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**Review of implementation of the United Nations  
Convention against Corruption**

**Executive summary**

**Note by the Secretariat**

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## Executive summary: review of Iraq

### 1. Introduction: overview of the legal and institutional framework of Iraq in the context of UNCAC implementation

Iraq's legislature approved the United Nations Convention against Corruption by Law number 35 of 2007, and it formally acceded to the Convention on 17 March 2008.

The Constitution of 2005 represents the supreme law of Iraq. Government power is divided between legislative, executive and judicial authorities. Law no. 160 of 1979 provides the structure of the judicial system. The Court of Cassation is the highest court, and is chaired by the president of the Council of Judges. There are sixteen courts of appeal distributed by regions, as well as first instance courts. The region of Kurdistan has a separate, parallel judicial system, with a separate Court of Cassation. Public prosecutors operate under the direction of the judicial authorities at every level of the judicial system.

Iraq is currently in a stage of transition, and has significant technical assistance needs, which are detailed below. In addition, Iraq is in the process of considering a comprehensive Anti-Corruption Law, which — as noted below — would meet many of the requirements of the Convention. Iraq has several mechanisms and oversight bodies that specialize in combating corruption offences, misuse of public funds and other matters.

*The Commission of Integrity:* Established by virtue of Integrity Commission Law No. 55 of 2004, the Commission has legal status and fiscal and administrative independence. The Head of Commission is appointed by Parliament. The main functions of the Commission are to prevent and combat corruption, and promote integrity in governance by: (a) investigating cases of corruption; (b) developing a culture of integrity, transparency and accountability in the public and private sectors; (c) preparing draft laws to prevent and investigate corruption; (d) issuing rules and standards of ethical conduct; and (e) strengthening the Iraqi people's trust in government by requiring public officials to make financial disclosures of outside activities and interests.

*Offices of the Inspectors General:* Established by the Inspector Generals Law, 57 of 2004, in each Iraqi Ministry, these offices conduct audits, investigations and performance reviews to increase accountability, integrity and oversight of the ministries, and to prevent, deter and identify waste, fraud, abuse of authority and illegal acts. The offices recommend improvements to ministry programmes, policies and procedures, as appropriate. They also conduct administrative investigations. Each Inspector General has the authority to refer appropriate cases to law enforcement for further investigation and prosecution.

*Board of Supreme Audit (Diwan):* Established in 1927, under Article 3 of the Supreme Audit Board Law, 31 of 2011, the Board: (a) protects public funds to avoid loss, waste or abuse, and ensure their efficient use; (b) increases the efficiency of institutions subject to audit; (c) helps achieve economic independence and supports economic growth and stability; (d) disseminates systems of accounting and audit that meet local and international standards, and improve management and accounting standards in an ongoing fashion; and (e) develops the accounting and

auditing professions and accountancy systems. The Board has financial and administrative independence and reports to Parliament. When the Board discovers a violation, it refers the case to the Inspector General or the Integrity Commission.

*The Integrity Committee of Parliament:* Provides monitoring and oversight to the various anti-corruption institutions listed above. Membership consists of 13 representatives of Parliament, chosen by the members of Parliament. This Committee is also responsible for oversight of anti-corruption legislation, and makes recommendations for amendments or policies.

*Joint Council against Corruption in Iraq formed by the Cabinet Secretariat:* Established by the Prime Minister in 2008, this Council is chaired by the Secretary-General of the Prime Minister's Office and includes members from the Commission of Integrity and the members of the Supreme Board of Audit. It is responsible for coordination and information-sharing among national anti-corruption entities. The Integrity Committees were established pursuant to the Law on the Election to Provincial Councils, 2008. Under local government frameworks, these Committees are responsible for investigating and following up on corruption cases.

## **2. Chapter III: Criminalization and Law Enforcement**

### **2.1 Observations on the implementation of the articles under review**

*Bribery offences; trading in influence (articles 15, 16, 18, 21)*

The Iraqi Criminal Code, Law 111 of 1969, makes it a crime for a public official or person in charge of public service to seek or accept for himself or for another a gift, benefit, advantage or promise to carry out any duty of his employment or to refrain from doing so or to contravene such duty. It is also a crime for any person who gives, offers or promises a public official or agent any such gift, benefit or promise. These provisions apply regardless of the intention of the public official to carry out or refrain from performing the act. It is a mitigating factor for the person offering the bribe to report the act to law enforcement prior to its discovery.

Article 19(2) of the Criminal Code defines "public official or person in charge of public service" broadly, and includes any official, employee or worker who is entrusted with a public task in the service of the government or its official or semi-official agencies or departments belonging to it or placed under its control. This includes the Prime Minister and other ministers, members of parliament and the judiciary. It also includes members of organizations and associations funded, in part, by the Government.

Bribery of foreign public officials has not yet been considered by Iraq, although relevant provisions are included in the draft anti-corruption law.

At present, Iraq does not have legislation in place to address active and passive trading in influence, unless it is related to abuse of authority by public officials. The draft anti-corruption law does include relevant provisions, which track the language of UNCAC article 18.

Iraq reported that it had not adopted legislation addressing active and passive bribery in the private sector, although such provisions are included in the draft anti-corruption law.

*Laundrying of proceeds of crime; concealment (articles 23, 24)*

Money-laundering offences are addressed in Iraq under Law No. 93 of 2004, which makes it a crime for a person to conduct or attempt to conduct a financial transaction that involves the proceeds of unlawful activity knowing that the property involves such proceeds. It also makes it a crime for a person to transport, transmit, or transfer a monetary instrument or funds that represent the proceeds of unlawful activity knowing that it involves such proceeds. Such acts must be done: (a) with the intent to promote the carrying on of unlawful activity, to benefit from unlawful activity, or to protect from prosecution those who have engaged in unlawful activity; and (b) knowing that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of unlawful activity or to avoid a transaction or other reporting requirement. Property includes, but is not limited to, currency, monetary instruments and financial securities.

A conviction for money-laundering may result in a maximum sentence of four years and a fine of up to twice the amount of funds laundered. In addition, all laundered funds may be confiscated and forfeited with due consideration for the rights of bona fide third parties.

Predicate offences are not enumerated so as to maximize the scope of the money-laundering provisions. Offences committed abroad count as predicate offences whether or not they would constitute offences in Iraq. A person can be convicted of both money-laundering and the underlying offence.

Iraq officially furnished copies of its money-laundering legislation to the Secretary-General of the United Nations in 2010.

Criminal concealment is addressed under Articles 460 and 461 of the Criminal Code, and meets the requirements of the Convention.

*Embezzlement; abuse of functions; illicit enrichment (articles 17, 19, 20, 22)*

Article 315 of the Criminal Code makes it a crime for a public official or agent to embezzle or conceal funds, goods, documents establishing legal rights or other things that come into his possession. Article 316 makes it a crime for any public official to exploit his position in order to obtain funds, goods or documents establishing legal rights or other things to which he is not entitled and which belong to the State or to an establishment or organization in which the state has a financial interest. Article 320 makes it a crime for any public official or agent who employs others to carry out the activities relating to his position to retain, in whole or in part, wages or other compensation for those employees.

Iraq has adopted criminal provisions to address abuse of functions in specific contexts, but as yet has not adopted a general statute in this regard. Such provisions, however, have been included in the draft anti-corruption law, and are aligned with UNCAC article 19.

Iraq's legislation to address illicit enrichment originated in 1958, and has been updated several times, including through the Integrity Commission Law No. 30 of 2011, which includes mandatory financial disclosure measures. The investigation of illicit enrichment is driven primarily by the results of the asset disclosures, which, according to Article 17 of the Integrity Commission Law, are limited to certain

categories of high-level public officials or “any person the Commission deems necessary to make financial disclosure.” Iraq reported that this Article has been invoked by the Commission for public procurement officials and those responsible for public contracts.

Embezzlement of property in the private sector is addressed in part by Article 453 of the Criminal Code pertaining to breach of trust in relation to movable property, although more expansive legislation is contained in the draft anti-corruption legislation.

*Obstruction of justice (article 25)*

Article 229 of the Criminal Code makes it a crime to insult or threaten a public official when the insult or threat occurs during, or on account of, the execution of official duties. Article 230 makes criminal any manner of assault of an official during the course, or on account, of the person’s official duties. These laws cover law enforcement and justice officials.

Article 253 of the Criminal Code makes it a crime for a person to bribe a witness to give false testimony and for a witness to receive such a bribe. Article 254 of the Criminal Code makes it a crime for a person to (a) force or induce by any means a witness not to testify or to give false testimony; or (b) refrain from testifying as a result of receiving a gift or promise. The draft anti-corruption law consolidates the offences and ensures that the language tracks UNCAC article 25.

*Liability of legal persons (article 26)*

Article 80 of the Criminal Code extends criminal liability to legal persons for criminal offences committed by their employees, directors or agents. Such liability does not prejudice the criminal liability of natural persons who commit the same offence. Punishment is limited to fines or other monetary penalties, and can include asset confiscation.

*Participation and attempt; mental state (articles 27, 28)*

Articles 47 to 50 of the Criminal Code criminalize participation in, or incitement to commit, an offence and impose the same penalty as for the principal. Attempt is similarly criminalized with penalties proportionate to the person’s role in the offence. Articles 55 to 58 of the Criminal Code make conspiracy to commit an offence a crime, as well as the attempt to arrange a conspiracy. Preparation to commit a criminal offence is not criminalized. The draft anti-corruption legislation includes a provision to address the preparation to commit a corruption offence, treating it similarly to an attempt to commit a crime.

Iraq reported that the fact-finder may infer knowledge, intent or purpose to commit a Convention offence from the objective factual circumstances.

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)*

Under Article 19 of the Constitution, criminal punishment shall only be imposed for an act that the law considers a crime when perpetrated, and a harsher punishment than the applicable punishment at the time of the offence may not be imposed.

Several statutes grant some privileges and immunities to certain public employees in the performance of their official duties. Immunity for such officials may be lifted by a majority vote of the Parliament or if caught in flagrante delicto in the commission of a felony. Members of the judiciary may only be suspended with the permission of the Minister of Justice. Immunity protection does not extend to members of the Commission of Integrity.

Under Article 10 of the disciplinary code for public sector employees, alleged cases of corruption can result in the formation of an investigative committee to investigate. This committee can recommend that the official be referred to the competent court, if it deems the act constitutes a criminal offence. The committee can also suspend the public official pending the investigation or upon arrest. A decision of the Revolutionary Command Council (disbanded, No. 19 of 1993) stipulates that an official convicted of bribery, embezzlement or theft may not be re-appointed. If the offence is a felony, the disciplinary code prohibits the reappointment of that person in any public sector capacity. In addition, the sentencing court can impose as part of the sentence the withdrawal of numerous rights and privileges. The draft anti-corruption law includes specific consequences for public officials who commit corruption offences.

Article 30 of the Criminal Procedure Code stipulates that public prosecution shall be undertaken by the chief of the Public Prosecution, under the supervision of the Minister of Justice. In corruption cases, this requires close coordination with investigators in the Commission of Integrity. Article 143 sets forth the measures to be taken, in the discretion of the presiding judge, to assure an accused's appearance in court, including the issuance of arrest warrants for a failure to appear. Article 147 permits trial to proceed in absentia if the accused absconds, having been previously informed of the trial date.

Under Article 331 of the Criminal Procedure Code, the sentencing court, upon request of the sentenced person, may discharge a sentence upon completion of at least three-quarters of the prescribed term. The remainder of such term is suspended and can be re-imposed as a consequence of subsequent criminal activity. Exceptions to early release apply to repeat offenders and especially serious crimes. Under the Law for the Reform of Inmates and Detainees, measures are outlined for the successful reintegration of prisoners into society.

Regarding cooperation with law enforcement, Article 311 of the Criminal Code provides exemption from punishment for a person who offers a bribe and reports the offence to law enforcement prior to detection, but excludes the person who accepts a bribe. The draft anti-corruption law would grant discretion to the investigating judge to suspend criminal proceedings against an accused person in a corruption offence if the person is willing to identify other perpetrators, gather evidence against them, and give testimony. Under the draft law, punitive measures could be permanently suspended if the person cooperates with the Commission or the competent investigative authority, discloses relevant information, presents full and valid testimony, and furnishes sufficient evidence against other perpetrators.

*Protection of witnesses and reporting persons (articles 32, 33)*

Although Iraq has provisions allowing for the granting of rewards to persons reporting corruption, as a percentage of the property seized, there are no provisions for the physical protection of the witness or their family, or protection of their residence or employment. Protection measures exist during investigation and trial through the concealment of identity, including voice alteration, during testimony. This may include placing the person behind a screen and the use of technology, through video links and the Internet, or by the investigating judge hearing testimony at the residence of the witness. Iraq reported that most of these provisions are not yet used in practice.

There are at present no provisions to facilitate changing a witness's identity or relocation of the witness or their families. In addition, there are no provisions to facilitate the presentation and consideration of the views and concerns of victims. Iraq reported that draft legislation was under development and serious consideration as a matter of priority to enhance protection of persons reporting corruption in furtherance of UNCAC article 33.

*Freezing, seizing and confiscation; bank secrecy (articles 31, 40)*

Article 101 of the Criminal Code permits the court, upon conviction, to order the confiscation of items acquired as a result of the offence or used in the commission of the offence. This is without prejudice to the rights of bona fide third parties. The provisions include fining the offender an equivalent amount when confiscation is not possible.

During investigation, under Article 183 of the Criminal Procedure Code, the investigating judge can restrain the assets of a person accused of committing a felony involving movable or immovable property, including converted assets. In addition, assets can be frozen pending the initiation of a criminal case on reasonable grounds that the assets are derived from criminal activity and are at risk of being transferred.

The draft anti-corruption law contains provisions to permit the court, on its own motion, to freeze assets pending investigation or trial. In addition, the draft law comprehensively enumerates the assets that may be frozen, seized and confiscated related to corruption offences, upon the request of a foreign State. Missing from the draft, however, are provisions relating to confiscation of frozen assets, as well provisions facilitating the identification and tracing of assets.

Procedures detailed in the Criminal Procedure Code facilitate the maintenance of impounded property pending a decision on forfeiture and disposition. The draft anti-corruption law addresses converted and intermingled property, allowing for their seizure and forfeiture up to the proceeds of the criminal activity.

Under the Money Laundering Law 93 of 2004 and provisions of the Commercial Code, companies and banks are obliged to keep and organize financial records. Such records can be seized or required to be turned over to law enforcement via a judicial order. Under Article 49 of the Banking Code (2004), a bank or financial institution cannot refuse to comply with such an order on the grounds of bank secrecy.

*Statute of limitations; criminal record (articles 29, 41)*

There is no statute of limitations for criminal cases. The only exceptions are with respect to juvenile offences (10 years for felonies, 5 years for misdemeanors) and customs offences (from 3 to 10 years, depending on the type of case).

Article 5 of the Riyadh Agreement on Judicial Cooperation, to which Iraq is a party, provides for the transfer of criminal records to State parties for persons, born or resident, who have been convicted of a criminal offence. Iraq reported that it is pursuing additional such agreements.

*Jurisdiction (article 42)*

Article 6 of the Criminal Code establishes jurisdiction for offences committed in Iraq, which also includes cases where the consequence of those offences are realized or are intended to be realized in Iraq. In all circumstances, the law applies to all parties to the offence of which all or part occurs in Iraq, even though any of those parties are abroad, and regardless of whether they are a principal or accessory to the offence. Iraq's jurisdiction includes the territory of the Republic of Iraq and all areas under its sovereignty, including its coastal waters and airspace. Iraqi ships and aircraft are subject to its territorial jurisdiction, wherever they may be.

Any Iraqi citizen who commits an act abroad and does so as principal or accessory to an offence that is considered a felony or misdemeanour under the Criminal Code is punishable in accordance with its provisions if the person is in Iraq and the offence is punishable under the laws of the land in which it is committed. This provision is applicable whether or not the offender has obtained Iraqi citizenship after the commission of the offence or whether the person had Iraqi citizenship after the offence was committed and subsequently lost that citizenship. Under Article 12, the Criminal Code is applicable to any public official or agent of the Republic of Iraq who commits abroad a felony or misdemeanour stipulated by this Code in the course of official duties or as a consequence thereof.

*Consequences of acts of corruption; compensation of damage (articles 34, 35)*

Under Article 11 of the Law on Public Contract, No. 87 of 2004, the Government can cancel public contracts when it is in the Government's interest to do so. In the case of malfeasance in the implementation of public contracts, the company can be blacklisted from future contracts for a two-year period. Under Articles 17, 20 and 21 of the Law of Public Investment in Private and Industrial Sectors (1991), private contracts can be challenged and compensation awarded under the Civil Code when an act of corruption is committed by one of the parties. Article 28 permits the imposition of licence revocations as well.

The Civil Code permits a person to bring a lawsuit for a claim of damages caused based on a wrongful act committed by another, which would include acts of corruption. The award of civil damages is without prejudice to the potential imposition of criminal penalties.

*Specialized authorities and inter-agency coordination (articles 36, 38, 39)*

Iraq has several specialized offices that work in the area of anti-corruption and law enforcement, which are detailed above.

Coordination among oversight institutions is ongoing, as well as between these institutions and judicial and investigation agencies, to promote the prevention, detection and investigation of corruption. Reporting relevant information relating to criminal activity to law enforcement by public servants is a legal obligation under Article 247 of the Criminal Code. In addition, the Code of Conduct for Civil Servants obliges them to report possible cases of corruption.

Article 12 of the Money Laundering Law requires banks and financial institutions to report cases of suspected money-laundering to the Money Laundering Reporting Office. The Law on Rewarding Informers (2008), aims to encourage people to report information that leads to the return of state and publically owned assets, or the disclosure of theft, embezzlement, forgery of official documents, or cases of corruption.

## **2.2 Successes and good practices**

The following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The Commission of Integrity operates under a clear and specific mandate, broad jurisdiction to investigate and prevent corruption, and with the necessary independence.
- Expansive and flexible jurisdiction for criminal cases, including public officials of Iraq who commit offences abroad in the conduct of their official duties without regard to dual criminality.

## **2.3 Challenges in implementation, where applicable**

The following steps could further strengthen existing anti-corruption measures:

- Adopt provisions of the draft anti-corruption law pertaining to the mandatory provisions of the UNCAC, including active bribery of foreign public officials, obstruction of justice (pertaining to witnesses and false testimony), and the seizure and forfeiture of converted and intermingled property.
- Consider adopting provisions of the draft anti-corruption law pertaining to passive bribery of foreign public officials, trading in influence, bribery in the private sector, abuse of functions, embezzlement of property in the private sector, participation and attempt (in terms of preparation to commit an offence), cooperation with law enforcement authorities and the Commission of Integrity, and the protection of witnesses and reporting persons.
- Consider the potential benefits to investigative effectiveness in extending limited immunity, subject to being lifted for involvement in criminal activity or misconduct, to senior management and investigators of the Commission of Integrity acting in the course of official duties.

- Consider adopting the provision of the draft anti-corruption law pertaining to suspension of certain rights and privileges for holding office for public officials who are convicted of corruption offences.
- Consider adopting legislation or procedures to facilitate changing a witness's identity or relocating the witness or their families; to facilitate the presentation and consideration of the views and concerns of victims and to consider victims as witnesses for protection purposes; and to enhance protection of persons reporting corruption.
- Adopt provisions of the draft anti-corruption law pertaining to freezing and seizing of assets, and incorporate elements of confiscation, identification and tracing of assets in line with UNCAC article 31.

#### **2.4 Technical assistance needs requested to improve implementation of the Convention**

- Good practices/lessons learned with regard to Articles 15 (Bribery of national public officials), 18 (Trading in influence), 19 (Abuse of functions), 20 (Illicit enrichment), 21 (Bribery in the private sector), 22 (Embezzlement of property in the private sector), 23 (Laundering of proceeds of crime), 32 (Protection of witnesses, experts and victims), 33 (Protection of reporting persons), 34 (Consequences of acts of corruption), 35 (Compensation for damage), 36 (Specialized authorities), 37 (Cooperation with law enforcement authorities), 38 (Cooperation between national authorities), 39 (Cooperation between national authorities and the private sector), 40 (Bank secrecy), 41 (Criminal record) and 42 (Jurisdiction).
- Model legislation with regard to Articles 15 (Bribery of national public officials), 18 (Trading in influence), 20 (Illicit enrichment), 21 (Bribery in the private sector), 22 (Embezzlement of property in the private sector), 23 (Laundering of proceeds of crime), 39 (Cooperation between national authorities and the private sector) and 41 (Criminal record).
- Development of an action plan for implementation with regard to Articles 15 (Bribery of national public officials), 23 (Laundering of proceeds of crime), 34 (Consequences of acts of corruption), 35 (Compensation for damage), 36 (Specialized authorities), 38 (Cooperation between national authorities), 39 (Cooperation between national authorities and the private sector), 40 (Bank secrecy) and 42 (Jurisdiction).
- Legislative drafting with regard to Article 16 (Bribery of foreign public officials).
- Legal advice with regard to Articles 16 (Bribery of foreign public officials), 18 (Trading in influence), 19 (Abuse of functions), 20 (Illicit enrichment), 21 (Bribery in the private sector) and 23 (Laundering of proceeds of crime).
- On-site assistance of an anti-corruption expert with regard to Articles 22 (Embezzlement of property in the private sector), 23 (Laundering of proceeds of crime) and 41 (Bank secrecy).
- Capacity-building assistance to national authorities with regard to Articles 31 (Freezing, seizure and confiscation), 32 (Protection of witnesses, experts and

victims), 39 (Cooperation between national authorities and the private sector) and 40 (Bank secrecy).

### **3. Chapter IV: International cooperation**

#### **3.1 Observations on the implementation of the articles under review**

*Extradition; transfer of sentenced persons; transfer of criminal proceedings (articles 44, 45, 47)*

Extradition is governed both by Iraqi national legislation and bilateral and multilateral extradition treaties. The general principles expressed in domestic legislation demonstrate a broad compliance with the requirements of UNCAC as regards extradition, although there are limited examples of the practical implementation of these provisions.

Iraq has several bilateral and multilateral extradition treaties currently in force, including with Egypt, Germany, Hungary, Saudi Arabia, Turkey, United Arab Emirates, United States of America and Yemen, and is actively seeking to conclude additional agreements. Iraq also considers UNCAC as a basis for extradition. Iraq confirmed that where an extradition request is received in relation to an UNCAC offence and no relevant bilateral or multilateral agreement is in place, the Convention will serve as the legal basis for cooperation. This was confirmed through a letter sent to the Secretary-General of the United Nations upon signature of the Convention.

Dual criminality is a prerequisite for extradition. Article 357 of the Criminal Procedure Code (1971) states that offences for which extradition is sought must carry a prison sentence of at least two years under the laws of the requesting State and of Iraq. This requirement is reduced to six months where the person has already been convicted in the requesting State. Iraq is able to extradite for any criminal offence meeting the above specifications.

Extradition must be refused for political offences. Article 21 of the Criminal Procedure Code defines political offences and also explicitly details a list of crimes that cannot be considered political offences, including several corruption-related offences. Consequently, extradition requests in relation to UNCAC offences may not be refused on such grounds. Requests cannot be refused on the ground that the offence involves fiscal matters.

Iraq does not extradite its own nationals. Where extradition is refused on these grounds, Iraq will prosecute in cooperation with the requesting State party. As per Article 9 of the Criminal Procedure Code, foreign judgments may be executed in Iraq, provided the order does not contravene public order. According to Article 362 Criminal Procedure Code, the Minister of Justice, with the approval of Minister of Foreign Affairs, may reject court the decision to extradite.

Due process is observed at all stages in extradition. An extradited individual shall not be tried or punished except for the offence for which extradition is sought. Under Article 19 of the Iraqi Constitution of 2005, legislation ensures the protection of the right to a defence in judicial and administrative proceedings. A person subject to extradition may not appeal that decision.

Iraq has established a legal basis for the transfer of sentenced persons for UNCAC offences through its ratification of the Riyadh Arab Agreement for Judicial Cooperation as well as through bilateral memoranda of understanding, including with Iran and Tunisia.

There is no prohibition to the transfer of criminal proceedings, subject to judicial authorization.

*Mutual legal assistance (article 46)*

Mutual legal assistance is accorded to the fullest extent possible, based on the general principle of reciprocity. Dual criminality is not required for Iraq to provide assistance. Legislation outlines the format in which requests should be sent, as well as the types of information that can be provided through assistance requests. The Riyadh Arab Agreement and several bilateral agreements address diverse forms of cooperation; however, Iraq noted that their practical application is almost non-existent, although Iraq is actively seeking to conclude additional assistance agreements. In addition, Iraq considers the UNCAC as a basis for mutual legal assistance.

The Commission of Integrity is the Central Authority to receive and process mutual legal assistance requests on corruption-related matters. The Commission coordinates with other authorities, such as the police, INTERPOL, the Ministry of Interior, the Ministry of Justice and courts, as necessary.

According to the Banking Law (2004), Articles 49 and 50, bank secrecy laws are not a barrier to the provision of mutual legal assistance by Iraq. The Commission of Integrity has the authority to issue the required judicial orders requesting the disclosure of relevant information by financial institutions.

Iraq permits video testimony in relation to foreign criminal proceedings. When providing such testimony, the witness must appear in an Iraqi court in the presence of a judge. While video testimony has not been used specifically for corruption cases, it has been carried out in relation to other criminal offences.

According to Article 354 of the Criminal Procedure Code, the requesting party is to bear the costs of mutual legal assistance, unless otherwise agreed. While in principle States may agree that the requested State will bear the costs of a request, the presumption in current Iraqi legislation is the opposite, which is inconsistent with the UNCAC.

*Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)*

Law enforcement cooperation with foreign authorities is provided on the basis of bilateral assistance agreements and on an informal, ad hoc basis. No domestic framework for the provision of law enforcement cooperation exists.

There are no domestic legislative provisions designed to facilitate the establishment of joint investigations between law enforcement authorities.

### 3.2 Successes and good practices

Overall, the following successes and good practices in implementing Chapter IV of the Convention are highlighted:

- Iraq is signatory to the Riyadh Arab Agreement for Judicial Cooperation, as well as several bilateral agreements outlining methods of cooperation, for both extradition and mutual legal assistance.
- The Commission of Integrity has been granted direct authority to receive and process mutual legal assistance requests for UNCAC offences.
- The Commission of Integrity has the legal authority to require financial institutions, by judicial order, to provide relevant information following receipt of a mutual legal assistance request without having to revert to the courts.
- In order to enhance the practical implementation of several bilateral agreements, Iraq has forged several memorandums of understanding to encourage cooperation relating to criminal extradition and mutual legal assistance.

### 3.3 Challenges in implementation, where applicable

The following steps could further strengthen existing anti-corruption measures:

- Continue to develop legislation to establish a more complete and effective framework for extradition and mutual legal assistance.
- Consider legislation to amend the current presumption that the requesting State party will cover the costs for the execution of a mutual legal assistance request.
- Consider entering into further bilateral and multilateral agreements in relation to extradition, and amend existing agreements to ensure they cover all UNCAC offences.
- Consider clarifying with the United Nations the preferred language for communication of requests, as no specific language was specified.
- Consider informing the Secretary-General of the United Nations whether Iraq will consider the Convention as the legal basis for cooperation on extradition with other States parties; or otherwise endeavour to enter into agreements or arrangements with other States to strengthen extradition mechanisms.
- Consider amending the domestic legal framework to more expressly allow for the provision of mutual legal assistance under certain circumstances even in the absence of dual criminality.
- Consider amending Article 362 of the Criminal Procedure Code to remove the provision which allows the Minister of Justice, with the approval of Minister of Foreign Affairs to prevent implementation of a court's decision to extradite.
- Continue to explore opportunities to actively engage in bilateral and multilateral extradition arrangements with foreign countries, with the aim to enhance the effectiveness of extradition, mutual legal assistance, transfer of criminal proceedings and other forms of international cooperation in criminal

matters, with special emphasis on law enforcement cooperation and joint investigations.

**3.4 Technical assistance needs requested to improve implementation of the Convention**

- Assistance in developing legal framework on international cooperation, provision of good practices/lessons learned with regard to Article 44(2) (Extradition) and Article 46 (Mutual legal assistance).
-