

Anti-corruption Law No (39) for 2006

yemen

3/16/2008

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In the name of the People,

The President of the Republic;

taking cognizance of the Republic of Yemen's Constitution,

and after the Parliament's approval,

We issued the following law:

Chapter One

General Regulations

Section One

Nomination and Definitions

Article (1): This law will be called (Anti-Corruption Law).

Article (2): For purposes of this Law, the expressions and phrases mentioned below will be intended to mean the following significations, unless the context indicates otherwise:

Republic: The Republic of Yemen

Civil servant: Any person working in a public job or providing a public service; assuming an executive, legislative, administrative, consultative, or judicial position; appointed or elected; permanent or temporary; for remuneration or without; irrespective of the authenticity of his/her appointment to this job. This includes employees in the executive system at all levels, members in the Parliament and Shura, local councilors, members in the judicial system, members in permanent councils and committees. Under civil servants come arbitrators, experts, notaries, attorneys, lawyers, custodians to whom properties are assigned, and directors and employees in corporations, companies and banks the State contributes to their capitals.

Foreign servant: Any non-Yemeni person assuming an executive, legislative, or judicial position or in a public job, or any non-Yemeni person working for a public organization or firm related to another country, or for international public institution in

Yemen.

Authority: National Supreme Anti- Corruption Authority established under this Law.

Competent Agency: The agency concerned - according to its laws - with issuing decrees, measures and regulations pertaining to this Law.

Convention: UN Anti-Corruption Convention.

Corruption: Taking advantage of the public job for personal interests, whether by misusing or violation of law, or by misusing of the authorities given by this job.

Bylaw: The executive bylaw of this Law.

Section Two

Purposes and Range of Application

Article (3): This Law is intended to achieve the following:

- 1. To establish an independent National Authority with legal Anti-Corruption authorization, has the right of tracking its practices according to this Law.
 - 2. To prevent and combat to corruption, ward off its risks, pursue its committers, seize and retrieve proceeds yielded corruption.
- 3. To promote the concept of cooperation and partnership with other countries and international organizations in international programs and projects aiming at preventing corruption.
- 4. To found honesty and transparency in economic, financial and administrative dealings so that to achieve good governance and best use of public property and resources.
 - 5. To enforce accountability basis, to enhance the controlling role of organizations concerned, and to facilitate the access by community members to information and to authorities concerned.
 - 6. To encourage civil society organizations to effectively participate in preventing and combating corruption, in campaigning against its causes and risks, and raising awareness of community about how to prevent it, and expanding the knowledge of Anti-Corruption practices.

Article (4): This Law is applicable to:

- a. All corruption crimes and practices, all or some or part of which is committed within the Republic or any of its institutions out of the country, whatever the committers' nature and nationality is.
- b. Corruption crimes that are committed outside the Republic but come within the competence of Yemeni Courts according to the penal procedures, the law of

combating money laundering practices or any other prevailing Laws, and the international conventions to which Yemen is a signatory.

Chapter Two

National Supreme Anti-Corruption Authority

Section One

The Establishment

Article (5): Under this Law, an authority will be established called (National Supreme Anti-Corruption Authority).

Article (6): a. The Authority will have a body corporate and legal framework and a financial and administrative autonomy.

b. The Authority's headquarters will be based in the Capital of Sana'a, and, as the need arises, it can have branches based in other governorates by a decision from its chairman.

Article (7): The Authority will be responsible for developing and approving its own Anti-Corruption policies, plans and programs, and clarifying its regulations.

Article (8): The Authority will have the following tasks and competences:

- 1- Developing and implementing general Anti-Corruption policies.
- 2- Drafting a national comprehensive strategy to combat corruption, and developing and implementing machineries, plans and programs to carry out this strategy.
- 3- Taking measures necessary to involve local communities and civil society organizations in campaigning against corruption's risks and impacts on community, and in expanding the community role in activities resisting and combating corruption.
- 4- Studying and evaluating regulations relating to combating corruption, in order to know the extent of their efficiency, and suggesting drafts of amendment to these regulations so that to be in line with international conventions to which Yemen is a signatory.
- 5- Receiving reports and complaints about corruption crimes and, then, studying, investigating and dealing with them in accordance with prevailing legislations.
 - 6- Receiving financial disclosure documents.
- 7- Investigations with corruption committers and referring them to Judiciary
- 8- Representing the Republic at international Anti-Corruption conferences.
 - 9- Coordinating and cooperating with other countries and international organizations relating to combating corruption, and participating in international

Anti-Corruption programs.

- 10-Coordinating with all State's organizations in promoting and improving measures required to protect against corruption, and in modernizing mechanisms needed to combat corruption.
- 11-Coordinating with media organizations in raising awareness of community against corruption's risks and impacts, and about how to prevent it.
- 12-Collecting information about all forms of corruption, establishing databases and info systems, and exchanging info with organizations concerned with corruption issues, local and international, in accordance with prevailing legislations.
- 13-Taking actions and measures necessary to retrieve funds and proceeds yielded by corruption crimes, in coordination with agencies concerned.
 - 14-Reviewing and assessing reports issued by local and international organizations on combating corruption, finding out about Republic's status in these reports, and taking appropriate actions thereof.
- 15-Taking legal actions and measures to invalidate any contracts in which the country is part of, or revocation of concessions or any other relation if proven to be violating prevailing laws or causing disadvantages to the public in coordination with agencies concerned.
- 16-Quarterly reporting to the parliament and President on tasks and works it carried out.
- 17-Developing and approving its budget to be incorporated in one figure into the states budget.
- 18-Developing its closing statement of account to be incorporated into the state closing statement.
- 19-Performing any other tasks assigned to it under prevailing legislations.

Section Two

The National Supreme Anti-Corruption Authority composition.

Article (9): a. The Authority will be run through an 11-member board of trustees who will be elected from independent qualified nationals known of experience and honesty.

This board should include representatives from civil society organizations, private sector and women.

- c. For the board of trustees membership, It is provided to have:
 - 1. Yemeni nationality.
 - 2. 40 years old or more
 - 3. university degree or higher
- 4. never been subjected or sentenced in corruption, morality or honesty unless it is proven to be false.
- d. For the selection of the board of trustees, Shura Council will submit a list consisting of thirty candidates to the parliament, provided paragraphs (a) and (b)

of this Article.

- e. The 11-Members of the trustee board will be chosen from the 30 candidates list in a confidential voting by the Parliament.
- f. The results of the voting will be submitted to the president for the issuance of the appointment decree.
- g. The name following the 11 selected members in the parliament voting will fill any vacancy in the board of trustees after issuance of the appointment decree by the president.
- h. Each member of the board of trustees will have a minister rights in the administrative system of the state.

Article (10): members of the board of trustees will submit their financial disclosures to the head committee in the parliament.

Article (11):a. The members of the trustee board will, before starting their tasks, swear constitutional oath.

b. The trustee board's period of time will be five years starting as of the next day following appointment issuance, and for one period only.

c. The board of trustees will, at its first meeting immediately after the appointment decree is issued, choose its chairman and vice-chairman from its members by majority approval, whom will be chosen each 30 months, and will distribute tasks among all members.

d. In case the chairman position is vacant, vice-chairman takes chairman responsibilities until the selection of the new chairman by members of the board of trustees.

e. Majority of members of the board of trustees have the right of referring any member of the board to judiciary in case he/she violates his/her duties and regulations of the Authority.

f. Membership will not be dropped unless there is a great violation of duties and regulations of the Authority and according to final court verdict.

Article (12): a. The Authority will have an executive body responsible for technical, administrative and financial system whose divisions and tasks will be defined by the Authority's constitution.

b. The Authority will have a general secretary to be appointed by the chairman after approval from majority of the board of trustees. The general secretary will be responsible to the executive body for running day-by-day work, and his/her tasks and responsibilities will be defined by the Authority's constitution

c. The Authority will select its administrative and technical staff from well qualified

persons known of experience and honesty, and from different specialties through transparent selection process, and according to criteria set by Authority's constitution.

- d. The chairman will have the authority of the prime minister on his Authority personnel and staff.
- e. All Authority employees will be subject to the civil servants executive regulations.
- f. The Authority has the right to engage the services of qualified experts or consultants, or form experienced civil servants from the public institutions.

Article (13): The Authority will rehabilitate and train its staff so that to be able to perform their tasks in combating corruption.

Article (14): For the purpose of implementing this Law, Authority's staff (to be identified under a decision by chairman) will enjoy a judicial advantage for which a decree will be issued by Justice Minister based on a proposal from chairman. Authority's constitution will determine the tasks done by staff according to this advantage.

Article (15): The Authority will dependently perform its functions, and no agency can by any means intervene in its affairs; such intervention will be considered as a punishable crime and lawsuit will not be prescribed.

Article (16): a. It will be forbidden for the Authority's staff to reveal any of the Authority's confidential information or data they may know as performing their tasks

b. The Authority will be committed to publish all information concerning corruption crimes immediately after being proved by judiciary.

Article (17): a. It will not be allowed for the Authority's chairman or members of the board of trustees to assume any other job during their mission in the Authority.

b. It will not be allowed for the Authority's staff to assume any job or work that directly or indirectly affects the Authority's autonomy and neutrality

Article (18): Within the State's budget, the Authority will have a separate budget in one figure proposed by chairman, to which budgeting rules and procedures used for the State's budget will be applied.

Article (19): The Authority's chairman will enjoy the same power as that authorized by prevailing legislation to ministers of finance and of civil service; in terms of using funds allocated for Authority's budget and managing its activities and personnel.

Chapter Three

Measures of Combating Corruption

Section One

Legislative Measures

Article (20): a. Studying, assessing and developing punitive regulations for corruption crimes, from procedural and subjective viewpoints, so that to keep pace with regulations of the Convention, and submit it to parliament for discussions and approval in accordance with the constitution of the state.

b. Putting studies, in coordination with competent agencies, on the establishment of specialized administrative courts.

Article (21): The Authority will study, assess and develop staffing systems in order to:

- a. Promote the concept of efficiency, qualification and creativeness in assuming a public posts.
- b. Strengthen systems of selection, rehabilitation and training in respect of recruiting for public posts more vulnerable to corruption for better performance.
- c. Promote transparency in public posts and prevent conflict of interest between public posts and employees; after-service regulations should be made to regulate or prevent employees from having personal advantages from practicing professional private activities directly related to the posts they used to do or supervise during service.
 - d. Developing systems aiming at promoting good practice at work.
- e. Enacting and enforcing disciplinary actions so that to prevent abuse of public posts for illegal personal purposes.

Article (22): The Authority will coordinate with competent agencies in studying, assessing and developing financial, purchases, tenders and auctions systems, and systems of managing public resources, utilities and property; and in developing different forms of control and audit mechanisms so that to improve public property management, consistent with COCA Law.

Article (23): The Authority will coordinate with competent public and private agencies in studying, assessing and developing systems and procedures pertaining to private sector to:

- a. Enhance transparency in accounting and auditing systems, draw up regulations for auditing the accounts and balance sheets, and obligate regular bookkeeping.
- b. Draw up regulations sufficient to prevent manipulating of accounting data.
- c. Take actions necessary to facilitate access to records for auditing agencies according to prevailing legislations.

Section Two

Community Participation

Article (24): Every one should report any corruption acts to the Authority or related agencies, which will make sure of information authenticity and take legal actions thereof. The Authority will act directly to investigate on any corruption crimes published in media and press.

Article (25): The Authority will enhance the participation of civil society organizations in activities of rejecting corruption, raising public awareness about risks and impacts of corruption, and campaigning against tolerance towards corruption doers.

Article (26): Financial firms will have cooperate with the Authority in all issues relating to corruption.

Article (27): The Authority will secure legal protection for reporters and witnesses, and its constitution will define procedures for their protection.

Section Three

International Cooperation

Article (28): Regulations stipulated in international relevant conventions (Yemen is a signatory to) will be applied for international cooperation in combating corruption.

Article (29): Every state signatory of the Convention Yemen part of has the right to file suit at Yemeni courts to claim retrieve ownership of proceeds related to corruption crimes stated in the Convention, and to claim indemnity for damages it suffered as a result of such crimes in accordance with prevailing laws, as long as this state applies same regulations.

Chapter Four

Corruption Crimes and Penalties

Section One

Corruption Crimes

Article (30): The following are considered as corruption crimes:

- 1. Crimes influencing national economy, stated in Penal Law.
- 2. Crimes influencing public post, stated in Penal Law.
- 3. Crimes influencing justice application, stated in Penal Law.
- 4. Embezzlements of private property, stated in Penal Law.

- 5. Bribing foreign staff and staff of international public corporations to illegally do or/and not to do a work in order to get commercial benefit or advantage, stated in Penal Law.
- 6. Forgery and falsification crimes connected to corruption, stated in Penal Law.
 - 7. Smuggling and tax evasion crimes.
- 8. Cheating and manipulating at auctions, tenders or any form of governmental contracts.
 - 9. Laundering money yielded from crimes stated in this Article.
 - 10. taking advantages from public posts for personal interest or benefit.
 - 11. Illegal wealth.
 - 12. Any other crimes stated by any other law as corruption crimes.

Article (31): As for the acts mentioned in Article (30) of this Law, relevant penalties stated in other prevailing laws are applicable.

Section Two

Capture, Investigation and Trial procedures

Article (32): a. The Authority will pursue, seize and retrieve proceeds yielded from corruption crimes according to regulations of prevailing laws and international conventions Yemen is a signatory to.

b. It not allowed to retrieve or seize proceeds unless there is a final court verdict.

Article (33): It is not allowed for any agency to hide any information required by the Authority, or to refuse providing records or documents requested by the Authority.

Article (34): Immediately after being informed, the Authority will have to investigate and collect corroborative evidences. To achieve this, the Authority will have the right to take cognizance of records and documents in relation to the crime in question, and to ask to be briefed on any data or information.

Article (35): The Authority will have the right to summon responsible public or private employees in order to inquire about an event relating to corruption in accordance with prevailing legislations.

Article (36): For capture, investigation and trial procedures in corruption crimes, rules stated in Penal Procedures Law will be applied.

Article (37): The competence of judging in corruption crimes will be limited to Public Property Courts and Prosecution.

Article (38): Correspondence, information and reports connected to corruption crimes will be considered as confidential matters that should be maintained, and workers involved cannot reveal any of them.

Article (39): The following will not be prescribed:

- a. Lawsuits connected to corruption.
- b. Sentences of courts connected to corruption.
- c. Retrieve and indemnity lawsuits connected to corruption.

Section Three

Penalties

Article (40): Discharge and commutation of penalty will be applied to any person participated in a corruption crime in case he/she informs competent agencies about the crime, or provides them with information to facilitate uncovering the act or capturing its doer and retrieving illegal proceeds.

Article (41): Any one may breach Article (15, 16/a, 26, 44/b) of this Law will be sentenced no more than five years in prison, or fined no more than five million Yemeni Rials.

Chapter Five

Final Regulations

Article (42): In coordination with Central Organization for Controlling and Auditing, the Authority will have to collect the corroborative evidences and the information that related to corruption and to refer the accused to the public prosecution to act according to prevailing law.

Article (43): All the country's organizations will commit itself to facilitate all challenges or difficulties enabling the Authority to perform its missions according to the Law.

Article (44): a. All the country's organizations will commit itself to cooperate with each other to inform the control and investigation authorities of corruption crimes and to provide them with all the Information related to any crimes.

b. Any civil servant, if he has information about a corruption crime, should immediately report it to the Authority or competent Agency and should provide all information he/she has about the crime.

Article (45): Regulations in the Code of Ethics, according to the groups this Code includes, will be applicable to property of civil servants.

Article (46): As for proceeds fro crimes, Laundering Money Law should be applicable.

Article (47): a. The executive bylaw of this Law will be issued after majority approval

from the board of trustees, under decrees from the President based on proposals from chairman within 6 months.

b. The constitution of the Authority will be issued by the Authority's chairman after majority approval from the board of trustees.

Article (48): the law come into effect as of it's promulgation and publish in the formal gazette.

Issued at Presidency of the Republic- Sana'a

Date 05/12/1426 Hajj

December 25th, 2006

President of the Republic of Yemen

Ali Abdullah Saleh