), www.bsairaq.net/pages/r1-o.htm.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

However, the ombudsman reports are usually delayed or out of date. Again in theory yes, but not in practice.

References:

The Board for Supreme Audit (BSA), www.bsairaq.net/pages/r1-o.htm.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

These offices are ineffective and usually are not able to follow up on cases after starting an investigation.

References:

The Committee for Public Integrity.

The Board of Supreme Audit.

There are general inspection offices in every ministry.

www.bsairaq.net.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

59

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

All the Board of Supreme Audit decisions are transferred to the prime minister's office.

The BSA is, according to the Iraqi Constitution, an independent institution in law (article 103) (US State Department Iraq Corruption Report, p. 5).

References:

Board of Supreme Audit, <http://www.bsairaq.net/pages/e-home.htm>.

'Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Only after they are removed can the head of the agency appeal to the Administrative Court, which is a branch of the Supreme Judicial Council. In practice, no agency audit head has won his case. The government influences the court's decisions.

References:

Board of Supreme Audit, <http://www.bsairaq.net/pages/e-home.htm>.

Interview with Mr. Rahdi al-Rahdi, former head of the Integrity Commission (Washington D.C., Aug. 6 2008).

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The authors of the US State Department's Iraq Corruption Report speculate that auditors have safety concerns similar to those faced by the inspector generals (p. 13).

References:

Board of Supreme Audit, <http://www.bsairaq.net/pages/e-home.htm>.

Interview with Mr. Rahdi al-Rahdi, former head of the Integrity Commission (Washington D.C., Aug. 6 2008).

'Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Names of audit agency candidates are presented by the political parties.

References:

Board of Supreme Audit, <http://www.bsairaq.net/pages/e-home.htm>.

Interview with Mr. Rahdi al-Rahdi, former head of the Integrity Commission (Washington D.C., Aug. 6 2008).

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Board of Supreme Audit, <http://www.bsairaq.net/pages/e-home.htm>.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Though, theoretically, audit agencies should make such reports public, they actually only provide them to the prime minister's office and the Integrity Commission.

References:

Board of Supreme Audit, <http://www.bsairaq.net/pages/e-home.htm>.

Interview with Mr. Rahdi al-Rahdi, former head of the Integrity Commission (Washington D.C., Aug. 6 2008).

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The Audit Agency reports to the Integrity Commission, but the prime minister's office usually does not take action. Instead, they have issued directives preventing the Audit Agency or the Integrity Commission from taking any direct action against former and current ministers.

References:

Board of Supreme Audit, <http://www.bsairaq.net/pages/e-home.htm>.

Interview with Mr. Rahdi al-Rahdi, former head of the Integrity Commission (Washington D.C., Aug. 6 2008).

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The US State Department Report on Iraqi Corruption notes that the the BSA is a long-standing agency [that] has a good reputation but we know little of its performance [...] the reputation may be overrated. BSA audits have resulted in few investigations of corruption" (p. 13).

References:

Board of Supreme Audit, <http://www.bsairaq.net/pages/e-home.htm>.

Interview with Mr. Rahdi al-Rahdi, former head of the Integrity Commission (Washington D.C., Aug. 6 2008).

'Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

0

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

The Audit Agency should make their reports public, but in practice it never has.

References:

Board of Supreme Audit, <http://www.bsairaq.net/pages/e-home.htm>.

Interview with Mr. Rahdi al-Rahdi, former head of the Integrity Commission (Washington D.C., Aug. 6 2008).

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports are not public are instead sent to the PM's office.

References:

Board of Supreme Audit, <http://www.bsairaq.net/pages/e-home.htm>.

Interview with Mr. Rahdi al-Rahdi, former head of the Integrity Commission (Washington D.C., Aug. 6 2008).

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are not public and instead are forwarded only to the PM's office.

References:

Board of Supreme Audit, <http://www.bsairaq.net/pages/e-home.htm>.

Interview with Mr. Rahdi al-Rahdi, former head of the Integrity Commission (Washington D.C., Aug. 6 2008).

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

CPA Law no. 77, Re-Establishment of the Audit Office.

Board of Supreme Audit, <http://www.bsairaq.net/pages/e-home.htm>.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

53 V-3. Taxes and Customs

62. Is the tax collection agency effective?

38

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The current organizational structure of the General Commission for Taxes consists of 14 departments within its headquarters, as well as 18 branch offices in Baghdad and 28 branch offices in the governorates.

References:

The Reality of Taxation in Iraq, 2007," Al-Jaredah Newspaper,
<http://www.aljaredah.com/paper.php?source=akbar&mf=interpage&sid=11943>.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

The Reality of Taxation in Iraq, 2007," Al-Jaredah Newspaper,
<http://www.aljaredah.com/paper.php?source=akbar&mf=interpage&sid=11943>.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

38

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The above as well as other media reports point out that most appointment to government jobs is based on patronage rather than qualifications.

References:

Former Head of Taxation Agency Reveals Secrets About His Office and Threatens to Accuse Al-Radhi," Issues and Talks, Al-Bayyna newspaper,
<http://www.al-bayyna.com/modules.php?name=News&file=article&sid=7711>.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

References:

Former Head of Taxation Agency Reveals Secrets About His Office and Threatens to Accuse Al-Radhi," Issues and Talks, Al-Bayyana newspaper, <http://www.al-bayyana.com/modules.php?name=News&file=article&sid=7711>.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

The General Commission for Taxes was created in 1982 under the authority of the Ministry of Finance Law #92 of 1981 following the merger between the Income Tax Directorate and the General Revenues Directorate. The Commission remains under the authority of the Ministry of Finance.

References:

The General Directorate of Taxation, <http://www.iraqtax.org/>.

According to Article 28 of the Iraqi Constitution, no taxes shall be levied, amended, collected or exempted except by law" (<http://www.pogar.org/countries/theme.asp?th=12&cid=6>) (http://www.uniraq.org/documents/iraqi_constitution.pdf).

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. Are tax laws enforced uniformly and without discrimination?

25

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The major problem relates to tax collection on political parties or those affiliated with parties, when discretion and bribes comes into play.

References:

The Reality of Taxation in Iraq, 2007," Al-Jaredah Newspaper,
<http://www.aljaredah.com/paper.php?source=akbar&mf=interpage&sid=11943>.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

The General Directorate for Customs, <http://www.iraqcustoms.org/>.

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

25

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The major problem relates to political parties or those affiliated with parties, when discretion and bribes comes into play.

References:

Former Head of Taxation Agency Reveals Secrets About His Office and Threatens to Accuse Al-Radhi," Issues and Talks, Al-Bayyana newspaper, <http://www.al-bayyana.com/modules.php?name=News&file=article&sid=7711>.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

35

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

Chapter 4, Iraqi Constitution re independent commissions; states that all the agencies are independent.

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The selection of personnel for the set of agencies entrusted with overseeing government activities such as state-owned companies – the Inspector General (IG) within the ministries along with the BSA and CPI – is highly politicized and therefore

compromises their professionalism (Iraq Corruption Report). Furthermore, those inspectors who have carried out their responsibilities and pursued investigations have been dismissed by the Prime Minister (NY Times).

References:

Testimony, Radhi Al-Radhi, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

'Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

NY Times (November 17, 2008): <http://www.nytimes.com/2008/11/18/world/middleeast/18maliki.html>

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Testimony, Radhi Al-Radhi, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The set of agencies entrusted with overseeing government activities such as state-owned companies – the Inspector General (IG) within the ministries along with the BSA and CPI – have difficulty starting or finishing investigations because they are vulnerable to political interference. The Prime Minister's Office has undermined their independence. One example comes from the selection of personnel and leadership of these agencies, which is frequently politicized and therefore weakens the ability of these agencies to investigate financial and other irregularities (Iraq Corruption Report). Furthermore, those inspectors who have carried out their responsibilities and pursued investigations have been dismissed by the Prime Minister (NY Times).

References:

Testimony, Radhi Al-Radhi, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

'Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

NY Times (November 17, 2008): <http://www.nytimes.com/2008/11/18/world/middleeast/18maliki.html>

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The concerned agencies are not able, or allowed, to impose penalties. They can only start an investigation and then write letters to the Inspector Generals.

References:

Testimony, Radhi Al-Radhi, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

10

69a. In law, citizens can access the financial records of state-owned companies.

YES | **NO**

References:

There is no such law.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | **0**

References:

No such cases have been reported.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | **50** | 25 | 0

Comments:

All state-owned companies are audited by the government auditing body (Supreme Auditing Council), which may not audit according to international standards.

References:

Interview with Judge Radhi (Nov. 12, 2008).

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No such cases have been reported and access is not common.

References:

No such cases have been reported and access is not common.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No such cases have been reported and access is not common.

References:

No such cases have been reported and access is not common.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

The Board of Supreme Audit.

The Commission on Public Integrity.

General Inspection offices in every ministry that runs a company (for example, the ministry of Industry).

www.bsairaq.net.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

48
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

63

70a. In law, anyone may apply for a business license.

YES | NO

Comments:

Yes, provided applicants submit the proper documents to prove their financial competence. The Chamber of Commerce and the Union of Industrialists are responsible for granting these licenses.

References:

Interview with Mr. Sahib Ali, member of Iraq Chamber of Commerce, longstanding Iraqi contractor (London, Nov. 12, 2008).

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

The National Commission for Investment is supposed to inspect and grant or deny licenses. The Commission was established pursuant the Investment Law passed by the Iraqi Council of Representatives.

A denied application could be appealed to the concerned ministry. Otherwise, the applicant could raise the issue in court against the state.

References:

http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawgwgqjasdba46s7a98das6dasda7das4da6sd8asdsawewqegw465e4qweq4wg6e4qw8eqwe4qw6eqwe4sadj&file=showdeta

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Center for International Private Enterprise conducted a survey in which the majority of business owners said business licenses are obtainable but corruption mars the process.

References:

The Center for International Private Enterprise, http://www.cipe.org/regional/mena/iraq/pdf/IraqPoll_08.pdf.

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The Center for International Private Enterprise conducted a survey in which the majority of business owners said business licenses are obtainable but corruption mars the process.

References:

The Center for International Private Enterprise, http://www.cipe.org/regional/mena/iraq/pdf/IraqPoll_08.pdf.

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

The investment law passed by the Council of Representatives in 2007,

[http://www.parliament.iq/Iraqi_Council_of_Representatives.php?](http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwgqjasdba46s7a98das6dasda7das4da6sd8asdsawewqegw465e4qweg4wg6e4qw8eqwe4qw6eqwe4sadj&file=showdeta)

[name=articles_ajsdyawqwgqjasdba46s7a98das6dasda7das4da6sd8asdsawewqegw465e4qweg4wg6e4qw8eqwe4qw6eqwe4sadj&file=showdeta](http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwgqjasdba46s7a98das6dasda7das4da6sd8asdsawewqegw465e4qweg4wg6e4qw8eqwe4qw6eqwe4sadj&file=showdeta)

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

The Investment Law passed by the Iraqi Council of Representatives in 2007.

[http://www.parliament.iq/Iraqi_Council_of_Representatives.php?](http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwgqjasdba46s7a98das6dasda7das4da6sd8asdsawewqegw465e4qweg4wg6e4qw8eqwe4qw6eqwe4sadj&file=showdeta)

[name=articles_ajsdyawqwgqjasdba46s7a98das6dasda7das4da6sd8asdsawewqegw465e4qweg4wg6e4qw8eqwe4qw6eqwe4sadj&file=showdeta](http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwgqjasdba46s7a98das6dasda7das4da6sd8asdsawewqegw465e4qweg4wg6e4qw8eqwe4qw6eqwe4sadj&file=showdeta)

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

The Investment Law passed by the Iraqi Council of Representatives in 2007.

http://www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajdyawqwqjjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweg4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdeta

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Glanz, James, "Inspectors Find Rebuilt Projects Crumbling in Iraq," New York Times (April 29, 2007).

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The sources discuss the lack of enforcement and efficiency of the Ministry of Health, which is responsible for environmental

standards.

References:

Glanz, James, Inspectors Find Rebuilt Projects Crumbling in Iraq," New York Times, http://findarticles.com/p/articles/mi_hb6465/is_ /ai_n25796925 (April 29, 2007).

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

In practice there no effective measures to ensure public safety standards. The Ministry of Health is singled out as one of worst ministries as far as efficiency is concerned.

References:

Glanz, James, Inspectors Find Rebuilt Projects Crumbling in Iraq," New York Times, http://findarticles.com/p/articles/mi_hb6465/is_ /ai_n25796925 (April 29, 2007).

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

73. Is there legislation criminalizing corruption?

89

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

As the authors of the Iraq Corruption Report note, however, the Commission on Public Integrity (CPI) is incapable of even the most rudimentary enforcement of anti-corruption laws.

References:

Accountability and Transparency Law.

Iraq Constitution Article 72: financial and administrative corruption is a crime serious enough that it falls outside the scope of the President's pardoning powers (<http://www.pogar.org/countries/theme.asp?th=13&cid=6>).

'Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

Accountability and Transparency Law

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Accountability and Transparency Law

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Accountability and Transparency Law

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | **NO**

References:

Accountability and Transparency Law

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

Accountability and Transparency Law

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Administrative Order 57, Regulations of General Inspections Offices,
http://www.iraqinterior.com/inspector_general_ar.htm.

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

According to UNDP-POGAR, Steps were underway in 2006 to establish a Money Laundering Reporting Office in the Central Bank of Iraq (CBI) to collect, analyze and disseminate information on financial transactions subject to financial monitoring and reporting, including suspicious activity reports. Pending new legislation, Coalition Provisional Authority Order 93 governs anti-money laundering activity” (<http://www.pogar.org/countries/theme.asp?th=13&cid=6>).

There is an anti money laundering office. Government and banks try to avoid it as well.
<http://www.asharqalawsat.com/details.asp?section=6&article=438105&issueno=10525>

Interview with Mohind Muhammad, Lecturer, Basra University

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Accountability and Transparency Law

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

75. Is the anti-corruption agency effective?

33

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

In theory, yes.

References:

Iraqi Constitution, article 102.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

According to the US State Department's Iraq Corruption Report, The Prime Minister's Office has demonstrated an open hostility to the concept of an independent agency to investigate or prosecute corruption cases [...] There have been a number of identified cases where government and political pressure has been applied to change the outcome of investigations and prosecutions in favor of members of the Shia Alliance. Advisors have documented a pattern of pressure seemingly designed to hire personnel along political lines. There also has been a clear sectarian shift in those who have been appointed as IGs since the Shia Alliance has taken control of the government" (pp. 3-4).

The Office of Accountability and Transparency also concluded in July 2007 that Iraq's Joint Anti-Corruption Committee was ineffective because the "committee's only purpose was to provide a forum for complaints against Judge Radhi Hamza al-Radhi, a top anti-corruption official in Baghdad whom many U.S. officials have hailed as the most effective in exposing fraud and abuse" ("Ex-State officials allege corruption in Iraq," USA Today, 2008).

References:

Testimony, Radhi Al-Radhi, U.S. House Oversight Committee, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

Ex-State officials allege corruption in Iraq," USA Today: http://www.usatoday.com/news/washington/2008-05-12-iraqi-corruption_N.htm

"Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

Interview with Mohind Muhammad, Lecturer, Basra University

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Testimony, Radhi Al-Radhi, U.S. House Oversight Committee, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

'Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

References:

Annabaa news network,
<http://www.annabaa.org/nbanews/60/206.htm>.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

According to an International Herald Tribune report (December 2, 2007), Iraq's top anti-corruption [resigned and fled] the country after 31 of his agency's employees were killed over a three-year period."

The US State Department Iraq Corruption Report also notes that the "CPI's 120 investigators do not have the numbers or the capacity to confront the job it is asked to do and is not being funded to a substantial increase. CPI has no formal means to handle internal security or discipline. This lack of a CPI IG or internal affairs department has placed in jeopardy the agency's reputation. The Iraqi government is conducting a series of classes for the training of hundreds of inspectors general, but without an increase in numbers nor a means to conduct investigations absent intimidation their value may only be administrative in character [...] The Commissioner has determined that he needs at least 450 investigators. Threats to investigators from insurgents and militias including those supporting the current government are so common place as to be impossible to catalogue. Many investigators sleep at night in the office in the IZ. Threats against the family often cause investigators to ask for leave to move their families out of the country. The hiring of additional staff in light of the danger involved 7, or just maintaining the 120 investigators, is a challenge. The current administration has been unsympathetic to requests for additional funding and manpower needs. Few guards for the investigators to leave the IZ have been authorized, and CPI has resorted to arming people hired for janitorial and maintenance duty." (p. 4, 9-10).

US government agency efforts to help Iraq with their anti-corruption efforts through the Anti-corruption Coordination Office have been hindered by staffing shortages "aggravated by short-term deployment," according to SIGIR (Anticorruption Efforts in Iraq: U.S. and Iraq Take Actions but Much Remains to be Done, July 30, 2008: p. 2).

References:

Story on corruption, Al-Najaf Al-Ashraf website, <http://www.alnajafalashraf.net/teny/n20takr20.htm>.

Damien Cave, Corruption and Theft Soar in Iraq," International Herald Tribune, December 2, 2007: <http://www.ihf.com/articles/2007/12/02/africa/baghdad.php>

"Anticorruption Efforts in Iraq: U.S. and Iraq Take Actions but Much Remains to be Done" (July 30, 2008), Special Inspector General for Iraq Reconstruction (SIGIR): <http://www.sigir.mil/reports/pdf/audits/08-023.pdf>

"Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The US State Department's Iraq Corruption Report notes that the Iraqi government has withheld support and resources from CPI (p. 4).

References:

Testimony, Radhi Al-Radhi, U.S. House Oversight Committee, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

'Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Board of Supreme Audit and the other anti-corruption commissions publish reports that are usually out of date.

References:

The Board of Supreme Audit, www.bsairaq.net.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

According to Stuart Bowen Jr., of the Office of the Special Inspector-General for Iraq Reconstruction, Prime Minister Nouri Kamal al-Maliki undermines anti-corruption efforts this year by requiring that investigators get permission from his office before pursuing ministers or former ministers on corruption charges" (Damien Cave, International Herald Tribune, December 2, 2007).

Furthermore, a "sensitive but unclassified" Iraq corruption report from the US State Department concluded: "The CPI is currently a passive rather than a true investigatory agency. Though legally empowered to conduct investigations the combined security situation and the violent character of the criminal elements within the ministries make investigation of corruption too hazardous for all but a tactically robust police force with the support of the Iraqi government. Currently this support is lacking."

References:

Testimony, Radhi Al-Radhi, U.S. House Oversight Committee, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

Damien Cave, Corruption and Theft Soar in Iraq," International Herald Tribune, December 2, 2007: <http://www.ihf.com/articles/2007/12/02/africa/baghdad.php>

"Classified" Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

According to Stuart Bowen Jr., of the Office of the Special Inspector-General for Iraq Reconstruction, Prime Minister Nouri Kamal al-Maliki undermines anti-corruption efforts this year by requiring that investigators get permission from his office before pursuing ministers or former ministers on corruption charges" (Damien Cave, International Herald Tribune, December 2, 2007).

Furthermore, a "sensitive but unclassified" Iraq corruption report from the US State Department concluded: "The CPI is currently a passive rather than a true investigatory agency. Though legally empowered to conduct investigations the combined security situation and the violent character of the criminal elements within the ministries make investigation of corruption too hazardous for all but a tactically robust police force with the support of the Iraqi government. Currently this support is lacking."

References:

Testimony, Radhi Al-Radhi, U.S. House Oversight Committee, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

Damien Cave, Corruption and Theft Soar in Iraq," International Herald Tribune, December 2, 2007: <http://www.ihf.com/articles/2007/12/02/africa/baghdad.php>

"Classified" Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Testimony, Radhi Al-Radhi, U.S. House Oversight Committee, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

References:

Testimony, Radhi Al-Radhi, U.S. House Oversight Committee, <http://oversight.house.gov/documents/20071004103646.pdf> (Oct. 4, 2007).

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The entities operate in an informal, decentralized way with each other.

References:

Administrative Order 57 establishing the General Inspection Offices in ministries.

The Board of Supreme Audit.

The Commission on Public Integrity.

www.bsairaq.net

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

⁵⁷
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

50

77a. In law, there is a general right of appeal.

YES | NO

References:

Iraqi Constitution, Chapter 3, Judicial Power.

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to a Human Rights Watch report on Iraq's central criminal courts, defendants are not well-informed about the appeals

process and procedures. In particular, there are serious delays in providing defendants with judicial hearings within a reasonable time period: The failure to provide judicial hearings within a reasonable period of time stood out among the procedural failings Human Rights Watch observed during its attendance at investigative hearings and from interviews with detainees referred for trial to the CCCI. A majority of detainees had been held for months, and in some cases years, before referral to a judge.” It is likely that significant delays in the system of trial/judicial hearings extends to flawed procedures that make it difficult for appeals to be resolved in a timely fashion.

References:

The American Bar Association, <http://www.abanet.org/rol/publications/jrl-iraq-2006.pdf>.

The Quality of Justice: Failings of Iraq’s Central Criminal Courts (Human Rights Watch, December 2008): <http://www.hrw.org/en/reports/2008/12/14/quality-justice>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

The American Bar Association, <http://www.abanet.org/rol/publications/jrl-iraq-2006.pdf>.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

50

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | **50** | 25 | 0

References:

The American Bar Association, <http://www.abanet.org/rol/publications/jrl-iraq-2006.pdf>.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

0

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

The American Bar Association. Page 13, <http://www.abanet.org/rol/publications/jrl-iraq-2006.pdf>.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

56

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Iraqi Constitution, Articles 84 and 85.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

According to Amnesty International and reported first in the NY Times, the trial of Saddam Hussein and three others in 2005-06 raises questions about the political independence of national-level judges. One trial judge involved in the case was dismissed and quickly replaced by another judge who had not heard and considered the evidence and was more likely to support a death penalty sentence. The accused were executed toward the end of 2006 and 2007.

References:

Five Iraqi Judges Escape Baghdad Bombs," Reuters, <http://www.reuters.com/article/worldNews/idUSL3035853820080630> (June 13, 2008).

"Iraq: New evidence further undermines the right to fair trial" (Amnesty International, October 2008): <http://www.amnesty.org/en/library/info/MDE14/026/2008/en>

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

There is no clear law.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

However, some of their roles are still to be regulated.

References:

Iraqi Constitution, Chapter 3, Judicial Powers, guarantees the independence of judges.

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

50

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

More often than not, judges live in fear and in hiding. For example, the investigative judge involved in the biggest cases in the joint Iraq-American Major Crimes Task Force unit has been threatened and his family moved to safer, guarded quarters (see David Johnston, U.S. Struggles to Tutor Iraqis in Rule of Law," NY Times [February 16, 2008]).

The Office of Accountability and Transparency also concluded in July 2007 that Iraq's Joint Anti-Corruption Committee was ineffective because "the committee's only purpose was to provide a forum for complaints against Judge Radhi Hamza al-Radhi, a top anti-corruption official in Baghdad whom many U.S. officials have hailed as the most effective in exposing fraud and abuse" ("Ex-State officials allege corruption in Iraq," USA Today 2008).

References:

Five Iraqi Judges Escape Baghdad Bombs," Reuters, <http://www.reuters.com/article/worldNews/idUSL3035853820080630> (June 13, 2008).

"Ex-State officials allege corruption in Iraq," USA Today: http://www.usatoday.com/news/washington/2008-05-12-iraqi-corruption_N.htm

David Johnston, "U.S. Struggles to Tutor Iraqis in Rule of Law," NY Times (February 16, 2008): <http://www.nytimes.com/2008/02/16/world/middleeast/16justice.html>

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

Judges have recently been targeted. However, it is not clear if this is because of their work on corruption cases.

The head of one of the country's two appeals courts was assassinated in June 2008, though it's unclear if this was related to work on corruption cases (see BBC news report).

References:

Five Iraqi Judges Escape Baghdad Bombs," Reuters, <http://www.reuters.com/article/worldNews/idUSL3035853820080630> (June 13, 2008).

"Top judge assassinated in Baghdad"
http://news.bbc.co.uk/2/hi/middle_east/7477800.stm

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

39

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Leinwand, Donna, Wheels of Justice Slowly Returning to Iraqi Courts," USA Today, http://www.usatoday.com/news/world/iraq/2008-02-26-Iraqicourts_N.htm (Feb. 27, 2008).

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The Personal Status Code of 1959, which addresses family law, is still in effect in Iraq. This Code has resulted in discriminatory practice [...] in relation to the value of a man's testimony compared with that of a woman. As it is not expressly set forth in the Code, personal status courts have reverted to a practice applied in civil matters requiring the testimony of two women to be equal to that of one man. This practice is based on the following Quranic text: get two witnesses out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her.³⁶ Although this verse begins with a reference to debt agreements, many Islamic states have extended this evidentiary rule to all civil matters, including marriage contracts (ABA Report on the Status of Women in Iraq, 2006 update: p. 93).

References:

American Bar Association:

http://www.abanet.org/rol/publications/iraq_status_of_women_2005_english.pdf

http://www.abanet.org/rol/publications/iraq_status_of_women_update_2006.pdf

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Iraqi Penal Law makes it clear that the state must appoint a public defender.

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | **25** | 0

Comments:

The problem is both lack and quality. This was previously confirmed to me by lawyer who defended Tariq Aziz, the former deputy prime minister.

However, there is some international assistance to improve access to legal counsel and the courts. USAID assisted the Kirkuk Jurists Union (KJU) in opening an office in the Kirkuk province in order to increase awareness and provide advice to

disenfranchised and poor people who cannot afford legal representation (USAID Iraqis Gain Improved Access to Courts" 2008).

References:

Post-Saddam Abuses still Plague Iraqi Courts", National Public Radio, <http://www.npr.org/templates/story/story.php?storyId=89195925> (March 28, 2008).

USAID: "Iraqis Gain Improved Access to Courts" (November 2008): http://www.usaid.gov/iraq/accomplishments/success_dg_1108.html

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Temple-Raston, Dina, Post-Saddam, Abuses Still Plague Iraqi Courts," <http://www.npr.org/templates/story/story.php?storyId=89195925> (March 28, 2008).

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Temple-Raston, Dina, Post-Saddam, Abuses Still Plague Iraqi Courts," <http://www.npr.org/templates/story/story.php?storyId=89195925> (March 28, 2008).

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Judicial Reform Index," American Bar Association, p. 8-10,
<http://www.abanet.org/rol/publications/jri-iraq-2006.pdf>

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

17

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Military influence in the Iraqi National Police force has been a significant problem. Recruits have been poorly screened, with several having criminal records or expressing loyalty/sympathy to the insurgency. The Pentagon has run a police training program, to mixed results, while the widely heralded Iraq Police Academy has run into numerous problems. Police corruption, violence, and other forms of abuse therefore continue to run rampant (Michael Howard, The Age, July 27, 2005; Amit Paley, Washington Post, September 28, 2006; Tucker Reals, CBS News, Feb. 5, 2007). Building a professional National Police force is a significant challenge. As Lt. Gen. James Dubik, head of the Multinational Security Transition Command, notes: The National Police had a reputation of being sectarian, of not being professional" (Lennox Samuels, Newsweek, June 3, 2008).

References:

Pfaff, Terry, Development and Reform of the Iraqi Police Forces," <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub840.pdf> (Jan. 2008).

Lennox Samuels, "The Politics of Policing," Newsweek (June 3, 2008): <http://www.newsweek.com/id/139809/page/1>

Amit Paley, "Heralded Iraq Police Academy a 'Disaster,'" Washington Post (September 28, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/27/AR2006092702134.html>

Michael Howard, "Criminals Joining Iraq Police Force," The Age (July 27, 2005): <http://www.theage.com.au/news/iraq/criminals-joining-iraqi-police-force-us-report-warns/2005/07/26/1122143845074.html>

Tucker Reals, "Building Iraq's Police Force" (February 5, 2007): <http://www.cbsnews.com/stories/2007/02/05/iraq/main2431258.shtml>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Pfaff, Terry, Development and Reform of the Iraqi Police Forces," <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub840.pdf> (Jan. 2008).

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

McDonald, Henry, Duncan Campbell, Richard Tayler, Bosses Didn't Want to Expose Iraqi Police Corruption," The Guardian (UK), <http://www.guardian.co.uk/uk/2007/dec/24/world.iraq> (Dec.24, 2007).

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

63

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

These offices usually have hot lines and e-mail addresses on which citizens are supposed to report on police actions.

References:

General Inspection Offices established by Order 57, 2004.

http://www.iraqinterior.com/inspector_general_ar.htm

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Sample, Kirk, U.S. Backs Hot Line in Iraq to Solicit Tips About Trouble," New York Times, <http://www.nytimes.com/2006/11/05/world/middleeast/05tips.html?pagewanted=1> (Nov. 5, 2006).

Moore, Solomon, "Insurgent infiltration, Brutality, Corruption Rampant in Iraqi Police Force", Huffington Post, http://www.huffingtonpost.com/2006/07/09/insurgent-infiltration-b_n_24671.html (July 9, 2006).

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

The Commission on Public Integrity's (CPI) work has been less effective, however, since the departure of Judge Radhi Al-Radhi.

References:

General Inspector of the Ministry of Interior established by administrative order 57, 2004.
http://www.iraqinterior.com/inspector_general_ar.htm.

Commission on Public Integrity.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

According to the US State Department's report on corruption in Iraq, the country's provincial police are independent and therefore practically immune from oversight (p. 16).

References:

Myrers, Lisa, Aram Rostton, Iraqi Official:Corruption Has Crippled Iraq,"
www.msnbc.com/id/20040667 (Sept, 7, 2007).

"Classified' Iraq Corruption Report posted online": <http://blogs.abcnews.com/theblotter/2007/09/classified-iraq.html>

Iraq Corruption Report: <http://www.fas.org/irp/eprint/anticorruption.pdf>

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Iraqi Constitution, Article 35, Sections A, B and C.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | **25** | 0

References:

Pfaff, Terry, Development and Reform of the Iraqi Police Forces," <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub840.pdf> (Jan. 2008).

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.