



National Endowment  
for Democracy



PAY INSTITUTE  
For Education & Development

# Independent Boards of Kurdistan Regional Government

**Between Commitment to the law and violations**



**The Independent High Elections and Referendum Commission**



**Independent Human Rights Commission**



**Commission of Integrity**



**Board of Supreme Audit**

**Fifth  
Report of the fifth Round**

February 2021

It is a part of Monitoring and Evaluation for  
the fifth round of Kurdistan  
Parliament project



**National Endowment  
for Democracy**



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**Between Commitment to the law and violations**



Kurdistan Region Board of Supreme Audit



Kurdistan Independent Human Rights Commission



Commission of Integrity of Kurdistan



The Independent High Elections and Referendum Commission

هەرتێمی کوردستان

## The Fifth Report

Is part of the observation and assessment project for the works of Kurdistan Parliament, written by PAY Institute, discussed and presented as a shared work in the meeting of February 23<sup>rd</sup>, 2021 in Erbil with the presence of members of parliament, representatives of the commissions, university teachers, civil activists and media channels.

**February 2021**

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\* The project of monitoring and assessing the works of Kurdistan Parliament has started since the 4<sup>th</sup> term of the parliament, with the support of American National Endowment for Democracy (NED).

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## **PAY Observatory for Parliament Censorship**

[www.payied.org](http://www.payied.org)

PAY Observatory is part of the project of censorshipping and evaluating the works of Parliament. This website publishes news in Kurdish and Arabic, PAY Observatory sections include:

- About PAY - PAY projects - PAY news
- Project of censorship on the Parliament of Kurdistan - Reports of the project of censorship on the Parliament of Kurdistan
- About Parliament of Kurdistan - History of Elections - Election Laws
- Parliament sessions - Parliament presidency – Parliament members - Parliament committees
- Laws
- Decisions
- Presense of Parliament members in Parliament sessions
- Contacting members of Parliament
- What posted about parliamentary work
- Publications of Parliament
- Video clips of Parliament sessions
- Photo gallery
- Freelance writers
- Locations

Information about the fifth session is available on the website and daily news of Parliament is published continuously

## How was this Report written?

Within the project of monitoring and assessing the works of Kurdistan Parliament which is supported by (NED) organization, feeling the importance of the Independent Commissions and their problems, we decided to prepare a report. We, the PAY Institute staff followed up with the works of the commissions, compared their laws with their actual works, visited all the commissions and had discussions with the heads of the commissions, their general directors, their representatives and their staff. After it was drafted, the report was read and assessed by several esteemed experts and university teachers, then we decided not to publish the report without taking into account the opinions of the commissions, so with the presence of the commissions' representatives we held a meeting and got their valuable opinions about the report.

On February 23<sup>rd</sup> 2021, we held a meeting in Erbil for the purpose of discussing how the independent commissions are doing their works in Kurdistan Region, which was attended by members of parliament, representatives of the independent commissions, university teachers, civil activists and media channels, during which the content of the report was presented, a few panels were held by the attendees about how the independent commissions are doing, their problems were discussed and some solutions and recommendations were given.

The panels' programs were as the following:

- Welcoming remarks and a brief about the project were given by (Rwanga Fayaq Ali).
- The (The independent commissions in Kurdistan Region between abiding by the laws and violations) report was presented by (Dr. Sarwar Abdulrahman) head of PAY institute.

### **Firs Panel: The importance of the independent commissions in an institutionalized country, was chaired by (M. Miran Husein Hasan).**

A reading for the laws of the independent commissions, by (Assistant Professor Shwan Omar) Dean of College of Law in Koya University.

The independence of the independent commissions, by (Assistant Professor Khamosh Omar) Kurdistan Parliament advisor.

### **Second Panel: The position of the independent commissions, chaired by (Dr. Sarwar Abdulrahman)**

The role of The Independent High Elections and Referendum Commission in the Kurdistan Region Elections, presented by (Suleiman Mustafa) Deputy Chairperson of the Independent High Elections and Referendum Commission.

The role of Integrity Commission in battling corruption, presented by (Dr. Adnan Abdulla Rasheed) Director General of Integrity Commission.

The role of the Independent Human Rights Commission in protecting the freedom, presented by (Tavga Omar Sa'eed) General Director in the Human Rights Commission.

The position of Fiscal Oversight Office in Kurdistan Region, presented by (Muhsin Muhammad Salih), Manager in the Board of Supreme Audit.

### **The Third Panel: Kurdistan Parliament's view of the Kurdistan Region Independent Commissions, chaired by (Arez Dara):**

The Human Rights Committee's point of view in Kurdistan Parliament, presented by Member of Parliament (Gulistan Sa'eed Muhammad), member of the Human Rights committee.

The Legal Committee's point of view in Kurdistan Parliament, presented by Member of Parliament (Kawa Abdulqadir Hasan), member of the Legal Committee.

The Civil Society Committee's point of view in Kurdistan Parliament, presented by Member of Parliament (Rupak Ahmed Rahman), member of the Civil Society Committee.

**The final panel: the attendees' discussion about the panels and final recommendations, chaired by (M. Miran Husein).**

This was dedicated to the attendees' discussion about the report of PAY Institute and other topics presented.

At the end the recommendations the attendees had were gathered by (Vyan Muhammad and Shokhan Mahmood).

It's worth mentioning that all the attendees and the representatives of the commissions talked about their issues, shared their views about the report, and in the light of their comments, the report was amended, and the recommendations were recorded, thus this report in front of you can represent the view of all the attendees and express everyone's opinion.

Though we tried to capture the full view of the relevant committees of the parliament, unfortunately most of the parliament members invited were not able to attend due to other commitments.

Below is name of those who attended the meeting:

- 1- Gulistan Sa'eed Muhammad / Member of Kurdistan Parliament
- 2- Kawa Abdulqadir Hasan / Member of Kurdistan Parliament
- 3- Rupak Ahmed Rahman / Member of Kurdistan Parliament
- 4- Suleiman Mustafa / Deputy Chairperson of the Independent High Elections and Referendum Commission
- 5- Shirwan Zirar / Commissioner and spokesperson of The Independent High Elections and Referendum Commission.
- 6- Dr. Aram Najmadeen Abdulmunawar / The Independent High Elections and Referendum Commission Erbil Office Manager.
- 7- Shorish Hasan Kareem / General Media Director in The Independent High Elections and Referendum Commission.
- 8- Tavga Omar Rasheed / General Director of The Human Rights Independent Commission.
- 9- Muhammad Sabir Gomashiny / Media Manager and Spokesperson of The Human Rights Independent Commission.
- 10- Dr. Adnan Abdullah / General Director of Department of Prevention and Transparency – Commission of Integrity.
- 11- Sawsan Muhammad Ameen / Expert in Commission of Integrity.
- 12- Muhsin Muhammad Salih / Manager of Training and Development Department in the Board of Supreme Audit.
- 13- Nisar Muhammad Sabir / Representative of Board of Supreme Audit.

- 14- Shwan Mahmood Abdulmajeed / Deputy Manager of KRG Department of Non-Governmental Organizations.
- 15- Shwan Omar Khidir / Dean of Faculty of Law and Social Sciences in Koya University.
- 16- Khamosh Omar Abdullah / Kurdistan Parliament advisor.
- 17- Dr. Dler Ahmed Hamad / Kurdistan Parliament advisor.
- 18- Jawad Taha Sa'eed / Kurdistan Parliament advisor.
- 19- Dana Dara Husein / Kurdistan Parliament advisor.
- 20- Hardi Shukir Mahmood / National Democracy Institute NDI.
- 21- Amir Botani / National Democracy Institute NDI.
- 22- Bilal Faris Ahmed / Head of Chawy Zanko Organization.
- 23- Sawen Khalid Muhammad / Chawy Zanko Organization.
- 24- Parikhan Ahmed Kareem / Head of Arsan Organization.
- 25- Farman Rashad Azeez / Head of STOP Organization.
- 26- Ary Abdullah Azeez / STOP Organization.
- 27- Muhammad Sabah Khalid / Head of Peace Meeting Organization PMO.
- 28- Ahmed Jawhar / Peace Meeting Organization PMO.
- 29- Dr. Sarwar Abdulrahman Omar / Head of PAY Institute for Education and Development.
- 30- Miran Husein Hasan / PAY Institute for Education and Development.
- 31- Arez Dara Jalal / PAY Institute for Education and Development.
- 32- Muhammad Kareem Ahmed / PAY Institute for Education and Development.
- 33- Rwanga Fayaq Ali / PAY Institute for Education and Development.
- 34- Vyan Muhammad Qarani / PAY Institute for Education and Development.
- 35- Shokhan Mahmood Abdulmajeed / PAY Institute for Education and Development.
- 36- Solin Hasan Ahmed / Journalist from Kurdsat News TV.
- 37- Hadi Salimy / Journalist from Rwdaw TV.
- 38- Hazhar Hakeem / Journalist from Kurdistan TV.
- 39- Hiwa Faqeyani / Journalist from Speda TV.
- 40- Farman Sadiq / Journalist from Deplomatic Magazine website.
- 41- Aram Gazwashani / Journalist from Deplomatic Magazine website.
- 42- Derya Khalil Khidhir / Media of Commission of Integrity.
- 43- Sa'eed Abdullah / Journalist from BasNews.
- 44- Aram Sardar Omar / Journalist from Xelk Media Network.
- 45- Issa Abdulqahar Ali / Journalist from BwarNews Media establishment.
- 46- Sarbaz Muhammad Ahmed / Journalist from Gali Kurdistan TV.
- 47- Bryar Muhammad / Journalist from Standard Establishment.
- 48- Amanj Ahmed / Journalist from Zaman Digital Media.
- 49- Mustafa Jalal / Journalist from Xendan Digital Media.
- 50- Bashdar Hasan Ahmed / Journalist from WAR TV.



## Introduction

In Kurdistan Region, so far, several laws have been passed specific to the independent commissions and many commissions were formed, even though these commissions were formed for some specific aims and purposes, that doesn't necessarily mean they have been successful in performing their duties since they were formed.

The aim of forming them is that they perform their duties while protecting their independence from other authorities and political parties. But the practical reality in Kurdistan Region may not reflect the aim they were formed for. The commissions should be free from working to keep the balance for and in the interest of the political parties and the negotiations that happen among these political parties, while making sure that relevant experts, unbiased and skillful people should fill the positions of the commission, as forming these commissions require the development of visions and the reflection of those concepts within the constitutional and legal frameworks, which will lead to filling the gaps in the state establishments. There should be a will for change, transparency, monitoring and follow up. In forming them, subjectivity and necessity of forming them should be considered, they should not be only formed only for the sake of the name and as a mask for authority.

The legislations based on which the independent commissions in Kurdistan Region were formed are the following:

- 1- Law No. 2 for the year of 2008, Board of Supreme Audit Act.
- 2- Law No. 4 for the year of 2010, Independent Human Rights Commission Act.
- 3- Law No. 3 for the year of 2011, General Commission of Integrity Act, and Law No. 7 for the year of 2014: Act for the first amendment of General Commission of Integrity in Kurdistan Region of Iraq, No. 3 for the year of 2011.
- 4- Law No. 4 for the year of 2014, The Independent High Elections and Referendum Act.

Besides the independent commissions, some laws were also passed specific to some commissions linked to the Council of Ministers, such as:

- 1- Law No. 6 for the year of 2013, General Commission in Kurdistan Region Act for the disputed areas.
- 2- Law No. 3 for the year of 2010, Environmental Protection and Improvement Commission Act.
- 3- Law No. 7 for the year of 2011, Civil Service Council Act.
- 4- Law No. 2 for the year of 2015, the law of Kurdistan Fund for Petrol and Gas Returns.

All the commissions in Kurdistan Region were formed except for (Civil Service Council) and (Kurdistan Fund for Petrol and Gas Returns).

The aim of the legislator in forming these commissions is not to create a new authority, but to give them independence so that they carry out their works and duties in a better and more unbiased way without being under the influence of the general authorities.

The aims of forming these commissions are various, some of them are general which we can say are common between all the commissions, and some of them are special aims for

which each commission is formed based on their works, for example the special aims of the commission of integrity are different, and we will talk about them here:

**First:** The General Aims: we can brief the general aims in the following points:

- 1- Ensuring that Principle of Legality is practiced.
- 2- Monitoring the work of the public establishments.
- 3- Monitoring the way the public funds is spent.
- 4- Protecting the human rights and freedom.

**Second:** Special aims: besides the general aims the commissions have according to the laws of each of the commissions, they also have some special aims for which they were formed, we will talk about each of them at the right time.

Even though these commissions were formed with the aim of monitoring, providing transparency, bringing about a democratic environment, widening the horizon of liberties and protection human rights, day after day transparency is replaced by ambiguity, democracy is replaced by individual leadership, and we see that instead of liberties, suppression and violation of human rights are increasing, and the main reason is the political parties' domination and the increased greed and violation of the laws for their own's and their party's interest.

Within the project of monitoring the parliament which is done with the support of National Endowment for Democracy NED, PAY Institute for Education and Development has tried to focus on the works and capabilities of all the four independent commissions (Board of Supreme Audit, The Independent Human Rights Commission, Commission of Integrity and The Independent High Elections and Referendum Commission), show their laws and compare between them on paper and their practical field, in addition to showing their shortcomings, violations, weaknesses, powerlessness and the violations by the parliament in this area.

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## What are the Independent Commissions? Why are they formed?

Around the world, the emergence of the independent commissions goes back to the modern countries' ideas and expertise in carrying out their duties, as forming these commissions, due to the increase and development of the state duties, is considered a necessity of the modern countries. Meaning the countries had to form these commissions to being able to carry out the new duties. In Other words, the rise of these independent commissions within the state establishments is one of the signs of a constitutional democratic system, which is built based on separating the different powers, peaceful handover of power, the rule of law and the protection of human rights and freedom.

Some others believe that the principle of the independent commissions is to achieve some goals, such as: to support managing the government, to monitor the people working in it and quick provision of services to the people.

Another opinion is that the independent commissions are the result of practicing the democracy principles in the form of protecting the individuals' rights and freedoms, which is achieved through guaranteeing the independence of these commissions in monitoring the legislative and executive power, in a way that they protect the rights and freedoms from violations.

But despite all of that, we must differentiate between the philosophy of forming these commissions from one country to another, as an example in France, the basis of forming these commissions goes back to the fact that besides the emergence of the democratic governance concepts and protection of individuals' rights and freedoms, alongside economic, social, political and technological growth, the state's activities needed to be carried out at a high level of expertise and independence. While in Iraq, forming these commissions goes back to strengthening the idea of a state after writing the constitution in 2005, that is in addition to the commissions carrying their duties, which are executive duties to manage the public establishments that meet the needs of the people. We can also argue that the existence of these commissions reflects the separation of the authorities so that the commissions carry out with duties free from the interference of both executive and legislative powers.

In Kurdistan Region, to further institutionalize and monitor, based in the Kurdistan Parliament's resolutions and legislations, some establishments were added to the administrative structure of the region, which are known as the Independent Commissions. These commissions emerged so that they carry out their own duties alongside the legislative, executive and judicial powers.

Politically, the new situation that arose after the liberation process of 2003, and more specifically the situations that arose after the elections in 2005 had a huge role in the emergence of these commissions, since the idea of the commissions' independency can have a direct link with the development of democracy. Administration wise, the increase of the works and duties of the government, adjusting those duties with the new concepts and principles of governance, opening new horizons to the duties and overcoming the past political culture required the formation of some commissions like these.

According to the law, the independent commissions are known to have some sort of independence in carrying out their works and activities, and that dependence is reflected in the areas of economy, administration and organisms.

Economic independence means that the commissions have their own accountants and budget. As for administration independence, it means they have an inner authority to do their works, and organic independence means they have the right to use structures that best suit them to do their works, all of which are identified in the laws specific to the commissions.

The independent commissions are a group of technical expert commissions which are independent from all the executive, legislative and judiciary power. Or they are a group of commissions and establishments and their duties are identified by the legislator either as monitoring, supervising or carrying out one of the state's activities or actions, during which the commissions are independent.

Another definition says: they are a group of actions and activities of expertise carried out by the commission of board, and their powers are identified by the legislator as independent from other powers.

In general, we can say that the independent commissions are "an organizing establishment which monitors the level of justice and systematization of management, alongside monitoring the general administration's performance in carrying out, activity, providing and their suitability to achieve the objectives, while giving the power of decision making to these establishments."

## Characteristics of the Independent Commissions

The position the commissions have among the state's establishments makes them have some specific characteristics, which are laid out below:

- 1- The commissions have their own financial, administrative and technical independence: the works of the commissions require them to be independent, so that the unbiasedness of the commissions' members is guaranteed in their works, duties, and strengthening transparency which can be in the form of structural, financial and administrative independence. The commissions' chairpersons, members and staff work unbiased and free from the influence of the political parties.
- 2- The commissions have their own moral or legal personality, and that's achieved through the existence of a legal principle that gives this personality to the commissions and makes them suitable to achieve the rights and accept the duties.
- 3- Variousness in the relation with all the three powers: In France the commissions have a semi-independence from the executive power and they are under the monitoring of the legislative power. In Iraq, based on the actual constitution, some of the commissions are related to the executive power, some to the legislative power and some are not linked to any powers. In Kurdistan Region, based on the specific laws, they are independent and under the monitoring of the parliament.
- 4- The decisions of the commissions are subject to judicial monitoring, in other words; the decisions made by the commission's chairpersons can be appealed.

## The concept and meaning of independence in the Independent Commissions

Adding the “Independent” adjective to the name of the commissions shows that the main goal of establishing these commissions and them working independently, meaning that independence is a significant part of these commissions. In this part we will talk about this concept and discuss the financial, administrative and structural independence of the commissions, because for these commissions to be independent, they need to achieve independence in all three of these aspects, so that they can preserve their independence in the face of the executive, legislative and judicial powers.

In the Commissions Law, their independence was mentioned as the following:

- 1- In the second article of Law No. 2 (2008): (the Board of Supreme Audit of Kurdistan - Iraq) has a moral personality and has financial and administrative independence, and it can take any legal actions to carry out its duties...
- 2- In the second article of Law No. 4 (2010): (the Independent Human Rights Commission of Kurdistan – Iraq) will have a moral personality, a financial and administrative independence in the general budget of the region, the commission will have a specific budget and will be related to and accountable for the parliament.
- 3- In the Second Article of Law No. 3 (2011): (The Commission of Integrity of Kurdistan – Iraq) will be established, with its moral personality and a financial and administrative independence, it has a specific budget and is monitored by the parliament.
- 4- In the second article of Law No. 4 (2014): (A Commission will be established and called The Independent High Elections and Referendum Commission so that it becomes the exclusive power which will arrange for all the elections and referendums across Kurdistan Region of Iraq. Also in article three of the same Law: The IHERC is a professional, independent and unbiased commission which has a moral personality and is monitored by and accountable for the parliament.)

Based on the definitions laid out in the special laws, the commissions need to their own financial ability, their own authority to make decisions and their own administration to be able to carry out their works independently, without being influenced or being overrun by the government or any influences by an outside interest.

We are going to explain financial, administrative and structural independence below:

### 1- Financial Independence:

Is considered one of the most important signs of independence, because without financial independence we cannot talk about these commissions’ independence. Financial independence allows legal actions to be freely taken, and helps the decisions to be supported, without being affected or influenced by the regular contacts with authorities. Lack of financial independence negatively affects the implementation of these commissions’ projects and decisions, and their implementation will need the approval of a higher authority, which will create obstacles in front of the works of the commissions, will restrict

their movements and freedom, and will allow the executive power to pressure them by not giving them financial approval.

Financial independence allows the commissions to prepare their own budgets, fit their budget into the state's general budget and take on the implementation and monitoring of the budget, which means this financial independence applies to both the preparation and the implementation of the budget.

## **2- Administrative Independence:**

Administrative independence means that the commission is able to make decisions free from the influence of other powers. It is also the commissions' ability to carry out their duties away from any legal obstacles, in a way that the overseeing parties don't interfere in their works and don't influence them in any way. Meaning the commission is in full control without any interference from other powers with no excuse, since giving any control over the independent commissions to the other powers practically decreases in the powers of the independent commissions, affects their independence, in the aspects of meaning and reality of independence, and the commissions become semi-independence. That's why each of the commissions need to be independent in organizing their administrative works without any interference from the other powers.

For this purpose, to create this type of independence, there must be a legislative guarantee, where the commission can practice this independence in identifying the duties of the staff, classifying their salaries, and coordinating the administrative and technical interests.

The independent commissions for their freedom in setting their own Rules of Procedure without the approval of other parties, especially the executive power, as it is emphasized on in the commissions' law.

## **3- Structural Independence:**

In addition to financial and administrative independence, in order for the independent commissions to succeed in their works and duties, they need to be structurally and organizationally independent, meaning that these commissions follow some specific policies in their structure that will make them independent from the other powers. For them to protect this independency from the other powers, they need an independent organizational establishment.

We can base the concept of independence on some criteria, for instance: how the commissions were created, how their members were assigned, their political level of authority in the state to remove or reassign the members of the commission, guaranteeing the way the chairperson and the staff are assigned, bringing their civil service forward, seconding them or ending their service, and also a legal environment related to the commissions' unbiasedness, freedom and subjectivity in doing their monitoring tasks. The decisions of the commissions' chairpersons need to be official, final and decisive without needing the approval of any other parties.

## **First:** **Board of Supreme Audit of Kurdistan Region - Iraq**

The Board of Supreme Audit of Kurdistan Region – Iraq is working according to Law No. 2 (2008), and is one of the independent commissions related to the Kurdistan Parliament. According to articles 2, 3 and 4: A power of monitoring will be established in the region by the name of (Board of Supreme Audit of Kurdistan Region – Iraq) which will have a moral personality and has financial and administrative independence, and it can take any legal actions to carry out its duties, it will be represented by its chairperson or the one who give it power. The board will be linked to the parliament and its main goal is protecting the public funds through practicing an effective monitoring according to its expertise and the power given to it based on this law.

About the Board of Supreme Audit, if we go back to law No. 2 (2008), in article 4 of the law the objective of the board is identified as: “the main objective of the board is to protect the public funds through an effective monitoring according to its expertise and the power given to it based on this law.”

In the reasons for legislating the law, it was mentioned that: “this law was legislated to protect the public funds, strengthen the principle of transparency and effectiveness of the national commission of Kurdistan – Iraq’s role of monitoring, and for the safety of the finance system and giving finances to the parties the money was allocated for.”

In addition to identifying the duties of the board in the second part of the law, which is mentioned in article 8:

**First:** to make sure of the finance and administrative activities’ results, in aspects of legal and practiced financial instructions, the board can:

- 1- Check and audit the expenditure activities in aspects of salaries, allowances and bonuses to make sure of the way they were spent.
- 2- Make sure that the limits of the approved budgets were not crossed in financial support.
- 3- Make sure that the general finances were spent on the things they were allocated for, and make sure that money is not wasted, or over-spent, while assessing the advantages of this.
- 4- Monitor and assess the works and activities based on the articles of this law.

**Second:** checking and auditing the works of evaluation, receiving income to make sure of the practiced activities and how they were implemented.

**Third:** offering technical support in the areas of finances, monitoring and any relevant administration and organization works.

**Fourth:** Organizing training courses for the staff of the board and the government establishments to build their capacity and the board can, based on the practiced laws, provide them with allowances.



**Fifth:** The board will express their opinion about the relevant schedules, announcements, and reports of the parties' works that are under audit, alongside their opinion about how the works are organized according to the practiced laws and policies of accountancy, to make sure of how the work is suitable with the reality, the financial establishments and the outcomes.

**Sixth:** revealing evidences of corruption, deception, wasting, abuse, lack of ability in receiving, spending and use of public funds through auditing and evaluating the works of the offices.

**Seventh:** investigation and information about the works related to the skills of attaining, spending and using public funds, as requested by the National Committee of Kurdistan Region – Iraq.

**Eighth:** Follow up with the implementation of the practiced financial and accountancy laws and instructions to make sure of their implementation and suitability with the new development happened in the region, and drawing attention to how shortcomings in the budgets happen, then offering needed suggestion in cooperation with the relevant parties to develop or amending those laws, rules and instructions.

Because of following up with the practical works of the Board of Supreme Audit, comparing them to the laws, we got to the following comments:

**First:** in the second article of Law No. 2 (2008) specific to the Board of Supreme Audit: "The Board of Supreme Audit has a moral personality, with its financial and administrative independence, it can take any legal actions to carry out its duties."

Which means that the Board's budget is set by the parliament as an independent unit, while this article was not implemented, as it's been several years that the board doesn't have its financial independence and it is waiting for the government and the ministry of finances to set a budget for the board, and by this the board is losing its financial independence and can't carry out its duties as it should!

**Second:** in the fourth article of the same law: "the main objective of the board is to protect the public funds through an effective monitoring according to its expertise and the power given to it based on this law."

Now the question is that was the board able to achieve the objective it was established for? Was it able to protect the public funds? All while the public funds was and is wasted?

**Third:** in the fifth article for the law about the president of the board: "the term of the board's presidency is 4 years, which can be renewed for the second term with the vote of most of the parliament members...".

The current president of the Board of Supreme Audit, started working in the board right after he was elected by the parliament members and was sworn in on May 11<sup>th</sup>, 2014. Based on the law the legal term has ended on May 10<sup>th</sup>, 2018, it's been 2 years and 7 months that the legal term has expired, and the president of the board is still illegally in his position.

The parliament was supposed to fix this based on the laws in the fourth term, but didn't, the fifth term continued this violation while either his term should've been renewed, or a new person should've been assigned to his position, even though the president of the board addressed the parliament in a written way about this, the parliament didn't take any actions, and this is a clear violation of the law by Kurdistan parliament.

**Fourth:** the first section of article 9 says: "The Board will present an annual report to the Presidency of the region, the parliament and the council of ministers in which the board will state its opinion about the financial, administrative and economic situation of the region around financial audit regarding the ministries and parties subject to audit. The report will also include a brief about the works of the board during the year". What is noticed is that the board didn't send the reports to the parliament based on the law and the parliament didn't follow up with this.

The question is did the board write these reports? There are two possibilities: it's either the board didn't write and didn't present the reports to the three presidencies, or the board did write the reports, but the three presidencies didn't listen to the board and ignored its reports, as the reality of Kurdistan Region's financial and administrative situation proves that.

**Fifth:** the second section of article 9 says: "the board can present a report to the presidency of parliament and the council of ministers regarding any emerging topic the board deems important in the field of auditing and evaluating the financial and administrative works."

Now the question is: during the last seven years the how many reports in those areas has the board present to these two presidencies? About independent economy, oil dossier, the cut from employees' salaries, not giving out salaries, the so-called saving system of payroll, the reformation law, giving away positions illegally and tens of other topics. If the board didn't present any reports about the many problems faced by the region, then it was not in accordance to the law, the board hasn't carried out its duties and it should be investigated, on the other hand, if the board did present the reports but they were ignored, who is in the position to question and investigate the government and the parliament? What was the position of the president of the board and their commission and what is their position now?!

**Sixth:** this commission was hasn't been able to carry out its legal duties properly, and the reason is that enough and required information was not provided by the relevant establishments, even though article 11 of the law says: "the Board of Supreme Audit has the right to see all the documents and dossiers relevant to classified or public deals that have to do with finances, except for the documents issued by the President of Kurdistan Region with the cooperation of the speaker of the parliament and the prime minister, with the condition that the president of the board of supreme audit is informed to have knowledge and express his opinion about it." this was not done. The question is to what extent is the board of supreme audit aware of the 50-year contract and to what extent have they seen the documents of the contract and followed up with it?

**Seventh:** Article 12 says: "First: the board of supreme audit has the power of financial assessment for the general contracts, supports, bonuses, debts and the governments offers

to make sure how they are spent for the purpose they were allocated for. Second: the region's establishments need to send all the contracts, debt documents and bonuses they gain to the board within a month for the purpose of following up with them and expressing its opinion about them."

What draws attention is that the government talks about a huge amount of debt accumulated on them, we see head of council of ministers (Masrour Barzani) talking about the government being in 27 billion USD debt, but the board of supreme audit was not made aware of this, and no internal contracts were presented to the board of supreme audit.

"the weakness of the finance system, and ignoring the governmental banking system brought the region to a stage where this latter system was not trusted and reliable anymore, and the government had no other way but to transfer and deal with the government's money through the private banks, which is against the law, as all that public money should've been in an establishment controlled by the board of supreme audit where they can look into it and audit the money" says the president of the board of supreme audit.<sup>1</sup>

**Eighth:** according to the law, the board can audit the private establishments who deal with the government.

The question is: how many times has the board audited an establishment like Kurdistan International Bank? How many times has the board audited the so-called charity organizations to see where they got their budgets which they give away for their own purposes? To what extent has the board audited the media channels which spend millions of dollars to see where they get their money? To what extent has the board audited the huge companies in the region?

**Ninth:** the law has gaps and some articles of the law contradict each other, which has caused the board not to be able to carry out its duties in a good enough way.

**Tenth:** the government was supposed to send the board the final accounts to be audited and the board then sends its report to the parliament to be discussed and approved, but since 2013 the government hasn't had the final accounts nor the financial report, which is not in accordance to the law, that's why the board hasn't done any audits.

**Eleventh:** based on article 10: "the following parties are subject to financial auditing:

**First:** the ministries, the government administrations, the independent commissions not linked to the ministries and the parties who have independent or supplemental budgets.

**Second:** all the syndicates, groups, associations and organizations the government gave license to.

**Third:** any other parties the Kurdistan Parliament decides to be put under financial audit by the board of supreme audit, or any other parties this was mentioned in their establishment law."

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<sup>1</sup> <http://www.xelk.org/detailnews.aspx?jimare=15055&babet=important&relat=2025>

However, based on that the Council of Ministers, the Regional Council of Oil and Gas Affairs, and the Security Council who have the largest budgets at hand avoid being audited and have exploited the law and the legal gap in it. Also regarding auditing the Regional Council of Oil and Gas Affairs which consists of the Prime Minister, Deputy Prime Minister, Minister of Natural Resources, Minister of Finance and Minister of Planning who supervise the region's Oil and Gas dossier, the Board of Supreme Audit's president says: "we were not able to audit the Regional Council of Oil and Gas Affairs, because we were not allowed to".<sup>2</sup>

Twelfth: there are the biggest number of comments about the Ministry of Natural Resources, data are not presented to the board and the ministry is dealing with a group of private companies, which makes the work even more difficult, and the companies which were named in the Oil and Gas Law to be established, have not been established yet, meanwhile the Board of Supreme Audit is not allowed to audit private companies. Regarding this issue, the Board of Supreme Audit's President has announced: "they don't allow us to see the oil contracts signed by the Ministry of Natural Resources with the companies, and they don't allow us to monitor the Oil and Gas processes". "we asked to see the oil contracts several times, but they were not given to us" he added.

The President of the Board of Supreme Audit has also mentioned that based on Article Eleven of the Board of Supreme Audit Law No. 2 (2008), the board has the right to see all the documents and dossiers of classified and public trades and deals related to the financial works, except for the documents issued by the President of Kurdistan Region in cooperation with the Speaker of Parliament and the Prime Minister, with the condition that the President of the Board of Supreme Audit is informed for his information and so that he expresses his opinion about it.

The president of the board also says: "we were only sent some routine and procedural contracts, we were not sent any important contracts from tendering and investment sectors, Oil and Gas and money exchange contracts".<sup>3</sup>

**Thirteenth:** based on sections Two and Three of Article 11 of Law No. 2 of 2020 - Law on Reform of Salaries, Allowances, Benefits, Privileges and Pensions in Kurdistan Region, the duty of monitoring and implementing this law was given to the Commission of Integrity and the Board of Supreme Audit, while the legal term of both commissions has expired and they are carrying out their works illegally, by which the Parliament instead of legislator and protector of laws and monitoring the Executive Power takes on the role of the violator.

**Fourteenth:** article Seventeenth of the law for the Board of Supreme Audit says: "if there was a disagreement between the board and one of the bodies related to the board and the disagreement was not directly resolved between them, the president of the board can take the issue to the presidency of the parliament".

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<sup>2</sup> <http://speemedia.com/dreja.aspx?Jmare=30079&Jor=1>

<sup>3</sup> <http://speemedia.com/dreja.aspx?Jmare=30079&Jor=1>

Now the question is: while there are a huge number of violations, how many reports has the Board of Supreme Audit presented to the presidency of the parliament about these violations? And what has the presidency of the parliament decided about them?

**Fifteenth:** Article Eighteen of the law regarding the legal oath the president of the board takes in front of the parliament: “I swear by Almighty God to carry out my works in the right way with honesty and loyalty, to follow the laws, roles and procedures with integrity and honesty and unbiased, to protect the boards independence, unbiasedness, and intergrity, to protect the secrets of the work, respect the ethical and professional principles which organize the affairs of the work and abide by them, Almighty God be my witness”.

Now the question is: isn't the president of the board's stay in his position illegally against that legal oath? While based on our information the president of the Board of Supreme Audit has so far sent several letters addressing the parliament regarding the fact that his term as the president of the Board of Supreme Audit has ended, but the parliament has not yet taken any actions to solve that legal problem.

**Sixteenth:** The problems of the Board of Supreme Audit that are related to the parliament are summarized in the following points:

- 1- The process of assigning the Deputy President of the Board of Supreme Audit and filling the other vacant positions such as: (Heads of offices, centers one and two, technical position, Halabja and Duhok) have been put on hold.
- 2- The parliament's silence and not having a position have a negative impact of the process of auditing and monitoring, because of not legislating the budget law, which will be a reason for not having an opportunity to compare the result of the final accounts of Kurdistan Regional Government with the budget.
- 3- The existence of some gaps and weaknesses in law No. 2 (2008) for the Board of Supreme Audit of Kurdistan – Iraq, which needs a new law to be passed in the parliament. The amendment is currently prepared by the Board of Supreme Audit, but the parliament hasn't worked on it.
- 4- The parliament being active and carrying out its works, paves the road for the other powers to legally do their jobs, which will also be a support and strength for the works of the Board of Supreme Audit, both organizationally and legally.
- 5- Some parts of the reform process which is prepared by the Borad of Supreme Audit require some laws to be amended, or some legislations to be done.
- 6- The existence of the parliament and holding parties accountable is a support for the independent establishments, commissions and etc.

## **Second: The Independent Human Rights Commission of Kurdistan – Iraq**

This commission is working based on law No. 4 (2010), the second article of the law says: a commission shall be established and named (the Independent Human Rights Commission of Kurdistan – Iraq), which will have a moral personality, with financial and administrative independence within the general budget of the region, the commission will have a special budget, linked to the parliament and will be accountable for the parliament.

The aim of the commission is identified in article three of the law: “the aim of the commission is safeguarding human rights, strengthen and promote them in all aspects based on international standards, while raising awareness on human rights”.

Also article four of the law identifies the duties of the commission, which are the following:

**First:** presenting and expressing its opinions about issues related to human rights, and giving recommendations to the ministries, and relevant establishments of the region.

**Second:** raising awareness on human rights, women’s and children’s issues through planting the values of forgiveness and the meanings of social support.

**Third:** monitoring how much the region’s law are suitable with the principles of human rights, key aspects of freedom and giving recommendations about them to the relevant parties.

**Fourth:** assessing the region’s power’s commitment to the terms of human rights documents and articles, and to both international conventions on civil, political, educational, social and economical rights, while also uncovering the human rights violations which are about to emerge due to the region’s powers.

**Fifth:** Preparing research with each term, releasing publications about ways of improving human rights in the region, and holding meetings and seminars specifically about human rights issues.

**Sixth:** visiting and monitoring the prisons, correctional facilities, jails and investigation facilities, preparing reports each term about the prisoners, inmates of correctional facilities and detainees.

**Seventh:** taking complaints from people, groups, and civil society organizations about human rights violations, ensuring their factuality, informing attorney general to take legal actions and follow up with the results.

**Eighth:** cooperation with the other local human rights civil society organizations inside and outside the region, while organizing research circles with idea groups, economic groups, social groups and the general public in the region in a way that ensures abiding by the legal

acts, international agreements on human rights, for the rule of law and respect for human rights.

**Ninth:** supports and cooperates with the international organizations that are specialized in human rights issues and other relevant parties and bodies to represent Kurdistan Region in meetings and conferences on human rights.

Tenth:

- A- Prepares annual reports to show the reality of human rights in Kurdistan Region for the presidency of Kurdistan Region, presidency of the parliament, presidency of council of ministers, and the presidency of judicial council, and presenting practical recommendations to safeguard and strengthen human rights in Kurdistan.
- B- Gives reports about the situation of human rights each term to the parliament and publishes them in the media.

It's worth mentioning that the law for this commission was not implemented completely, and the Independent Human Rights Commission of Kurdistan – Iraq was not able to carry out its duties well:

**First:** section two of article five of the law says: “the president of the commission is assigned based on the candidates identified by the presidency of parliament and by the presidency of council of ministers, employed with a special rank, and after the parliament approves the candidate with the majority of its members present, regional order is issued so he assumes duty, the duration of the presidency is four years and the term is renewed once.”

The interesting thing is that the president of the IHRCKR (Independent Human Rights Commission in Kurdistan Region) was elected on Dec. 17th, 2012, and his legal term was finished on Jan. 17th, 2017. Even though the president of the commission sent an official letter addressing the parliament on Jan 4th, 2017, it's been around four years past the legal term of the commission's president, he has not been retired, someone else hasn't been assigned in his position and his presidency term hasn't been extended yet.

Even though on September 1st, 2020 the parliament wrote an announcement on their website asking citizens of Kurdistan Region who want to nominate themselves for the position of President of the Independent Human Rights Commission of Kurdistan – Iraq to send their CV.s to the Directorate of Parliament Affairs, there were some issues in the announcement and we had some comments, for example:

- 1- The announcement didn't have any dates or reference number or signature on it.
- 2- In the announcement, it was written Kurdistan Parliament, meaning the body announcing the position was Kurdistan Parliament, which is against the law, the announcing party or body was supposed to be the Speaker of the Parliament, or the presidency board of the parliament.
- 3- On the announcement, it's written attention, which is not legal as well.

“today was the deadline (for self-nomination for the position of president of Independent Human Rights Commission), 31 CV.s were sent to Kurdistan Parliament, 12 of the applicants were female and 19 were male” stated the parliament media manager to Anadol Media Agency on September 15th, 2020. Yet so far, and after five months of the deadline, while the parliament was in session this was not put into the session program and no one was tasked to carry out the duties of the commission's president.

**Second:** section one of article eight of the law says: “the parliament shall monitor and follow up with the works of the commission based on the terms of the law and the rules of procedure”.

Now the question is which works of the commission did the parliament monitor and follow up with? To what extent has the parliament followed up with the violations mentioned in the IHRCKI reports? How many meetings has the parliament held about the adverse situations the IHRCKI showed in its reports? To what extent has the parliament followed up with the violations made against the law of the commission? Obviously, none! Because it’s obvious that the parliament hasn’t taken any actions to monitor the commission while legal violations are seen.

**Third:** the commission’s law has shortcomings and lacks specialty. It doesn’t go along with human rights and the international standards, it needs to be amended, even the commission members have many comments on the law, but the parliament hasn’t taken any steps towards amending the law.

**Fourth:** about the commission’s budget, as it’s mentioned in the first section of article two: “a commission called (Independent Human Rights Commission of Kurdistan – Iraq) shall be established, it shall have a moral personality, a financial and administrative independence, it shall have a special budget within the general budget of the region, and will be linked to and accountable to the parliament.”

While financial independence is the basis of decision making independence, the commission is tied up in that aspect, currently it has no financial independence, it is waiting for the Minister of Finance to allocate a small budget for the commission, which negatively impacts the works of the commission.

**Fifth:** the Right of Gaining Information Law which has a huge impact on transparency and preventing corruption, the implementation and supervision of which is the responsibility of the IHRCKR, yet the government hasn’t taken any steps to implement it, hasn’t issued instructions for the law, hasn’t established the departments and directorates that were supposed to be established, and has not provided any of the law’s requirements, and the IHRCKR is silent about it and hasn’t taken any actions in that regard.

**Sixth:** there are some laws that need to be amended or legislated, such as (terrorism law, user law, human trafficking law, labor law and etc...) which are all directly related to human rights, some of those laws are not yet legislated and some of them were legislated with shortcomings and have not taken effect, yet the IHRCKR hasn’t done anything about them and hasn’t tried to do something in their regard.

**Seventh:** Section 10 of article four of the law says:

“A- Prepares annual reports to show the reality of human rights in Kurdistan Region for the presidency of Kurdistan Region, presidency of the parliament, presidency of council of ministers, and the presidency of judicial council, and presenting practical recommendations to safeguard and strengthen human rights in Kurdistan.



B- Gives reports about the situation of human rights each term to the parliament and publishes them in the media.”

Yet, every time the commission submitted its reports to the parliament, the parliament didn't negative or positive respond, didn't even respond with a thank you, and whenever the commission didn't write reports to the parliament, which is a violation of the law, the latter was quiet about it and didn't question the commission.

**Eighth:** according to article seven of the law, the commission must have three offices run by three general managers, but until now there are two general managers and an overnight position is not filled. And according to the same article, the commission must have two advisors, but in reality it only has one advisor and the position to the other one is still vacant, which of course will affect the commission's performance in doing its job.

**Ninth:** the name of the commission is (Independent Human Rights Commission), but while the members of the commission, from the highest rank to the lowest, are put there based on political parties' agreements and sharing, to what extent has the parliament questioned this?

**Tenth:** in the demonstrations of the recent years in the region where people were asking for their own privileges, many violations were committed against people, illegal arrests, torturing people, killing and etc. to what extent has the IHRCKR worked on those violations and followed up with them in the parliament?!

## **Third: The Commission of Integrity**

This commission works based on law number 3 (2011), and amended law number 7 (2014), article 2 of the law says: “based on this law, a commission called (the General Authority of Integrity of Kurdistan – Iraq) shall establish, it shall has its moral personality, with financial and administrative independence, an independence budget, and monitored by the parliament”.

The aims of forming the commission of Integrity are mentioned in article 3 of the law:

**First:** battling and avoiding corruption.

**Second:** supporting the principles of integrity, transparency, accountability and embodying the rule of law.

**Third:** assessment, correction and promotion of professional work and behavior, standards of public service, taking responsibility and facilitating the procedures.

Article 5 of the law talks about the tasks and duties the commission works for:

**First:** implementing and imposing the laws to battle corruption, and standards of public service based on the constitution and active laws.

**Second:** receiving information and complaints about corruption through all the ways and tools and from all sources, and dealing with all that counter the information, including false information.

**Third:** investigating corruption through commission investigators, under the supervision of investigation judges, based on the principles of penal trials, following up with them and keeping the identity of informants confidential according to law.

**Fourth:** getting the people who have run away and are accused of corruption back into the region and getting back the money and that’s smuggled out of the region with the cooperation of specialist parties.

**Fifth:** international support with the prevention of corruption, combatting corruption and exchanging information about it, while performing shared investigation, especially in the area of border-crossing corruption, in coordination and cooperation with relevant parties.

**Sixth:** raising national awareness to promote the concepts of integrity, transparency, accountability and commitment to the public service standards, and working with specialists to set up national educational curriculum, to strengthen the concept of honesty and integrity.

**Seventh:** issuing instructions for the positive behavior policies on the job to clarify the standards of public service and work ethics to which the region employees must commit as a

condition to employment and staying employed, and monitoring the duration of commitment to them should be monitored and amended as needed from time to time.

**Eighth:**

- 1- Issuing instructions on showing financial declaration, by making tasked people committed to public service, who are written about in this law, and that's by Declaring the financial interests of themselves, and their families, which will be amended from time to time based on what the commission deems suitable, to achieve the goals expected from it.
- 2- Declaring the financial interests includes detailed information about the things the person owns, including the assets that their ownership was moved to another person, financial income, bank accounts, shares, stocks and intangible financial rights both inside and outside the region the person has.
- 3- The following people are subject to Declaring financial interests:
  - A- President and Deputy President of Kurdistan Region.
  - B- Speaker, Deputy Speaker, Secretary and members of the parliament.
  - C- Prime Minister and Deputy Prime Minister.
  - D- The ministers, those of the same rank and Deputy Ministers.
  - E- The President, Deputy President, all the general managers, and investigators of The Commission of Integrity.
  - F- People of special ranks, deputies and their assistants.
  - G- General Directors and their assistants.
  - H- Judges and members of the attorney general office, judicial supervisors and investigators.
  - I- Officers of Regional Guards, Internal Security who have the rank of lieutenant-colonel and higher, the officers and commissioners who carry out investigations.
  - J- Governors, head of administrative units, head and members of provincial councils of governorates, provinces and districts, head of municipalities, and members of municipality councils.
  - K- Anyone with a civil or military position whose name was not mentioned above, but the commission deems necessary that they are included in the financial declaration report, based on instructions issued specifically for this.
- 4- The commission has the right to publish the financial declaration report of those who are charged with one of the crimes in section 7 of article 1 of this law, and allow the public and the media to see them or copy them.

**Ninth:**

- 1- The commission has the right to task the relevant office to dismiss the employee who is subject to investigation based on Law No. 14 of (1991) for Disciplining the state and private sector in the region.
- 2- The commission has the right to refer the violations that have to do with the standards of public service to the relevant parties and to attach recommendation to the referral regarding taking disciplinary actions.

**Tenth:**

- 1- The Commission of Integrity cooperates with the Board of Supreme Audit in monitoring and writing regular reports about the way the region's money is received, spent, dealt with and managed.
- 2- The Commission of Integrity monitors the level of Integrity of decision making, the works done or the actions taken in the private sector and writes regular reports about them.
- 3- The party subjected to audit, needs to present to the commission of integrity without delay any information, letter, and documents, even the confidential and classified ones regardless of its confidentiality level, whenever the commission asks, in addition to anything else the commission deems necessary to take a look at, based on the effective laws.
- 4- Whoever doesn't comply with the terms of paragraph 3 of section 10 of this article, will be punished by imprisonment for a duration not less than 6 months and a fine not more than 10 million IQD, or one of these punishments.
- 5- The commission of integrity has the right to file a penal trial and to follow up based on paragraph 4 of section 10 of this article.

**Eleventh:** suggesting bills that can help prevent or combat corruption.

**Twelfth:** the commission can oblige the private sector offices and establishments to publish data or information or specific documents that the commission deems necessary to show integrity, based on some mechanisms and policies identified by the commission.

**Thirteenth:** implementing procedures to prevent involvement of the private sector in corruption and strengthen transparency in the private sector bodies, and prevent conflict of interests happening in them.

**Fourteenth:** issuing instructions on preventing conflict of interests in the region, monitoring commitment to the instructions, identifying punishments for violating the instructions and writing regular reports about them.

**Fifteenth:** the commission has to right to take any actions needed to combat and avoid corruption.

What is noticed here is that the law of this commission is not fully implemented, and the commission was not able to carry out its tasks well:

**First:** article 2 of the commission's law says: "based on this law, a commission called (the General Authority of Integrity of Kurdistan – Iraq) shall establish, it shall has its moral personality, with financial and administrative independence, an independence budget, and monitored by the parliament", yet no budget was allocated for the commission and they are waiting for the government and ministry of finance if they can allocate a budget for the commission to be able to do its works, which negatively impacts the independence of Commission of Integrity.

**Second:** the aims of establishing the commission were laid out in article 3 of the law for the commission of integrity in three points. Which aim was the commission able to achieve? The following are the aims:

1- battling and avoiding corruption.

It's noticed that despite having the law and an important establishment like the commission of integrity, corruption in the region has been increasing and growing day after day, so we're asking what kind of avoidance was practiced?

2- Supporting the principles of integrity, transparency, accountability and embodying the rule of law.

It's noticed that transparency is not seen in the region, holding negligent parties and those who waste public funds accountable is not practiced, the principle of rule of law barely exists and a huge number of violations are committed.

3- assessment, correction and promotion of professional work and behavior, standards of public service, taking responsibility and facilitating the procedures.

It's noticed that legal procedures were not practiced, the standards of public service are not considered, taking responsibility is weak, the procedures are not only not made easier but made more difficult over time, and the bureaucratic procedures were increased instead of decreased.

**Third:** paragraph 3 of section 8 of article 5 talked about those who are subject to the terms of this law, as the following:

The following people are subject to Declaring financial interests:

- A- President and Deputy President of Kurdistan Region.
- B- Speaker, Deputy Speaker, Secretary and members of the parliament.
- C- Prime Minister and Deputy Prime Minister.
- D- The ministers, those of the same rank and Deputy Ministers.
- E- The President, Deputy President, all the general managers, and investigators of The Commission of Integrity.
- F- People of special ranks, deputies and their assistants.
- G- General Directors and their assistants.
- H- Judges and members of the attorney general office, judicial supervisors and investigators.
- I- Officers of Regional Guards, Internal Security who have the rank of lieutenant-colonel and higher, the officers and commissioners who carry out investigations.
- J- Governors, head of administrative units, head and members of provincial councils of governorates, provinces and districts, head of municipalities, and members of municipality councils.
- K- Anyone with a civil or military position whose name was not mentioned above, but the commission deems necessary that they are included in the financial declaration report, based on instructions issued specifically for this.

One of the reasons why this law was not implemented is because the majority of employees and officers have a kind of immunity, such as: members of parliament, ministers, lawyers, security officers, interior forces, peshmargas, journalists and etc. all of whom

cannot be subpoenaed or investigated without going back to their employer first, and their employers and establishments hardly ever approve subpoenas or investigations.

**Fourth:** the tasks and duties of the commission are clearly identified in article 5 of the law, but the majority of these tasks and duties were not carried out. Until now no high ranked employee such as a minister or even a general manager were prosecuted, let alone the president of Kurdistan Region, the speaker of parliament and president of council of ministers.

One of the sectors that is the most suspected for corruption is the Oil and Gas sector and the ministry of Natural Resources with many comments and questions about them, but the Commission of Integrity hasn't done anything about this, and the reason is that no data and information were made available to the commission by the government and relevant people.

**Fifth:** article seven of the law says: "the term of the president of Commission of Integrity's service is four years, and it can be renewed once." But the current president of the commission was elected as the president of the Commission of Integrity with the vote of the majority of parliament members on May 13th, 2013, he took the oath and started work in his position on May 28th, 2013. His term has ended around three years and a half, yet until this moment neither his term was extended, nor someone else was assigned to replace him, while the parliament should've taken one of the last two actions, they haven't.

**Sixth:** based on paragraph 4 of article 10 "the commission must present their report to the parliament every six month or whenever needed", the commission has so far presented only one report a year to the parliament, (despite many comments about their reports), we wonder to what extent has the parliament worked on the reports and followed up with their contents?

**Seventh:** based on the law, the commission was not able to fully structure themselves due to financial crisis, the commission was not fully staffed, and also based on section 1 of article 11, a deputy should've been assigned to the president, and that position has not yet been filled.

**Eighth:** based on article 14, the commission was supposed to question and investigate those office holders who have gathered wealth illegally, and that has not been done either.

**Ninth:** the parliament was supposed to follow up with the law not being implemented, and with the commission not carrying out its duties, but due to political conflicts it was not done as well.

**Tenth:** there are gaps and shortcomings in the law for the Commission of Integrity, even the commission staff are not content with the law after it was amended, but the parliament didn't action this task.

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## Fourth: The Independent High Elections and Referendum Commission

This commission is working based on law No. 4 of (2014), as it's stated in both articles 2 and 3 of the law:

“Based on this law, a commission called (The Independent High Elections and Referendum Commission) will be established to become the exclusive power which carries out the procedures for all the elections and referendums all over Kurdistan Region of Iraq. The headquarters of the commission will be the Erbil, the capital, and based on needs the commission it will open its offices in other governorates and administrations. The commission will be a professional, independent, unbiased body and will have its own moral personality, monitored by and accountable to the parliament.”

Article 4 of the law identifies the duties carried out by the commission:

**First:** setting universally followed principles and policies for the elections and referendums held across Kurdistan Region – Iraq, to ensure their implementation fairly and with justice.

**Second:** supervising elections and referendums across Kurdistan Region – Iraq.

**Third:** announcing the times of elections and referendums based on the practiced laws.

**Fourth:** organizing and implementing all types of elections and referendums across Kurdistan Region – Iraq.

**Fifth:** managing the process of registering voters, organizing and renewing voters' registrations to ensure their right to vote in the elections.

**Sixth:** registering the candidates' lists, coalitions and approving them based on the relevant laws.

**Seventh:** organizing and implementing the process of registering the representatives of candidates' lists and election monitors from local and international organizations and journalists and others.

**Eighth:** organizing and implementing the process of counting and sorting the ballots, and then announcing the results in the voting stations, with the condition that a copy of the counting and sorting report is given to each of bodies' representatives.

**Ninth:** announcing the initial results of the elections and referendums, with the condition that the announcement is not later than 72 hours from the election, and then announcing the final results after being approved by a specialist judicial power.

**Tenth:** working to rebuild trust in the election process with all the people of Kurdistan, and fixing the awareness around elections through continuing communication with all the parties who participate in the election process.

As a result of taking a thorough look at the works of the Independent High Elections and Referendum Commission and comparing them to the commission's law, some comments emerged which are summarized in the following points:

**First:** even though this commission, as it's stated in the name of its law, is "independent", and as stated in section 1 of article 15: "the commission shall have an independent annual budget in accordance with the practiced instructions and policies, which will be suggested by the council with consultation with the Ministry of Finance, approved by the parliament and will be included in the region's overall budget"

We see that the commission's budget is in the hands of the government, and the commission will have to wait for the Ministry of Finance to provide the budget, which negatively impacts the independence of the commission.

**Second:** article 3 of the law states that this commission is "unbiased", which is not in accordance with the law as the commission is shared between the five main political parties, it has 9 members of council, 3 members from Kurdistan Democratic Party (KDP), 2 members from Patriotic Union of Kurdistan (PUK), 2 members from Gorran/Change Movement, 1 member from Kurdistan Islamic Union (KIU), and 1 member from Kurdistan Islamic Group (KIG). This doesn't only reflect in the council, it is also reflected in the administration aspect of the commission, where there are 12 general managers in the commission, 4 from KDP, 3 from PUK, 3 from Gorran, 1 from KIU, and 1 from KIG. The same applies to the managers, deputy managers and each and every one of their staff, which is not in accordance with the law and the standard of independence.

This situation in the commission is also not in accordance to section K of article 5 of the law which is about the people working for the commission: "the members of the council of the Independent High Elections and Referendum Commission shall not belong to any political party". But all the people working for the commission were placed there by the political parties for their own purposes. Meaning the IHERC is only independent by name, but all the five main political parties have assigned people who are loyal to them in the commission, not independent and unbiased people.

**Third:** section 5 of article 4 of the law states: "managing the process of registering voters, organizing and renewing their records to ensure their right to vote".

And also section 1 of article 6 of the law states: "establishing, renewing and organizing the voters' records through state of art ways, and the relevant parties have to support and cooperate with the council to achieve that aim".

But until now, the commission hasn't taken any actions to create a good and clean voters' record, if a new election is held in Kurdistan, they have to go with the Iraqi voters' record



which was used before, while that record is full of faults, and hundreds of thousands of deceased people's names, repeated names and even fake ones.

**Fourth:** section 10 of article 4 states: "working to rebuild trust in the election process with all the people of Kurdistan, and fixing the awareness around elections through continuing communication with all the parties who participate in the election process".

So far, no steps were taken and no works were done to rebuild trust for the people of Kurdistan in the elections process. On the contrary, most of the people and the political parties think that the elections are just a scenario giving legitimacy to some people and the results of the elections are known in advance.

**Fifth:** section 1 of article 5 of the law states: "the council of commissioners consists of 9 members who are elected by the parliament through the vote of the majority of the parliament, after being suggested by a special committee formed by the parliament, with the condition that at least 2 of the 9 members are law majors, and the members have to represent women and all the blocs, and the term of the council's work will be 5 calendar years".

It's worth mentioning that the council of commissioners started their work on December 3<sup>rd</sup>, 2014, based on Law No. 31 of (2014), which means that their legal term has ended more than a year ago, but the parliament hasn't followed up with this legal issue to this date.

**Sixth:** based on section 1 of article 7 of the law, one of the reasons for ending membership in the council is the end of the council's legal term. Based on when the council started working, they have finished their term and now the council has no legal power.

**Seventh:** section 1 of article 5 of the law states: "the representation of all the blocs should be ensured in the council", yet we see that even the representatives were suggested and assigned by the two main political parties, KDP represents the Turkmen and PUK represents the Assyrians!

**Eighth:** with the start of the Ninth Cabinet of Kurdistan Regional Government in July 2019, a member of the commissioners' council, from KDP's share resigned from the council, one year and six months after that and the position is still not filled.

In addition to the fact that another member of the council from KDP's share passed away due to COVID-19 on November 3<sup>rd</sup>, 2020, and his position is still vacant and not filled.

The president of the commission who is also in KDP's share has been on leave for a few months and he's not working in the commission's headquarters!

## Outcomes

- 1- The parliament's weakness in the process of monitoring the following up has also negatively impacted other official bodies and establishments, such as the Independent Human Rights Commission, the Board of Supreme Audit, the Commission of Integrity and the Independent High Elections and Referendum Commission, most of their works have been halted and are not going well.
- 2- The parliament which is legislating law and monitoring the implementation of the law, has violated the laws of the independent commissions.
- 3- All four commissions believe that their laws are not suitable and need changes and amendments, some of the commissions even presented projects in this regard to the parliament, but the latter hasn't taken any actions.
- 4- All four commissions have some posts to be legally filled and they're still vacant.
- 5- All four commissions have the issue of under-staffing, then need staff to be employed for them.
- 6- All four commissions have lost their legal power because the legal term of their president or council has expired, and they are doing their works illegally.
- 7- The commissions are financially independent according to their laws, but in reality none of them, not even the parliament, have their financial independence, they are all waiting for the Ministry of Finance to pay them their salaries, or to allocate a small amount of budget for them.
- 8- The commissions are supposed to be administratively independent, but their independence has been taken away from them by the political powers, their works are continuously interfered with, even if a staff is assigned to the commissions, the political parties fight over their shares of staff and the new staff is not assigned without their approval.
- 9- The biggest number of violations happened in the commissions laws, while they were established to monitor and prevent violations from happening, which is a huge failure for the commissions, the parliament and the governance system in Kurdistan Region.
- 10- The executive power either doesn't trust the commissions, or doesn't want the secrets of its works and contracts to be seen by these commissions, a live example for that is bringing a foreign company (Deloitte) to monitor the Oil Process, instead of the Board of Supreme audit.

- 11- Even though the existence of these independent commissions can be a positive step towards improving the principles of democracy and transparent governance, in reality this experience in Kurdistan Region was not a success practically, it was constantly under the pressure and influence of the executive power and the political parties, the most noticeable example if the Independent High Elections and Referendum Commission, the Independent Human Rights Commission, the Commission of Integrity, and the Board of Supreme Audit, which were not able to succeed in their works and duties, the presidents, other high ranked staff of the commissions are shared between and assigned by the political parties. If we take the Commission of Integrity and the Board of Supreme Audit as an example, we see that in Kurdistan Region even after their establishment, the level of corruption and illegal works go higher and higher, which proves the failure of the commission and the board.
- 12- There are 2 Independent High Elections and Referendum Commissions in Kurdistan Region, which has cause a huge financial burden.
- 13- One of the main works of the Board of Supreme Audit was to follow up with the instructions of implementing the budget, after being approved by the parliament every year, but the budget hasn't been approved since 2013, which has negatively impacted the works of the Board of Supreme Audit.

## Recommendations

### For the Independent Human Rights Commission

- 1- The parliament to amend Law No. 4 of 2010 for the Independent Human Rights Commission of Kurdistan Region – Iraq, as soon as possible.
- 2- The parliament to elect a president to the commission as soon as possible.
- 3- The parliament in general and specifically the specialized committee to monitor the works of the Independent Human Rights Commission, and not turn tolerate any shortcomings from them.
- 4- The gaps of the Independent Human Rights Commission in relation to staffing to be filled.
- 5- The parliament to pressure the government to issue required instructions about the Law of Right to Access Information, and to provide the materialistic and human needs so that the law takes effect.
- 6- The budget of the Independent Human Rights Commission to be allocated separately and based on needs, so that their works are not hindered or stopped by others.
- 7- The teams of the commission should be given more freedom in monitoring the situation of human rights in Kurdistan Region.
- 8- The commission to publish its annual and periodic reports and present them to the parliament, otherwise the parliament should question them.
- 9- Immunity to be given to the staff of Independent Human Rights Commission while they're on duty.
- 10- Staff to be assigned the vacant positions to be filled in all the offices of the commission and the board of the commission as they lack staff.
- 11- The law of the Right to Access Information to be resolved.
- 12- The relevant parties to work by the recommendations of the reports of the commission.
- 13- The teams of the commission to be allowed into any establishments in the region, and their works and follow ups not to be hindered.
- 14- The Human Rights Court to be established.

- 15- The commission should behave according to the (Paris) principles of 1991, which was approved by the United Nations' resolution No. (48/134) in 1993 by the all the votes. The component of the commission has representatives of (council of ministers and attorney general) in it, who represent the governmental administrations, which is not in accordance with Paris principles, as representatives of the government should be advisors without the right to vote.
- 16- The laws should be in accordance with the international standards, mandate not to be extended, as they may be politically influenced.

### **For the Board of Supreme Audit:**

- 1- The parliament to amend Law No. 2 of 2008 for the Board of Supreme Audit of Kurdistan – Iraq as soon as possible. Making them open-handed in auditing, especially article 10 of the law, not to be prevented from doing their works and their work area to be widened.
- 2- The parliament to elect a president for the Board of Supreme Audit as soon as possible.
- 3- The parliament in general and specifically the specialized committee to thoroughly monitor the works of the commission and not to tolerate shortcomings from them.
- 4- The budget of the Board of Supreme Audit to be allocated separately and based on needs, so that their works are not hindered or stopped by others.
- 5- The gaps of the Board of Supreme Audit in relation to staffing to be filled.
- 6- The reports of the Board of Supreme Audit to be worked with by the executive power and not to be neglected, in addition to holding those who are negligent and violate laws accountable.
- 7- The Board of Supreme Audit to be able to audit all the governmental and private establishments as stated in the law, without being prevented from that.
- 8- The oil contracts to be transparently put under the audit of the Board of Supreme Audit.
- 9- The parliament to fix the legal issue of the presidents of (Board of Supreme Audit) and (Commission of Integrity) as soon as possible, otherwise tasking the implementation of reform law to this commission which does its works illegally will be shameful for the legislation and judiciary powers, as the legal principle that says: “whatever is based on nullity is itself a nullity” applies to this as well.

## **For the Commission of Integrity:**

- 1- The parliament to amend Law No. 3 of 2011 for the Board of Supreme Audit, and Law No. 7 of 2014: the act for the first amendment of the law for the Board of Supreme Audit of Kurdistan – Iraq, No. 3 of 2011, as soon as possible.
- 2- Form a specialized court for corruption cases.
- 3- The required number of investigators to be provided for the Board of Supreme Audit and the authority of assigning them to be given to the president of the board.
- 4- The parliament to elect a new president for the board as soon as possible.
- 5- The parliament in general and specifically the specialized committee to thoroughly monitor the works of the board and not to tolerate shortcomings from them.
- 6- The gaps in staffing of the board to be filled and the administrative structure of the board to be restructured, considering the skills and capacity of the staff.
- 7- The Board of Supreme Audit to be allowed to follow up with the cases of Oil, investment and all the other areas.
- 8- The budget of the Board of Supreme Audit to be allocated separately and based on needs, so that their works are not hindered or stopped by others.
- 9- Anti-corruption strategies to be implemented by the executive power.
- 10- The other establishments (from all three powers) to cooperate with and support the Board of Supreme Audit, not hinder the boards works.
- 11- The parliament needs to further follow up with the six-month reports of the board, so that the board is more encouraged to include more details in their reports.
- 12- Strengthening and restructuring the board of organizations in the Board of Supreme Audit.
- 13- For the amendment of the board's law, conferences and summits need to be held, so that the amendment reflects the needs.
- 14- There need to be more media reports and further transparency, so that the general public is more aware about the works of the board.
- 15- The Kurdistan Region of Iraq doesn't have a law on combating corruption, they only have an announced strategy, a law for that purpose needs to be legislated.
- 16- The law for the Board of Supreme Audit needs to be in accordance with the international standards, specifically with the United Nations Convention against Corruption, especially article 36 of the convention.

## For the Independent High Elections and Referendum Commission:

**First:** it's not possible to have two commissions in the same region, two offices in the same governorate, two representatives, two voters record, two laws, and two types of teams for the elections. That's why we suggest that the Independent High Elections and Referendum Commission to be dismantled, and we recommend that from now on the elections to be held and managed by the Iraqi Independent High Electoral Commission, which will also lift that heavy financial burden.

**Second:** in the possibility of the commission remaining as it is, it is better that:

- 1- The parliament amends their law as soon as possible and fixes shortcomings of the law.
- 2- The parliament to work on assigning a new Council of Commissioners as soon as possible.
- 3- If the members of the council are shared among the political parties, then the "Independent" must be removed from the name of the commission.
- 4- The number of the commission members to be reduced to 5 members only.
- 5- The positions of the president and the administration manager of the commission should be periodically shared among the members, so that it's not all taken by one political party.
- 6- The budget of the commission to be allocated separately and based on needs, so that their works are not hindered or stopped by others.
- 7- A new, clean and fair voters' record to be created as soon as possible.
- 8- Filling all the vacant positions that are identified in the law.
- 9- Holding seasonal meetings between the parliament's committee and the commission so that they are updated and well aware of each other.

## Appendix No. (1)

القانون رقم ( ٢ ) لسنة ٢٠٠٨

### قانون ديوان الرقابة المالية لاقليم كردستان – العراق

#### الفصل الاول

#### التعاريف وتشكيلات واهداف ديوان الرقابة المالية

##### المادة الاولى:

- بقصد بالمصطلحات الاتية المعاني المبينة ازاؤها: -  
اولا: الإقليم: إقليم كردستان العراق.  
ثانيا: الديوان: ديوان الرقابة المالية في الإقليم.  
ثالثا: المجلس: مجلس الرقابة المالية.  
رابعا: الرئيس: رئيس ديوان الرقابة المالية للإقليم.  
خامسا: سلطة الرقابة: المجلس و رئيسه و كل هيئة و موظف في الديوان يخوله احدهما في مجال اختصاص الرقابة.

##### المادة الثانية:

تؤسس سلطة رقابة مالية في الاقليم باسم (ديوان الرقابة المالية لاقليم كردستان-العراق)، تتمتع بالشخصية المعنوية و الاستقلال المالي و الاداري و لها القيام بجميع التصرفات القانونية لتحقيق مهامها و يمثله رئيسها او من يخوله.

##### المادة الثالثة:

يرتبط الديوان بالمجلس الوطني لكوردستان –العراق.

##### المادة الرابعة:

يهدف الديوان المحافظة على الاملاك والاموال العامة عن طريق ممارسة رقابة فعالة وفق الاختصاصات والصلاحيات المخولة له بمقتضى هذا القانون.

##### المادة الخامسة:

يعين رئيس الديوان بمرسوم من رئاسة الاقليم و بناء على ترشيح من المجلس الوطني لكوردستان – العراق باكثرية اعضائه و يكون بدرجة وزير و له حقوق و امتيازات الوزير فيما يتعلق بالراتب و المخصصات و التقاعد و الخدمة و له وزير المالية فيما يتعلق بشؤون الديوان و ملاكه و موازناته، و مدة رئاسته (٤) سنوات قابلة للتجديد لمرة واحدة بموافقة اكثرية اصوات اعضاء المجلس الوطني لكوردستان-العراق ولا يجوز عزله في مدة رئاسته إلا بموافقة ثلثي اصوات اعضاء المجلس الوطني لكوردستان –العراق.

##### المادة السادسة:

يتشكل الديوان من:

أولا: مجلس الرقابة المالية:

- يتشكل مجلس الرقابة من رئيس الديوان كرئيس مع نائبه و المدراء العاميين كأعضاء و عند غياب رئيس الديوان ينوب عنه نائبه.  
يجتمع المجلس مرة واحدة في الشهر على الأقل و يكتمل النصاب القانوني بحضور ٣/٢ أعضائه.  
يصدر المجلس قراراته بأكثرية أصوات الحاضرين و عند تساوي لأصوات يرجح الجانب الذي صوت له الرئيس.  
ثانيا: رئيس الديوان: يكون رئيس الديوان رئيسا للمجلس و ترتبط الدوائر التالية برئيس المجلس: -  
دائرة الشؤون الادارية و المالية و القانونية: يرأسها مدير عام يقوم باعداد و تقديم الخدمات الادارية و المالية و القانونية الى تشكيلات الديوان.



دائرة الشؤون الفنية والبحوث: يرأسها مدير عام، يقوم بتقديم المهام الفنية والمهنية التي تحتاجها للتخطيط والمتابعة والأنظمة الحسابية مع تقييم نتائج العمل والتأهل وكذلك تأخذ على عاتقها البحث عن عوامل تطوير مهمة الرقابة وزيادة تأثيرها ورفع مستوى تنفيذها والتنسيق مع الدوائر والمديريات التابعة للديوان.

مكتب رئيس الديوان: يرأسه موظف بدرجة مدير.

قسم الاعلام والعلاقات العامة.

قسم الرقابة الداخلية.

ثالثا: نائب الرئيس: لرئيس الديوان نائب و يكون بدرجة وكيل وزارة ويتمتع بجميع الحقوق والامتيازات الخاصة بوكيل الوزارة.

رابعا: دوائر التدقيق: يرأس كل دائرة منها مديرعام أو محاسب قانوني وتختص بعدد من الأنشطة القطاعية حسب ما يقررها لمجلس وفقا لمتطلبات العمل الرقابي المالي وتتكون من:

دوائر التدقيق المركزية وهي: -

أ- دائرة نشاط التمويل والتوزيع والشركات.

ب- دائرة النشاط الصناعي والموارد الطبيعية.

ج- دائرة النشاط الزراعي والاعمار.

د- دائرة النشاط الخدمات العامة.

هـ - دائرة نشاط النقابات والمنظمات الجماهيرية والمهنية.

و- دائرة النشاط الهندسي والفني.

دوائر تدقيق المحافظات.

#### المادة السابعة:

أولا: يشترط فيمن يعين رئيسا للديوان مايلي: -

ان يكون من مواطني الاقليم و مقيما فيه.

ان يكون حاصلًا على شهادة جامعية اولية على الاقل في احده مجالات (الادارة، المالية، الاقتصاد، القانون) و له خبرة في مجال اختصاصه لا تقل عن (١٠) سنوات.

ان لا يكون محكوما بجريمة تنتقص من مركزه او سمعته.

ثانيا: يشترط فيمن يعين نائبا لرئيس الديوان او مديرا عاما توفر ما يلي:

ان يكون من مواطني الاقليم و مقيما فيه.

او يكون حاصلًا على شهادة البكالوريوس في العلوم الادارية او المالية او الاقتصادية.

ان يكون له خدمة لمدة (١٥) سنة شريطة ان تكون له (١٠) سنوات خدمة فعلية في وظيفة ذات علاقة بمهام اختصاصه.

ان لا يكون محكوم عليه بجناية او جنحة.

ثالثا:

يعين نائب رئيس الديوان بقرار من رئاسة المجلس الوطني لكوردستان- العراق و بالتشاور مع رئيس الديوان.

يعين المدراء العامون بقرار من المجلس الوطني وبترشيح من رئيس الديوان.

### الفصل الثاني

#### مهام ونطاق عمل الديوان والجهات الخاضعة للرقابة المالي

مهام الديوان

#### المادة الثامنة:

أولا: للتأكد من نتائج النشاطات الحسابية والادارية من الوجة القانونية والتعليمات المالية المطبقة يحق للديوان:

فحص وتدقيق معاملات الانفاق بالنسبة للرواتب والمخصصات المكافآت للتأكد من كيفية الصرف.

للتأكد من عدم تجاوز حدود الاعتمادات المالية من الميزانية المصدقة.

التأكد من استعمال المالية العامة للأغراض التي خصصت لها والتأكد من عدم الاسراف والتبذير مع تقييم فوائدها.  
رقابة وتقييم الاعمال والنشاطات وفق مواد هذا القانون.  
ثانيا: تفتيش وتدقيق معاملات التخمين وتحقيق وجباية الموارد للتأكد من ملائمة الإجراءات المعتمدة وكيفية تنفيذها.  
ثالثا: تقديم العون الفني في المجالات المحاسبية والوقائية وجميع ما يتعلق بها من أمور إدارية وتنظيمية.  
رابعا: تنظيم دورات تعليمية لموظفي الديوان والمؤسسات الحكومية لرفع قابلياتهم وللديوان تأمين المخصصات لهم وفقا للقوانين المرعية.

خامسا: يبدي الديوان رأيه حول الجداول والبيانات والتقارير المتعلقة بنتائج عمل النشاطات المالية للجهات التي وضعت تحت رقابة المالية مع ابداء الرأي حول اسلوب تنظيمية وفق القانون والقواعد الحسابية المتبعة للتأكد من مدى ملائمتها مع الحقيقة وتوافقه مع المراكز المالية ونتائجها.

سادسا: إظهار وثائق الفساد والاحتيال والتبذير وسوء الاستعمال وعدم الكفاءة في شؤون التسلم والصرف واستعمال المالية العامة نتيجة التدقيق وتقييم أعمال ونشاطات الدوائر.

سابعا: التحقيق والتبليغ في الأمور المتعلقة بكفاءة التحصيل والإنفاق واستعمال الأموال العامة كما هو مطلوب رسميا من قبل المجلس الوطني لكوردستان - العراق.

ثامنا: متابعة تطبيق القوانين والأنظمة والتعليمات المالية والحسابية النافذة للتحقق من تطبيقها وكفائتها و ملائمتها للتطورات المستجدة في الإقليم وتوجيه الأنظار إلى أوجه النقص في ذلك وتقديم الاقتراحات اللازمة بالتنسيق مع الجهات ذات العلاقة لتطوير أو تعديل في تلك القوانين والأنظمة والتعليمات.

#### **المادة التاسعة:**

أولا: يقدم الديوان تقريرا سنويا الى رئاسة الاقليم والمجلس الوطني ومجلس الوزراء يبين فيها ملاحظاته عن الوضع المالي والاداري والاقتصادي في مجال الرقابة المالية عن الوزارات والجهات الخاضعة للرقابة ويكون التقرير ملخصا عن اعمال الديوان ونشاطاته خلال تلك السنة.

ثانيا: للديوان الحق في تقديم تقرير الى رئاسة المجلس الوطني ورئاسة مجلس الوزراء عن أي موضوع مهم يظهر في مجال الرقابة وتقييم الاعمال والنشاطات المالية والادارية والاقتصادية.

#### **المادة العاشرة:**

تحضج الجهات التالية للرقابة المالية:

أولا: الوزارت والادارات الحكومية والهيئات المستقلة غير المرتبطة بوزارة والجهات ذات الميزانيات المستقلة والملحقة.

ثانيا: جميع النقابات والجمعيات والاتحادات والمنظمات المجازة من قبل الحكومة.

ثالثا: أية جهة أخرى يقرر المجلس الوطني لكوردستان - العراق إضافتها الى رقابتها من قبل الرقابة المالية أو التي وردت في قوانين تأسيسها.

### **الفصل الثالث**

#### **اختصاصات و صلاحيات الديوان**

#### **المادة الحادية عشرة:**

للديوان حق الاطلاع على الوثائق وملفات المعاملات العلنية والسرية ذات العلاقة بالاعمال المالية، عدا الوثائق التي يستثنىها رئيس الاقليم بالتنسيق مع رئيس المجلس الوطني ورئيس الوزراء، على أن يخبر رئيس الديوان للاطلاع على المعلومات وابداء الرأي فيها.

#### **المادة الثانية عشر:**

أولا: للديوان صلاحية التقييم المالي لشؤون العقود العامة وكذلك المعونات والمنح والقروض والتسهيلات الحكومية للتأكد من صرفها للأغراض المخصصة لها.

ثانيا: على مؤسسات الاقليم ارسال جميع العقود والبيانات عن القروض والمنح التي تحصل عليها الى الديوان خلال شهر لعرض المتابعة و ابداء الملاحظات الضرورية عليها.

## الفصل الرابع المخالفات المالية

### المادة الثالثة عشرة:

أولاً: تعتبر مخالفة مالية لاغراض هذا القانون الافعال والتصرفات الآتية:  
عدم الالتزام بالقوانين والقرارات والانظمة والتعليمات والبيانات المالية.  
الاهمال والتقصير الذي يؤدي الى الضياع أو الهدر في الاموال العامة أو الاضرار في الاقتصاد الوطني.  
انتهاك قانون انضباط موظفي الدولة أو أي قانون آخر معمول به اذا نتج عنه ضرراً بالمال العام.  
اخفاء الاوراق والمستندات والسجلات المطلوبة لعمل الرقابة والتدقيق بغیرعذر مشروع.  
الامتناع عن الرد على كتب سلطة الرقابة واعتراضاتها وملاحظاتها وعدم أخذه بنظر الاعتبار.  
عدم اتحاذ الاجراءات اللازمة بشأن تصفية المخالفات الواردة في تقارير الديوان.  
ثانياً: على الجهات الخاضعة لرقابة الديوان ابلأغهن حالات (التزوير والاختلاس) والمخالفات المالية المذكورة في الفقرتين (١ و ٢) من البند أولاً من هذه المادة التي تقع فيها، وذلك حال اكتشافها دون الاخلال بما يجب أن تتخذ تلك الجهات من الاجراءات وعليها ابلاغ الديوان بنتائج التحقيق في تلك المخالفات وبالعكس تعتبر مخالفة لهذا القانون.

## الفصل الخامس

### صلاحيات ومهام مجلس الرقابة المالية

### المادة الرابعة عشرة:

يختص مجلس الرقابة بالمهام الآتية:  
أولاً: وضع أسس وخطط العمل في الديوان وأساليب تنفيذها.  
ثانياً: توفير المستلزمات الاساسية التي تقتضيها مهام الرقابة والتدقيق.  
ثالثاً: تعديل نقاط عمل دوائر ومديريات الديوان وقواعد تنظيمها بنظام داخلي.  
رابعاً: تحديد الاطار العام لتقارير الديوان.  
خامساً: مناقشة واقرار الملاحظات والتوجيهات والمقترحات والآراء الواردة في تقارير الديوان السنوية قبل اصدارها وله في ذلك تحويل أي من أعضائه أو موظفي الديوان من هذا الاختصاص.  
سادساً: تنظيم دورات دراسية تطبيقية للموظفين وللمجلس منح الملتحقين بها المخصصات التي يقرها.  
سابعاً: دراسة كل ما يعرضه عليه رئيس الديوان أو أي من أعضاء المجلس من قضايا واتحاذ القرارات والتوصيات بشأنها.  
ثامناً: إعداد الميزانية السنوية للديوان وارسالها الى وزارة المالية لدرجها ضمن الموازنة العامة للإقليم.  
تاسعاً: للمجلس إستحداث أو الغاء مديريات وأقسام ضمن تشكيلات الديوان حسب ضرورات العمل.  
عاشراً: للمجلس اجراء الرقابة على المعاللات قبل بلوغها مراحلها النهائية.  
حادي عشر: للمجلس اجراء تعديل في أنشطة الدوائر التدقيقية وإعادة توزيعها حسب ضرورات العمل.  
ثاني عشر: التحقيق في كل التقارير والمواضيع المحالة الى الديوان من قبل رئيس الاقليم أو رئيس المجلس الوطني أو رئيس مجلس الوزراء، لإتحاذ القرارات والتوصيات والمقترحات اللازمة بشأنها.

### المادة الخامسة عشرة:

أولاً: للمجلس منح موظفي الديوان المخصصات الآتية:  
مخصصات رقابية لا تتجاوز نسبتها عن (٥٠٪) من راتب الموظف.  
مخصصات خطورة ومهام خاصة لا تتجاوز نسبتها (٧٥٪) من الراتب للموظفين الذين يقومون بمهام الرقابة والتدقيق ويتعرضون للمخاطر اثناء عملهم.

مخصصات الموقع الجغرافي لا تتجاوز (٣٠٪) من الراتب.  
مخصصات منع ممارسة المهنة خارج أوقات الدوام الرسمي لا تتجاوز نسبتها (٥٠٪) من الراتب.  
ثانياً: المخصصات أعلاه ليست لها علاقة بالمخصصات الممنوحة لباقي الموظفين بشكل عام.  
ثالثاً: للمجلس حق منح قدم لا تتجاوز سنة واحدة في كل درجة لأغراض العلاوة والترقية لموظفي الديوان ممن يتميزون بكفاءة عالية أو يبذلون جهوداً استثنائية وفق تعليمات يصدرها لهذا الغرض.

## الفصل السادس صلاحيات رئيس الديوان

### المادة السادسة عشرة:

لعرض تنفيذ هذا القانون ولضمان سلامة الاجراءات التي تترتب على نتائج اعمال الرقابة المالية لرئيس الديوان الاختصاصات والصلاحيات الآتية:  
أولاً: التحقيق في المخالفات المالية وطلب تقديم أية ايضاحات أو معلومات ممن ترى اكتشاف المخالفة متوقفاً على التحقيق معه سواء كان من العاملين في الدائرة أو غيرهم.  
ثانياً: سحب يد الموظف كلما اقتضت ذلك سلامة التحقيق والرقابة أو عند ظهور مخالفة أو جريمة مالية أو تصرفات لمخالفة لأحكام هذا القانون أو القوانين والأنظمة أو التعليمات المالية النافذة.  
ثالثاً: للرئيس ان يطلب من الوزير المختص إحالة المخالف (لمخالفة مالية) الى لجنة تحقيقية تشكل في وزارته أو فرض العقوبات الادارية عليه.  
رابعاً: للرئيس في القضايا التي ينتهي التحقيق فيها، أن يطلب من الوزير المختص تضمين الموظف بالاضرار التي تكبدتها الدائرة بسبب اهماله أو لمخالفته للقوانين والأنظمة والتعليمات المرعية.  
خامساً: الطلب من الوزارة المختصة أو الجهات المعنية إقامة الدعاوي المدنية بالمخالفات المالية ومتابعتها لدى المحاكم المختصة على ان يقوم الديوان بتزويد الجهة المعنية بما لديه من معلومات عن تلك المخالفات وفي حالة عدم تنفيذ ذلك من قبل الوزارة المختصة يعتبر مخالفة مالية على الوزارة المعنية ولرئيس الديوان اعلام رئاسة المجلس الوطني بذلك.  
سادساً: لرئيس الديوان إقامة دعوى قانونية على مرتكبي جرائم مالية بواسطة الادعاء العام إذا لم تباشر الوزارة بذلك.  
سابعاً: لرئيس الديوان دعوة أو استضافة أية جهة خاضعة لرقابة الديوان لحضور اجتماعات المجلس في الامور المتعلقة بها.  
ثامناً: لرئيس الديوان الاستعانة بموظفي الحكومة أو الخبراء عند الحاجة وبالصورة التي يريئها لاشراكهم في العمل الرقابي وله صرف المكافآت والاجور لهم لقاء الخدمات التي يقدمونها وفق القانون والتعليمات المعمول بها.

### المادة السابعة عشرة:

إذا وقع خلاف بين الديوان واحدى الجهات الخاضعة للرقابة ولم يتم حسمه بينهما مباشرة فلرئيس الديوان عرض الموضوع على رئاسة المجلس الوطني.

## الاحكام الختامية

### المادة الثامنة عشرة:

أولاً: قبل أن يتولى رئيس الديوان أعماله وصلاحياته المقررة بهذا القانون يؤدي أمام المجلس الوطني لكوردستان-العراق اليمين القانونية التالية (اقسم بالله العظيم أن أقوم بمهام وظيفتي بصدق وأمانة واخلص وأن اطبق القوانين والأنظمة والتعليمات بأمانة ونزاهة وحياد، وأحافظ على استقلال الديوان وحياده وكرامته، وأحافظ على أسرار العمل، واحترام القواعد الاخلاقية والمهنية التي تنظم شؤون الوظيفة وألتزم بها، والله على ما أقول شهيد).

ثانياً: يؤدي نائب رئيس الديوان المدراء العامون ومعاونوهم ومن هم بدرجتهم ورؤساء الهيئات الرقابية اليمينية القانونية المنصوص عليه في الفقرة أولاً أعلاه أمام مجلس الرقابة قبل ممارستهم أعمالهم وتتضمن الالتزام بمبادئ مهنة الرقابة وأدائها بحيادية والكشف عن كلما يراه ضرورياً لرفعة ومكانة الرقابة في الإقليم.

#### **المادة التاسعة عشرة:**

يتفرغ كل من رئيس الديوان ونائبه ورؤساء الدوائر ورئيس وأعضاء هيئات الرقابة وتخصص جهودهم لمهام وأعمال وظائفهم ولا يجوز لهم الاشتغال في أي عمل ومهنة أخرى عدا تأليف ونشر الكتب وإلقاء المحاضرات.

#### **المادة العشرون:**

أولاً: لا يجوز اتخاذ التعقيبات القانونية بحق رئيس الديوان إلا بعد الحصول على إذن من رئيس المجلس الوطني كوردستان-العراق فيما يتعلق بتصرفاته الرسمية في أداء مهام الرقابة والتدقيق.

ثانياً: لا يجوز اتخاذ التعقيبات القانونية بحق نائب رئيس الديوان ورؤساء الدوائر التدقيقية فيما يتعلق بتصرفاتهم الرسمية في مجال الرقابة والتدقيق إلا بعد الحصول على إذن من رئيس الديوان ويعلم رئاسة المجلس الوطني كوردستان-العراق.

#### **المادة الحادية والعشرون:**

تنفذ قوانين الخدمة المدنية والملاك وانضباط الموظفين بحق-موظفي الديوان، بما لا يتعارض مع أحكام هذا القانون.

#### **المادة الثانية والعشرون:**

أولاً: تحدد تشكيلات ودوائر الديوان ومهامها واختصاصاتها بنظام داخلي يصدر عن الديوان.

ثانياً: لرئيس الديوان بموافقة المجلس إصدار التعليمات لتسهيل تنفيذ هذا القانون.

ثالثاً: يلغى قانون ديوان الرقابة المالية رقم (١٤) لسنة ٢٠٠٠ ونظام ديوان الرقابة المالية رقم (٢١٢) لسنة ١٩٩٩ .

#### **المادة الثالثة والعشرون:**

على مجلس الوزراء والجهات ذات العلاقة تنفيذ أحكام هذا القانون.

#### **المادة الرابعة والعشرون:**

لا يعمل بأي نص يتعارض وأحكام هذا القانون.

#### **المادة الخامسة والعشرون:**

ينفذ هذا القانون اعتباراً من تاريخ نشره في الجريدة الرسمية (وقائع كوردستان).

#### **عدنان المفتي**

**رئيس المجلس الوطني لكوردستان-العراق**

#### **الاسباب الموجبة**

حفاظاً على الأموال العامة وترسيخاً لمبدأ الشفافية وتفعيلاً للدور الرقابي للمجلس الوطني لكوردستان-العراق، وضماناً لمهام النظام المالي وصرف النفقات في الأوجه المخصصة لها فقد شرع هذا القانون.

## Appendix No. (2)

### Law No. 4 (2010) An act for the Kurdistan Region – Iraq independent board for human rights

#### قانون رقم (٤) لسنة ٢٠١٠ قانون الهيئة العامة المستقلة لحقوق الانسان في اقليم كردستان – العراق

##### المادة ١

يقصد بالمصطلحات والتعابير الآتية المعاني المبينة ازاءها لأغراض هذا القانون:

أولاً: الاقليم: اقليم كردستان – العراق

ثانياً: البرلمان: برلمان الاقليم.

ثالثاً: الهيئة: الهيئة المستقلة لحقوق الانسان

رابعاً: المجلس: مجلس الهيئة

خامساً: الرئيس: رئيس الهيئة

##### المادة ٢

أولاً: تؤسس هيئة باسم (الهيئة المستقلة لحقوق الانسان في اقليم كردستان – العراق) بالشخصية المعنوية والاستقلال المالي والاداري، وتكون لها ميزانية خاصة ضمن الميزانية العامة للاقليم، وترتبط بالبرلمان وتكون مسؤولة امامه.  
ثانياً: يكون المقر الرئيسي للهيئة في محافظة اربيل عاصمة الاقليم، وتفتح لها مكاتب في مراكز سائر المحافظات كما ويجوز لها فتح مكاتب في الاقضية والنواحي.

##### المادة ٣

تهدف الهيئة الى الحفاظ على حقوق الانسان وتعزيزها والدفاع عنها في جميع المجالات وفق المعايير الدولية مع نشر ثقافة حقوق الانسان.

##### المادة ٤

تتولى الهيئة المهام الآتية:

اولاً: تقديم المشورة وابداء الرأي فيما يتعلق بقضايا حقوق الانسان ورفع توصياتها للوزارات والمؤسسات ذات العلاقة في الاقليم.

ثانياً: نشر ثقافة حقوق الانسان وقضايا المرأة والطفل بترسيخ قيم التسامح ومفاهيم التضامن الاجتماعي.

ثالثاً: مراقبة ملائمة التشريعات في الاقليم لمبادئ حقوق الانسان والحريات الاساسية وتقديم المقترحات بشأنها للجهات المعنية.

رابعاً: تقييم مدى التزام السلطات في الاقليم بأحكام المواثيق والبنود الخاصة بحقوق الانسان والعهدين الدوليين الخاصين بالحقوق المدنية والسياسية وبالقوق الثقافية والاجتماعية والاقتصادية وابرار الانتهاكات التي قد تنجم عن ممارسات السلطات في الاقليم.

خامساً: اعداد دراسات وبحوث دورية واصدار نشرات ومطبوعات حول سبل تحسين حقوق الانسان في الاقليم وعقد الندوات والاجتماعات الخاصة بقضايا حقوق الانسان.

سادساً: زيارة ومراقبة السجون ومراكز الاصلاح الاجتماعي والمواقف والمعتقلات ومراكز التحقيق واعداد تقارير دورية عن احوال السجناء

والمودعين في الاصلاحات والموقوفين.

سابعاً: تلقي الشكاوي من الافراد والجمعيات ومنظمات المجتمع المدني عن انتهاكات حقوق الانسان والتأكد من صحتها واخبار الادعاء

العام بها لأخذ الاجراءات القانونية ومتابعة نتائجها.

ثامناً: التعاون مع المنظمات المعنية بحقوق الانسان وغيرها من منظمات المجتمع المدني داخل الاقليم وخارجه ومع الجمعيات الفكرية

والاقتصادية والاجتماعية وتنظيم حلقات البحث مع المواطنين في الاقليم بما يضمن نشر ثقافة الالتزام بالبنود التشريعية والاتفاقيات الدولية

حول قضايا حقوق الانسان لتعزيز سيادة القانون وتكريس احترام حقوق الانسان.

تاسعاً: التعاون والتنسيق مع المنظمات الدولية المختصة بقضايا حقوق الانسان والجهات الاخرى ذات العلاقة بهدف تمثيل اقليم

كوردستان في الاجتماعات والمؤتمرات المعنية بحقوق الانسان.

عاشرا:

أ- اعداد تقرير سنوي لبيان واقع حقوق الانسان في الاقليم ورفعته الى رئاسة اقليم كردستان، ورئاسة البرلمان كردستان ورئاسة مجلس الوزراء ورئاسة مجلس القضاء والجهات ذات العلاقة مع بيان التوصيات العملية لحماية وتعزيز حقوق الانسان في كردستان.  
ب- تقديم تقرير دوري حول اوضاع حقوق الانسان الى برلمان كردستان ونشره في وسائل الاعلام.

#### المادة ٥

أولا: رئيس الهيئة هو الرئيس الاداري للهيئة والمسؤول المباشر عن تنفيذ سياساتها، وتصدر منه القرارات والأوامر والتعليمات في كل ما له علاقة بشؤونها الفنية والمالية والادارية وفق القانون، ويمثل الهيئة لدى الجهات الحكومية والمؤسسات والهيئات الاخرى ذات العلاقة داخل الاقليم وخارجه.

ثانيا: يعين رئيس الهيئة بدرجة خاصة بناء على ترشيح من رئاسة البرلمان ورئاسة مجلس الوزراء ويصدر مرسوم اقليمي بالتعيين بعد مصادقة البرلمان على المرشح باغلبية عدد الحاضرين وتكون رئاسته لمدة أربع سنوات قابلة للتجديد مرة واحدة.

ثالثا: يشترط في من رئيسا للهيئة:

- ١- ان يكون مواطني الاقليم وساكننا فيه.
- ٢- حاصلا على شهادة جامعية أولية على الأقل، ومتمتعا بالكفاءة والخبرة في مجال حقوق الانسان.
- ٣- حسن السيرة والسلوك وغير محكوم بجناية او جنحة مخلة بالشرف.
- ٤- تقديم تعهد خطي بعدم ممارسة العمل الحزبي طيلة مدة وظيفته.
- ٥- لم يشارك في الجرائم التي ارتكبتها السلطات القمعية.

#### المادة ٦

يؤدي رئيس واعضاء الهيئة اليمين القانونية أمام رئيس مجلس القضاء بالصيغة الآتية:  
(اقسم بالله العظيم ان اود المسؤوليات القانونية والمهنية بصدق وامانة واخلاص واعمل على انجاز المهام الموكولة الي في مجال الدفاع عن الحقوق الانسان باستقلال وحياد)).

#### المادة ٧

اولا: تتكون تشكيلات الهيئة من الدوائر الآتية، وتدار كل دائرة منها من قبل موظف بدرجة مدير عام حاصل على شهادة جامعية اولية من ذوي الخبرة والاختصاص، ويعاونه عدد من الموظفين.

١- الدائرة الادارية والمالية: تتولى متابعة شؤون منتسبي الهيئة وما يتعلق بميزانياتها وممتلكاتها وما يكفل تسيير عملها.  
٢- الدائرة القانونية وحماية حقوق الانسان: تتولى استقبال ومتابعة الشكاوي من الافراد والمؤسسات والمنظمات وغير في مسائل حقوق الانسان وزيادة السجون ومراكز التوقيف والتحقيق من صحة الانتهاكات في مسائل حقوق الانسان ورفع النتائج في مجلس الهيئة كما تتولى دراسة التشريعات ذات العلاقة بحقوق الانسان ودراستها على ضوء المواثيق الدولية لحقوق الانسان وابداء مقترحات بهذا الشأن الى مجلس الهيئة.

٣- دائرة العلاقات والاعلام: تتولى التنسيق بين الدوائر المعنية في الهيئة وما يحيله اليها مجلس الهيئة او رئيسها من طلبات في هذا الشأن ومتابعة ما ينشر في وسائل الاعلام المختلفة فيما يتعلق بحقوق الانسان ونشر ثقافة حقوق الانسان والاسهام في الترتيبات عند اقامة المؤتمرات والندوات ذات العلاقة.

٤- مستشارين لا يزيد عن اثنين ومن ذوي الخبرة والاختصاص في مجال حقوق الانسان.

٥- يكون للهيئة مجلس اداري يتكون من الرئيس ومدراء دوائر الهيئة والمستشارين.

ثانيا: لرئيس الهيئة استحداث او دمج او إلغاء أي من أقسام الهيئة او شعبها وفقا لمتطلبات العمل بعد مصادقة مجلس الهيئة.

ثالثا: يتكون مجلس الهيئة من:

١- رئيس الهيئة/رئيسا.

٢- مدير عام الدائرة القانونية وحماية حقوق الانسان/ مقرا.

٣- ممثل مجلس الوزراء لا تقل درجته عن درجة خاصة/ عضوا.

٤- ممثل مجلس القضاء/ عضوا.

٥- ممثل الادعاء العام / عضوا.

رابعا: ضمان مشاركة المرأة في المجلس.

خامسا: يجتمع المجلس شهريا، وللرئيس عند الضرورة دعوته لاجتماع طارئ، وتتخذ القرارات فيه بأغلبية عدد الحاضرين، وفي حالة التساوي في الاصوات يرجح الجانب الذي يصوت معه الرئيس.

سادسا: للرئيس دعوة ممثلي الجهات ذات العلاقة من الوزارات ودوائر الاقليم والقطاع الخاص ومنظمات المجتمع المدني لحضور اجتماعات المجلس ولا يحق لهم التصويت.

#### المادة ٨

أولا: للبرلمان مراقبة ومتابعة أعمال الهيئة وفقا لأحكام القانون ونظامه الداخلي.

ثانيا: يعفى الرئيس من منصبه بقرار مسبب من البرلمان يتخذه بالأغلبية المطلقة لعدد اعضائه بعد ثبوت عدم كفاءته.

#### المادة ٩

على الوزارات والجهات غير المرتبطة بوزارة والهيئات المستقلة كافة الالتزام بتقديم الوثائق والبيانات والاحصائيات والمعلومات ذات الصلة بأعمال والمهام المهنية للهيئة في المدة المحددة وعلى الهيئة مفاتحة البرلمان في حالة عدم التزام الجهات المذكورة به.

#### المادة ١٠

تخضع حسابات الهيئة للتدقيق والرقابة من قبل ديوان الرقابة المالية في الاقليم.

#### المادة ١١

لرئيس الهيئة اصدار التعليمات اللازمة لتسهيل تنفيذ أحكام هذا القانون.

#### المادة ١٢

اولا: تؤول كافة موجودات وحقوق والتزامات وزارة حقوق الانسان الملغاة الى الهيئة.

ثانيا: تتم املاء درجات ملاكات الهيئة من منتسبي وزارة حقوق الانسان الملغاة.

ثالثا: لا يعمل بأي نص قانوني او قرار يتعارض مع أحكام هذا القانون.

#### المادة ١٣

على مجلس الوزراء والجهات ذات العلاقة تنفيذ أحكام هذا القانون.

#### المادة ١٤

ينفذ هذا القانون اعتبارا من تأريخ نشره في الجريدة الرسمية (وقائع كردستان).

### الاسباب الموجبة

لضمان حماية وتعزيز احترام حقوق الانسان والحقوق والحريات المنصوص عليها في الدستور والقوانين النافذة والاعلان العالمي لحقوق الانسان والعهدين الدوليين والبروتوكولات الملحقه بهما وغيرها من المواثيق والاتفاقيات المتعلقة بحقوق الانسان المصادق عليها من قبل الحكومة الاتحادية وحيث ان المبادئ الأساسية منها على قدر كبير من الأهمية ومعيارا يمكن ان تقاس به مواقف المجتمعات والحكومات وترسيخ وتنمية وتطوير قيم وثقافة حقوق الانسان وبما ان شعب كردستان -العراق اختار طريق التقدم بما يضمن حقوق المواطنين الكوردستانيين وتأكيدا على هذا النهج فقد شرع هذا القانون.



## Appendix No. (3)

### Law No. (3) of 2013 the Public Integrity Authority of Kurdistan Region – Iraq

#### Chapter One Definitions, Creation & Objectives

**Article One:** For the purposes of this law, the following words and expression shall have the meanings designated hereunder against them:

- I)The Region: Kurdistan Region – Iraq;
- II)The Parliament:The Parliament of the Kurdistan Region of Iraq;
- III)The Government:Government of the Region - KRG
- IV)The Authority:The Public Integrity Authority of the Region;
- V)The Chairman:Chairman of the Public Integrity Authority of the Region;
- VI)The Judicial Council:The Judicial Council of the Region.

**Article Two:** Under this law, an authority titled (The Public Integrity Authority of the Kurdistan Region - Iraq) shall be created with an independent legal personality that is subject to the supervision of the parliament and has allocations within the public budget of the Region.

#### **Article Three:**

This law aims at:

- I) To establish an effective mechanism for corroborating the principle of the rule of law;
- II) To combat the phenomenon of corruption and promote the principle transparency in all institutions of the Region through legal procedures;
- III) To take the necessary legal action to prevent corruption;
- IV) To adopt objective criteria for the evaluation of job performance and development thereof in the public service and eradicate bureaucracy;
- V) To establish and evaluate the job conduct and bear responsibility during the performance of public service in accordance with the laws and procedures incriminating corruption;

#### **Article Four:**

Provisions of this law shall apply to:

- I) Head of legislative, executive and judicial branches and the staff members and officers thereof;
- II) Private sector parties contracting, as persons and corporations, with all the ministries, institutions and departments of the Region;
- III) Political organizations, civil society organizations, non governmental and international organizations operating in the Region and the associations, societies and clubs with respect to the matters hereunder:
  - (1) Legality of the sources of funding and donation;
  - (2) Aspects of expenditure in accordance with the established rules of disbursement;

(3) Compliance with and non violation of the bylaws thereof.

## **Chapter Two Duties and Competences of the Authority**

### **Article Five:**

The Authority shall work on the following:

I) Implementation and application of the anticorruption laws and public service standards in accordance with the Constitution and the effective laws;

II) Investigation in corruption cases, refer them to courts and follow up the same;

III) Reception of complaints of citizen related to the corruption and various entities and initiate investigations in therein;

IV) Maintenance of the confidentiality of identity of collaborating bodies in accordance with the law;

V) Dissemination of a national culture to develop the ethics of personal integrity and self-commitment with the criteria of public service and work with specialized people in charge towards developing national study curricula to promote the concept of public integrity;

VI) Issue of instructions on job code of conduct to clarify the public service criteria and morals with which the public servants of the Region shall comply as a prerequisite for appointment and continuous service, and monitoring the extent of compliance thereof and amend them from time to time, as needed;

VII)

1- Issue of instructions pursuant to the rules of illicit enrichment provided for in Chapter Five of the Law on the Authority which compel the officers of the Region as well as the spouses and minor children thereof to disclose the financial interests thereof, to be amended from time to time as appropriate to realize the foreseen purposes thereof;

2- The report on declaration of financial interests to include detailed data on the real estate and movable properties, financial income, bank balances, shares, bonds, and moral rights within the Region and abroad;

3- 3- Declaration of financial interests shall include the following:

4- a. President of the Region and the vice thereof;

5- b. Speaker of the parliament and his/ her deputy as well as the secretary and members thereof;

6- c. The prime minister and deputy prime minister of the Region;

7- d. Ministers of the Region, those of similar ranking and undersecretaries of the Region;

8- e. Chairman, vice chairman, directors general and all investigators of the Authority;

9- f. Officers of private degrees and the deputies and assistance thereof;

10- g. Directors general and the deputies thereof;

11- h. Judges, members of public prosecution, judicial inspectors and investigators;

12- i. Officers of the Regional Guards and Internal Security;

13- j. Heads of administrative units, members to governorate, district and subdistrict councils, mayors and members to the municipal councils;

14- k. Any person holding a civilian or military position that the Authority deems necessary to include by presenting a report on declaration of financial interests.

15- VIII)

16- 1- The Authority may make recommendation on inhibiting the officer under investigation from acting in accordance with the State Officers Discipline Law No. (4) of 1991 in effect with the Region;

17- 2- The Authority may refer the violations related to the public service criteria to the head of the department to which the violating officer is affiliated, and it may enclose therewith a recommendation on initiating disciplinary and judicial action;

18- IX)

19- 1- The Authority shall have control over disposition with the funds of the Region and the manner of management thereof in cooperation with the Financial Audit Bureau and other concerned entities;

20- 2- Control shall extend to include the legality of decisions and actions of ministries, departments and entities subject to control and extent of integrity thereof;

21- 3- The entity subject to control shall provide the Authority, at the request of the latter and without delay, with the information, explanation, instruments and documentation, including those confidential regardless of the classification thereof, to which the Authority deems necessary to have access for control purposes.

### **Chapter Three Election and Duties of the Chairman of the Authority And formation of the Authority**

#### **Article Six:**

I) The parliament shall elect the chairman of the Authority by secret ballot with two-thirds majority of the members of the parliament from among three candidates to be nominated by the Judicial Council of the Region and shall be appointed by a regional decree in a minister rank; in case no candidate wins with the two thirds votes of the members of the parliament, a reelection shall be take place among the candidates with the highest votes where the winner shall be the one who obtains two- thirds of the votes of the parliament members;

II) The candidate for the office of the vice chairman of the Authority must meet the following conditions in addition to the general occupational conditions:

1. Not to be convicted for a deliberate crime or a misdemeanor involving honor turpitude;
2. To enjoy standards of integrity, efficiency and impartiality;
3. Not to be an accessory or accomplice in the crimes that were planned, executed or committed by the ruling Baathist Regime;
4. To hold a university degree in law with expertise in the field of specialization thereof that is not less than fifteen years for bachelor degree holder, where two years shall be deducted from this period for those who hold a masters degree in law and five years for Ph.D. degree in law holders; the minimum study period to attain any of those two certificates shall be deemed as practice period for the purposes of this law.

#### **Article Seven:**

I) Applications for appointment shall be submitted, following to the announcement of the position, to the Judicial Council attached with the curriculum vitae and documentation related to appointment;

II) The Judicial Council shall select three applicants for the purposes of nomination thereof to the office of the chairman so that the parliament would then elect one of them in accordance with Article (Six/ I) of this law;

III) Tenure of the chairman shall be four once renewable years under the same procedures and rules provided for in Article Six of this law;

IV) Legal actions shall be taken against the chairman at committing violations related to the office duties in accordance with the law, following to a prior permission from the parliament;

V) The chairman shall be removed from the office by a resolution made by the parliament in any of the following cases:

1. If a fait accompli judicial ruling on conviction thereof for a committing a crime or misdemeanor in turpitude of honor is rendered;

2. If omission or grave negligence in performing the duties and tasks thereof is established;

3. In case of abuse of power;

VI) Removal resolution in cases (2 and 3) of Clause V of this article shall be issued based on the recommendation of an investigation committee to be formed with the chairmanship of the deputy speaker of the parliament and the membership of the deputy prime minister and justice on the Court of Cassation.

**Article Eight:**

Prior to assumption the duties and powers set forth in this law, the chairman shall take the following legal oath before the parliament:

(I Doth swear by Almighty Allah to honestly, partially, truly and devotionally perform the duties assigned to me and to honestly apply the laws, regulations and instruction on anticorruption to eliminate the phenomenon of corruption).

**Article Nine:**

I) The Authority shall have a board consisting of the following:

1) The chairman of the Authority – as a chairman;

2) The vice chairman – as a vice chairman to act for the chairman in case of absence thereof;

3) The directors general of the Authority - as members;

4) A number of experts from among the staff of the Authority or from outside of it whose number does not exceed three and who shall participate in meeting and discussions of the board without having a voting right;

II) The Board of the Authority shall assume the following duties:

1) Draft the budget of the Authority, establishing the cadres thereof, drawing up the payrolls and personnel schedules thereof in coordination with the Ministry of Finance;

2) Issue the regulation of the Authority;

3) Prepare the action plan of the Authority;

4) Approve the periodical reports submitted to the parliament or to other official entities;

5) Study the matters referred thereto by the Chairman and taking necessary resolutions thereon;

III) Resolution of the Board of the Authority shall be taken by majority; and at equal voting, the chairman of the authority shall have a casting vote.

**Article Ten:**

Chairman of the Authority shall assume the duties hereunder:

To run the affairs of the Authority and ensure the performance of the duties thereof within the limits of the law in a manner ensuring the realization of the objectives thereof;

II) To open branches for the Authority within the governorates and districts of the Region provided that each branch to be run by an officer with a director general ranking holding at least the first university degree;

III) To provide a regular report every four months to the parliament or whenever required, following to the endorsement thereof by the Board of the Authority in accordance with Article (Nine/ II- 4) of the Law on the Authority, involving the activities of the Authority and a summary on the investigated and closed cases which have been referred to the competent courts to which the public and media are permitted to have access;

IV) To request the Judicial Council to second judicial investigators to work for the Authority.

**Article Eleven:**

I) The Authority shall have a vice chairman to be appointed by a regional decree upon a nomination made by the Chairman which position shall be of private degree;

II) Chairman of the authority may delegate some of the powers thereof to the vice chairman or the directors general.

**Article Twelve:**

The Authority consists of the following:

I) Department of Administrative and Financial Affairs shall be presided by an officer with director general ranking holding at least the first university degree with expertise in the field of specialization thereof that is not less than ten years;

II) Department of Legal Affairs and Investigation shall be presided by an officer of director general ranking holding a first university degree in law with at least ten years expertise in the field of specialization thereof; it consists of the following:

1) Directorate of Legal Affairs shall be headed by an officer of director ranking holding a first university degree in law with at least five years expertise in the field of specialization thereof who shall assume the following duties:

- a. Giving opinion and advise in legal matters submitted to the Authority;
- b. Plea before competent courts in relation to corruption cases initiated by the Authority and review the means of appeal thereof;
- c. Representing the Authority in investigation committee to be formed at the request of the Authority;
- d. Preparing legal studies and researches on the anticorruption laws and international convention on this regards;

Directorate of Investigations shall be headed by an officer of director ranking holding a first university degree in law with at least five years expertise in the field of specialization thereof, and shall be responsible for detecting corruption cases within all governmental organs, collecting information thereon with the assistance of technical organs and investigating therein

III) Department of Prevention and Transparency shall be headed by an officer of director ranking holding a first university degree with at least ten years expertise in the field of specialization thereof, and it shall be responsible for the following tasks:

1) Verification of the legitimacy of the sources of funds governed by the provisions of the Law on the Authority whether registered in his/ her name or in the name of third parties, and whether in his/ her possession or in the possession of third parties as long as they belong to him/ her;

2) Development of the investigation skills in corruption cases and financial control and administrative inspection techniques in addition to the dissemination of integrity and transparency culture;

3) Follow up the enforcement of laws, regulations and instructions related to the Authority;

4) Development of relations with organizations with similar activities;

5) Management of the training programs and holding conferences in cooperation with the ministries, competent bodies and private sector institutions;

IV) Office of the Chairman of the Authority) shall be presided by an officer with director ranking holding at least the first university degree.

**Article Thirteen:**

I) During any investigation conducted by the Authority, the investigators of the Authority shall have the right to interrogate any person governed by the provisions of this law and shall have access to official instruments and documents, including the classified, regardless of the degree of confidentiality thereof, and shall further facilitate the mission of access of the investigators of the Authority with the devices that the nature of work require to the concerned department, and provide them with protection, where the devices related to the work thereof may not be taken away from them;

II) In the event that the entity subject to the investigation claims that the information and documentation required to be accessed to are top secret and that the potential disclosure thereof would jeopardize the security of the Region, the chairman of the Authority shall form an investigation committee presided by him/ her with the membership of two directors general of the Authority to verify the information and documentation.

#### **Chapter Four Provisions on Illicit Enrichment**

**Article Fourteen:**

I) Every fund which a person subject to the provisions of this law procures for him/ herself or for a third party as a result of public office, public mandate or capacity abuse or as a result of conduct violating a legal provision;

II) Pursuant to the above, every increase in wealth that occurs following to the assumption of a public office, public mandate or acquiring the capacity by the person subject to the provisions of this law or the spouse or minor children thereof shall be deemed as abuse as long as the same is inconsistent to the resources thereof and as they fail to establish a legitimate source thereof;

III) The provisions of clause (II) of this Article shall apply to any person of whatsoever capacity who takes holds of public funds the origin of which is an illicit enrichment.

**Article Fifteen:**

I) The Authority shall notify the Judicial Council of the cases of illicit enrichment related to the President and the Vice President of the Region, the Speaker and deputy speaker of the parliament, the prime minister and deputy prime minister, the ministers and undersecretaries, and chairpersons and vice chairpersons of independent entities with view to investigate and refer the same to the courts in accordance with the law;

II) Cases of illicit enrichment related to all other officers that are not provided for in Item (I) of this article shall be referred to the examining magistrate, as the case may be.

**Article Sixteen:**

The court shall, in cases of illicit enrichment, attach the funds of those required to be investigated or the spouse or minor children thereof.

**Article Seventeen:**

I) Every person who procures for him/ herself or for a third party any illicit enrichment shall be subject to the penalty of imprisonment in addition to the recovery of the amount of illicit enrichment;

II) The abatement of the criminal case by death shall not avert the recovery of the illicit enrichment by a ruling rendered by the competent court at the request of the Authority within three years as of the date of death where the funds of the spouse, children and minors shall be recovered to the extent of benefit of each of them from the illicit enrichment;

III) The competent court shall resolve, vis-à-vis the spouse, and minor children who have benefited from the illicit enrichment, on the execution of the ruling on recovery of the funds from them, each in the amount of benefit thereof.

**Article Eighteen:**

An accomplice to the crime of illicit enrichment shall be pardoned once he/ she reports the crime to the competent authorities prior to the detection thereof or collaborates during the inquiry and investigation to the detection thereof; the provisions of this article shall be without prejudice to the obligation of rendering a ruling on recovery.

**Article Nineteen:**

Each who deliberately fails to present the declarations on disclosure of financial interests for a period exceeding three month as of the scheduled dates shall be subject to a penalty that is not less than one million Dinars nor exceeding three million Dinars, where the same penalty shall be imposed upon each who deliberately state false essential information in such declarations.

**Article Twenty:**

The penalties prescribed in this law shall be without prejudice to the imposition of any other aggravated penalty that is prescribed in another effective law within the Region.

## Chapter Five General and Final Provisions

**Article Twenty One:**

Officers of the Authority, other than the directors general and those of private ranks, shall earn allocations similar to those earned by the officers of the Financial Audit Bureau of the Region in accordance with the Law on the Financial Audit Bureau of Kurdistan Region No. (2) of 2008.

**Article Twenty Two:**

No one but the chairman of the Authority may administratively discipline the officers thereof nor they may be detained or arrested due to actions related to the offices thereof but with the permission of the chairman of the Authority, except for cases of felony or misdemeanor *in flagrante delicto*.

**Article Twenty Three:**

Accounts of the Authority shall be subject to auditing by the Financial Audit Bureau.

**Article Twenty Four:**

Chairman of the Authority shall issue the instructions necessary to facilitate the enforcement of the provisions of this law.

**Article Twenty Five:**

Chairman of the Authority has the power to create, merge or cancel sections and divisions of the Authority according to the work requirements. 162

**Article Twenty Six:**

No legal provision or decision that in conflict with the provisions of this law shall be applicable.

**Article Twenty Seven:**

Relevant entities shall execute the provisions of this law.

**Article Twenty Eight:**

This law shall come into force as of the date of publishing hereof in the Official Gazette (Waq'a'i Kurdistan).

*Mohammed Qader Abdullah*

*(Dr. Kamal Kerkouki)*

*Speaker of the Parliament of Kurdistan- Iraq*

**Grounds for the Law**

Financial and Administrative corruption from which governments and communities suffer leads to the creation of a state of underdevelopment and injustice within the society, the matter that made the developed and civilized governments and nations enact legislation to fight, combat and eradicate it; due to the importance of the role of supervision over authorities, which is deemed as a basic pillar in true democratic systems, and whereas combating corruption at all levels requires the existence of a public integrity authority that is subject to the control of the parliament and granting it the powers and authorities that the nature of tasks assigned to it requires, this law has been enacted.



## Appendix No. (4)

### القانون رقم ( ٤ ) لسنة ٢٠١٤ قانون المفوضية العليا المستقلة للانتخابات والاستفتاء

#### الفصل الاول

##### المادة الأولى:

يقصد بالمصطلحات والتعابير الآتية المعاني المبينة إزاءها لأغراض هذا القانون:

أولاً: البرلمان: برلمان كردستان - العراق.

ثانياً: المفوضية: المفوضية العليا المستقلة للانتخابات والاستفتاء.

ثالثاً: الاقليم: اقليم كردستان - العراق

رابعاً: المجلس: مجلس المفوضين.

#### الفصل الثاني

##### المادة الثانية:

أولاً: تؤسس بموجب هذا القانون هيئة تسمى المفوضية العليا المستقلة للانتخابات والاستفتاء لتكون السلطة الحصرية التي تقوم بإجراء جميع الانتخابات العامة والاستفتاءات على مستوى جميع انحاء كردستان-العراق.

ثانياً: مقر الرئيسي للمفوضية في محافظة أربيل العاصمة وتفتح لها مكاتب في مراكز محافظات كردستان - العراق والوحدات الإدارية عند الاقتضاء.

##### المادة الثالثة:

المفوضية العليا المستقلة للانتخابات والاستفتاء هيئة مهنية مستقلة ومحيدة تتمتع بالشخصية المعنوية وتخضع لرقابة البرلمان، وتكون مسؤولة أمامه.

##### المادة الرابعة:

تتولى المفوضية العليا المستقلة للانتخابات والاستفتاء ما يلي:

١- وضع الأسس والقواعد المتبعة دولياً للانتخابات والاستفتاءات العامة التي تجري في جميع انحاء كردستان - العراق لضمان تنفيذها بصورة عادلة ونزيهة.

٢- الإشراف على الانتخابات والاستفتاءات العامة في جميع انحاء كردستان العراق.

٣- القيام باعلان موعد الانتخابات العامة والاستفتاءات، وفقاً للقوانين النافذة.

٤- تنظيم وتنفيذ كافة انواع الانتخابات والاستفتاءات العامة في جميع انحاء كردستان العراق.

٥- إدارة عملية تسجيل الناخبين وتنظيم وتحديث سجلاتهم لضمان حق الاقتراع.

٦- تسجيل القوائم الانتخابية والاتلافات وتصديقها، وفقاً للقوانين ذات العلاقة.

٧- تنظيم وتنفيذ عملية تسجيل ممثلي القوائم الانتخابية ومراقبي الانتخابات من المنظمات والإعلاميين الدولية والمحلية وغيرهم.

٨- إعلان النتائج الأولية للانتخابات والاستفتاءات على ان لا تزيد على (٧٢) ساعة، والنتائج النهائية بعد المصادقة عليها من الجهة القضائية المختصة.

٩- العمل على بناء الثقة في العملية الانتخابية لدى كافة أوساط المجتمع الكوردستاني وتعزيز الثقافة الانتخابية عبر إقامة الصلة مع كافة شركاء العملية الانتخابية.

١٠- تنظيم وإجراء عملية العد والفرز لأصوات الناخبين، وإعلان النتائج داخل المحطات على ان يزود الكيانات نسخة من محاضر العد والفرز.

## الفصل الثالث تشكيلات المفوضية

### المادة الخامسة:

تتألف المفوضية العليا المستقلة للانتخابات والاستفتاء من:

أولاً: مجلس المفوضين.

ثانياً: الإدارة الانتخابية.

أولاً: مجلس المفوضين:

١- مجلس المفوضين: يتألف من ( ٩ ) تسعة أعضاء يختارهم البرلمان بالأغلبية المطلقة لعدد أعضائه بعد ترشيحهم من قبل لجنة خاصة يشكلها البرلمان على ان يكون اثنان من أعضاء المجلس على الأقل من القانونيين و على ان يضمن تمثيل النساء والمكونات وتكون مدة ولاية المجلس ( ٥ ) سنوات تقويمية.

٢- يشترط فيمن يرشح لمجلس المفوضين ما يلي:

أ- ان يكون من مواطني كردستان - العراق، ومقيماً فيه إقامة دائمة.

ب - ان يكون حاصلًا على شهادة جامعية أولية على الأقل.

ج - لا يقل عمره عن ( ٣٠ ) ثلاثين سنة.

د- ان يكون من ذوي الخبرة والمشهود له بالكفاءة والنزاهة والحياد.

هـ - ان يكون حسن السيرة والسلوك وغير محكومًا بجريمة مخلة بالشرف.

و- لم يشارك في الجرائم التي خطط لها أو ارتكبها نظام البعث في العراق لقمع الشعب الكوردستاني وعموم شعب العراقي ولم يكن بعثياً وفقاً لقانون رقم (١٨) لسنة ٢٠٠٣.

ز- ان لا يكون منتمياً الى اي حزب سياسي اثناء عضويته.

٣- يؤدي أعضاء المجلس اليمين القانونية أمام مجلس القضاء في الإقليم وبالصيغة التالية: (اقسم بالله العظيم ان أؤدي مسؤوليتي القانونية والمهنية بأمانة وتفان وإخلاص واعمل على انجاز المهام الموكلة إلي باستقلال وحياد والله على ما أقول شهيد) .

٤-

أ- ينتخب المجلس في جلسته الأولى بأغلبية الثلثين لعدد أعضائه رئيساً ونائباً ومقرراً للمجلس ورئيساً للإدارة الانتخابية.

ب - رئيس المجلس هو الممثل القانوني للمفوضية.

٥- يمارس رئيس المجلس أو من ينوب عنه الصلاحيات الآتية:

أ- إدارة أعمال المجلس الإدارية والتنظيمية.

ب - إعداد جدول اجتماعات المجلس وعقدتها وترؤسها بما في ذلك إي اجتماع يطلبه ثلاثة من أعضاء المجلس على الأقل.

ج - أية مهام أخرى يكلفها به المجلس.

٦- يكون اجتماع المجلس صحيحاً بحضور الأغلبية المطلقة لعدد أعضائه وتتخذ قراراته بأغلبية الحاضرين و في حال تساوي الأصوات يرجح الجانب الذي يصوت معه الرئيس.

ثانياً: الإدارة الانتخابية:

تتألف الإدارة الانتخابية من المكتب العام والمكاتب الانتخابية في المحافظات والوحدات الإدارية وفقاً للهيكلية المقترحة من الإدارة الانتخابية والمصادق عليها من قبل مجلس المفوضين.

تتولى الإدارة الانتخابية مسؤولية تنفيذ الأنظمة والتعليمات الصادرة من قبل المجلس وإدارة كافة النشاطات ذات الطابع العملي والالتزامي والتنفيذي والاجرائي.

## الفصل الرابع

### صلاحيات المجلس

## المادة السادسة :

أولاً: يمارس المجلس الصلاحيات الآتية:

- ١- إنشاء وتحديث وتنقيح سجل الناخبين عبر جميع الوسائل الحديثة المتاحة، وعلى الجهات المعنية التعاون والتنسيق مع المجلس تحقيقاً لهذا الغرض.
- ٢- المصادقة على تسجيل القوائم الانتخابية والائتلافات والمرشحين لغرض خوض الانتخابات والمشاركة فيها.
- ٣- اعتماد مراقبي الانتخابات وكلاء القوائم الانتخابية والاعلاميين ومنظمات المجتمع المدني على صعيدين الدولي والداخلي.
- ٤- البت في الشكاوي والطعون الانتخابية كافة وتكون قراراتها قابلة للطعن أمام الهيئة القضائية في محكمة تمييز الإقليم.
- ٥- المصادقة على إجراءات العد والفرز.
- ٦- اعلان النتائج النهائية للانتخابات والاستفتاءات بعد المصادقة عليها من قبل محكمة تمييز الإقليم.
- ٧- وضع الأنظمة والتعليمات التي تحفظ للعملية الانتخابية نزاهتها.
- ٨- المصادقة على هيكلية الإدارة الانتخابية.
- ٩- تعيين منتسبي المكاتب الانتخابية في المحافظات والوحدات الإدارية.
- ١٠- رسم السياسة المالية للمفوضية.

ثانياً: الترشيح للتعين في الدرجات العليا من مدرء الدوائر في المفوضية والمكاتب الانتخابية في المحافظات يكون باقتراح ثلاث مرشحين وفقاً للمبدأ تكافئ الفرص، وذلك من قبل لجنة خاصة يشكلها مجلس المفوضين ويتم اختيار احدهم من قبل مجلس المفوضين بأغلبية الثلثين.

## الفصل الخامس المسألة وانتهاء العضوية

### المادة السابعة :

أولاً: تنتهي العضوية في المجلس لأحد الاسباب الآتية:

- ١- انتهاء ولاية المجلس.
  - ٢- الاستقالة.
  - ٣- الوفاة أو عجزاً لعضو عن أداء مهامه.
  - ٤- صدور حكم قضائي بات بحق العضو في جريمة مخلة بالشرف.
  - ٥- إعفاء برلمان كوردستان أعضاء المجلس مجتمعاً أو منفرداً من مهامهم عند مخالفتهم لأحكام هذا القانون والأنظمة باغلبية الثلثين.
  - ٦- إذا ثبت عدم صحة المعلومات التي أدلى بها عند الترشيح للوظيفة.
  - ٧- غياب متتالي لثلاث جلسات بدون عذر مشروع.
  - ٨- عند ترشيح العضو لأحد المجالس النيابية.
- ثانياً: في حال شغور احد مقاعد المجلس لأحد الأسباب الواردة في الفقرات أعلاه يتم اختيار عضو آخر بنفس الآلية الواردة في هذا القانون.

## الفصل السادس حقوق الاعضاء

### المادة الثامنة :

- اولاً- يتمتع اعضاء مجلس المفوضين (بامتيازات وكيل الوزارة) لمدة خمس سنوات قابلة للتجديد لمرة واحدة.
- ثانياً- لمجلس المفوضين منح مخصصات للموظفيه، لانتجاوز المخصصات الممنوحة لموظفي البرلمان.
- ثالثاً- جميع اعضاء مجلس المفوضين لايمكن تعيينهم في وظائف عامة، باستثناء المناصب الاكاديمية، ولمدة ثلاث سنوات من تاريخ انتهاء مهمتهم كمفوضين.

رابعا. يتمتع المفوضون براتب تقاعدي يبلغ ٨٠٪ من مجموع ما كانوا يتقاضوه من رواتبهم بعد انتهاء مهامهم عدا حالات الاقالة والاستقالة او الادانة بجريمة لها علاقة بعملهم.

خامسا: اذا اصيب احد اعضاء مجلس المفوضين اثناء او من جراء خدمته في المفوضية، بعوق يمنعه من اداء واجبه يخص له راتب تقاعدي حسب الفقرة الرابعة من هذه المادة.

سادسا- اذا توفى احد اعضاء مجلس المفوضين اثناء او من جراء خدمته في المفوضية او بسببها يخص لعائلته راتب تقاعدي حسب الفقرة الرابعة من هذا المادة.

سابعا تحتسب خدمة العضو في المفوضية لاغراض علاوة وترفع وتقاعد.

## الفصل السابع

### الشكاوي الانتخابية

#### المادة التاسعة:

١- يتمتع المجلس بسلطة حصرية فيما يتعلق بالتنفيذ المدني لاجراءاته وانظمتها ويجب على المجلس ان يحيل اية قضية جنائية إلى السلطات المختصة إذا توفر لديها دليلا على سوء تصرف جنائي يتعلق بنزاهة العملية الانتخابية.

٢- على مجلس المفوضية حل النزاعات الناجمة عن إعداد وتنفيذ الانتخابات والاستفتاءات العامة وله ان يفوض هذه الصلاحية للإدارة الانتخابية لحلها حال وقوعها.

٣- تشكل في محكمة تمييز إقليم كردستان هيئة قضائية مكونة من ثلاث قضاة غير متفرغين للنظر في الطعون التي تقدم على قرارات المجلس من قبل المتضررين من قرارات المجلس مباشرة.

٤- تنشر قرارات المجلس في ثلاث صحف محلية يومية في الإقليم وباللغتين الكردية والعربية، للمجلس الحق بإصدار صحيفة خاصة وأنشاء موقع الكتروني لهذا الغرض.

٥- تقدم الطعون في قرارات المجلس إلى الهيئة القضائية في الإقليم خلال مدة ثلاثة أيام تبدأ من اليوم التالي لنشر القرار من قبل المجلس أو من قبل المتضررين من قرارات المجلس مباشرة، مع مراعاة أيام العطلة الرسمية.

٦- على الهيئة القضائية حسم الطعون المقدمة إليها خلال مدة سبعة أيام من تاريخ تقديم الطعن إليها وتعتبر قراراتها بشأن الطعون باتا ويخضع إجراءات نظرها للطعون لأحكام هذا القانون مع مراعاة قانون المرافعات المدنية رقم ( ٨٣ ) لسنة ١٩٦٩ المعدل والقوانين الإجرائية الأخرى النافذة في إقليم كردستان فيما لم يرد به نص في هذا القانون.

## الفصل الثامن

### إحكام متفرقة وختامية

#### المادة العاشرة:

على مجلس المفوضين وضع الآليات المناسبة لضمان مشاركة المواطنين خارج كردستان - العراق في الانتخابات والاستفتاءات.

#### المادة الحادية عشر:

للمجلس الاستعانة بخبراء دوليين ومحليين في مجال الانتخابات والاستفتاءات في مراحل الإعداد والتحضير وإجراء الانتخابات والاستفتاءات.

#### المادة الثانية عشر:

علي مجلس التنسيق والتعاون مع منظمات المجتمع المدني على صعيدين (الدولي و الداخلي) وممثلو الكيانات السياسية والاعلاميين لتسهيل عملية مراقبة الانتخابات والاستفتاءات وذلك لضمان نزاهتها.

#### المادة الثالثة عشر:

أولا: على مجلس المفوضين إعداد تقارير فصلية عن مهامها وتقديمها إلى البرلمان.

ثانيا: اصدار تقرير نهائي تفصيلي عن كل عملية انتخابية بجميع مراحلها ورفعها الى البرلمان.

#### المادة الرابعة عشر:

لرئيس مجلس المفوضين صلاحية الوزير فيما يتعلق بالمخاطبات الرسمية مع الوزارات والدوائر الرسمية الاخرى.

#### **المادة الخامسة عشر:**

اولا- تكون للمفوضية ميزانية سنوية مستقلة يتم اعدادها وفقا للاسس والقواعد المتعارف عليها تقترح من قبل مجلس المفوضين بالتشاور مع وزارة المالية يصادق عليها البرلمان وتدرج ضمن الموازنة العامة للإقليم.

ثانيا- تخضع حسابات المفوضية للتدقيق والرقابة من قبل ديوان الرقابة المالية في الإقليم.

#### **المادة السادسة عشر:**

تتولى المجلس بالاغلبية المطلقة لعدد اعضائه مايلي:

١- وضع نظام داخلي خاص به.

٢- وضع نظام خاص بتشكيلات المفوضية.

٣- استحداث أو الغاء أو دمج مديريات أو أقسام أو شعب عند الاقتضاء.

٤- اصدار الأنظمة اللازمة لتسهيل تنفيذ أحكام هذا القانون.

#### **المادة السابعة عشر:**

للمجلس حق تقديم مقترحات القوانين المتعلقة بالانتخابات والاستفتاءات الى البرلمان.

#### **المادة الثامنة عشر:**

يضمن في تشكيل المفوضية ما يحقق التوازن في تمثيل المكونات القومية.

#### **المادة التاسعة عشر:**

يجب تشكيل المفوضية العليا المستقلة للانتخابات والاستفتاءات خلال مدة لا تتجاوز تسعين يوما من تاريخ المصادق على هذا القانون.

#### **المادة العشرون:**

لا يعمل بأي نص قانوني أو قرار يتعارض و احكام هذا القانون.

#### **المادة الحادية والعشرون:**

على مجلس الوزراء والجهات ذات العلاقة تنفيذ إحكام هذا القانون.

#### **المادة الثانية والعشرون:**

ينفذ هذا القانون اعتبارا من تاريخ نشره في الجريدة الرسمية (وقائع كردستان).

### **الأسباب الموجبة**

نظرا للحاجة الوطنية الملحة إلى تأسيس هيئة عليا مستقلة لإجراء الانتخابات والاستفتاءات، وبغية تنظيم تشكيلاتها ومهامها وإناطتها

بهيئة عليا محايدة ومستقلة ومرتبطة ببرنامج كردستان - العراق، فقد شرع هذا القانون.

## Appendix No. (5)

### القانون رقم ( ٧ ) لسنة ٢٠١٤

#### قانون التعديل الأول لقانون الهيئة العامة للنزاهة في إقليم كردستان – العراق رقم ( ٣ ) لسنة ٢٠١١

##### المادة (١):

يعدل عنوان القانون ويُقرأ على الوجه الآتي: (قانون هيئة النزاهة لإقليم كردستان – العراق).

##### المادة (٢):

تضاف فقرتان بتسلسل (سابعاً و ثامناً) إلى المادة (الأولى) من القانون وتُقرآن على الوجه الآتي:

سابعاً: جريمة الفساد: يقصد بها أي جريمة من الجرائم المنصوص عليها في المواد (٢٣٣، ٢٣٤، ٢٧١، ٢٧٢، ٢٧٥، ٢٧٦، ٢٩٠، ٢٩٣، ٢٩٦) من قانون العقوبات العراقي رقم (١١١) لسنة ١٩٦٩، والجرائم المخلة بواجبات الوظيفة العامة، والمتمثلة في الرشوة والاختلاس وتجاوز الموظفين حدود وظائفهم، وجرائم غسيل الأموال وإخفائها (حيازة الأموال الناتجة عن جناية أو جنحة الفساد)، وأي جريمة تشملها أحد الظروف المشددة المنصوص عليها في الفقرات (خامساً وسادساً وسابعاً) من المادة (١٣٥) من قانون العقوبات المعدل بقانون تنظيمي صادر عن مجلس الحكم (المنحل) الملحق بأمر سلطة الائتلاف المؤقتة (المنحلة) رقم (٥٥) لسنة ٢٠٠٤.

ثامناً: الأولاد التابعون: هم الأولاد القاصرين غير المتزوجين والأولاد المتزوجين غير المستقلين من الناحية المالية.

##### المادة (٣):

تعديل المادة (الثانية) من القانون وتقرأ على الوجه الآتي:

تؤسس بموجب هذا القانون هيئة باسم (هيئة النزاهة لإقليم كردستان – العراق) تتمتع بالشخصية المعنوية واستقلال مالي وإداري، ولها ميزانية مستقلة، وتخضع لرقابة البرلمان.

##### المادة (٤):

تعديل المادة (الثالثة) من القانون وتقرأ على الوجه الآتي:

يهدف هذا القانون إلى:

أولاً: مكافحة الفساد والوقاية منه.

ثانياً: دعم مبادئ النزاهة، والشفافية، والمساءلة وتجسيد مبدأ سيادة القانون.

ثالثاً: تقييم وتقويم وتطوير الأداء والسلوك الوظيفي، ومعايير الخدمة العامة، وتحمل المسؤولية وتسهيل الإجراءات.

##### المادة (٥):

تعديل المادة (الرابعة) من القانون وتقرأ على الوجه الآتي:

تسري أحكام هذا القانون على كل شخص داخل الإقليم ويضمنها الجهات الآتية:

أولاً: رؤساء السلطة التشريعية والتنفيذية والقضائية وأعضائها والعاملين فيها.

ثانياً: القطاع الخاص وعلى وجه الخصوص الأشخاص والشركات المتعاقدة مع كيانات القطاع العام.

ثالثاً: المنظمات السياسية، منظمات المجتمع المدني، المنظمات الحكومية الوطنية، الاتحادات، النقابات، المراكز الدينية، الجمعيات والنوادي في المواضيع المتعلقة بمشروعية مصادر التمويل وأوجه الإنفاق وملاحقة غسيل الأموال.

##### المادة (٦):

تعديل المادة (الخامسة) من القانون وتقرأ على الوجه الآتي:

تعمل الهيئة على:

أولاً: تنفيذ وتطبيق قوانين مكافحة الفساد ومعايير الخدمة العامة وفقاً للدستور والقوانين النافذة.

ثانيا: تسلم الإخباريات والمعلومات والشكاوى المتعلقة بالفساد بجميع الطرق والوسائل ومن جميع المصادر والتعامل مع جميع الأمور التي تردّها وبضمنها الإخبارات الكاذبة.

ثالثا: التحقيق في جرائم الفساد عن طريق محققين تابعين للهيئة تحت إشراف قضاة التحقيق وفقا لقانون أصول المحاكمات الجزائية، ومتابعتها والمحافظة على سرية هوية المتعاونين وفقا للقانون.

رابعا: إعادة المتهمين بجرائم الفساد الهاربين إلى الخارج، واسترداد أموال وثروات وعائدات الفساد المهربة إلى الخارج بالتنسيق والتعاون مع الجهات المختصة.

خامسا: التعاون الدولي في مجال الحد من الفساد ومكافحته وتبادل المعلومات حول الفساد والتحقيق المشترك خاصة فيما يتعلق بجرائم الفساد العابرة للحدود بالتعاون والتنسيق مع الجهات المعنية.

سادسا: نشر ثقافة وطنية لتنمية مفاهيم النزاهة والشفافية والمساءلة، والالتزام بمعايير الخدمة العامة والعمل مع المسؤولين المختصين من أجل وضع مناهج دراسية وطنية لتعزيز مفهوم النزاهة العامة.

سابعا: إصدار تعليمات قواعد السلوك الإيجابي الوظيفي لتوضيح معايير الخدمة العامة وأخلاقيات العمل التي يجب على موظفي الإقليم الالتزام بها باعتبارها شرطا للتعيين والاستمرار في الخدمة ومراقبة مدى الالتزام بها، وتعديل من وقت لآخر حسب الحاجة.

ثامنا:

١- إصدار تعليمات كشف الذمة المالية عن طريق إلزام المكلفين بالخدمة العامة المنصوص عليهم في هذا القانون، بالكشف عن مصالحتهم المالية ومصالح أزواجهم وأولادهم التابعين، وتعديل من وقت لآخر وفقا لما تراه الهيئة مناسبا لتحقيق الأغراض المنشودة منها.

٢- يتضمن الكشف عن المصالح المالية بيانات تفصيلية عما يملكه المكلف وبضمنها العقارات والمنقولات والدخل المالي والرصيد في البنوك والأسهم والسندات والحقوق المعنوية المملوكة له في داخل الإقليم وخارجه.

٣- يشمل الكشف عن المصالح المالية كل من:

أ- رئيس الإقليم ونائبه.

ب- رئيس البرلمان ونائبه والسكرتير والأعضاء.

ج- رئيس الوزراء ونائبه.

د- الوزراء ومن هم بدرجة وزير ووكلاء الوزراء.

هـ- رئيس هيئة النزاهة ونائبه وجميع مدراء الهيئة العاملين ومحققها.

و- أصحاب الدرجات الخاصة ووكلائهم ومعاونيهم.

ز- المدراء العاملين ومعاونيهم.

ح- القضاة وأعضاء الإِدعاء العام والمشرفين العدليين والمحققين.

ط- ضباط حرس الإقليم والأمن الداخلي من رتبة مقدم فما فوق، والضباط والمفوضين الذين يمارسون أعمال التحقيق.

ي- المحافظون ورؤساء الوحدات الإدارية ورئيس وأعضاء مجالس المحافظات والأقضية والنواحي ورؤساء البلديات وأعضاء المجالس البلدية.

ك- أي شخص يشغل منصب مدني أو عسكري لم يرد ذكره أعلاه وترى الهيئة ضرورة شموله بتقرير الكشف المالي، وفقا لتعليمات تصدر لهذا الغرض.

٤- للهيئة نشر تقارير كشف الذمة المالية للأشخاص الذين يحكم عليهم بإحدى الجرائم الواردة في الفقرة (سابعا) من المادة الأولى من هذا القانون والسماح للجمهور والإعلام بالإطلاع عليها أو استنساخها.

تاسعا:

١- للهيئة توصية الدائرة المعنية بسحب يد الموظف الخاضع للتحقيق وفقا لقانون انضباط موظفي الدولة والقطاع العام رقم (١٤) لسنة ١٩٩١ النافذ في الإقليم.

٢- للهيئة إحالة المخالفات المتعلقة بمعايير الخدمة العامة إلى الجهات ذات العلاقة، ولها أن ترفق بها توصية باتخاذ إجراءات انضباطية.

عاشرا:

١- تعاون الهيئة ديوان الرقابة المالية للإقليم وتراقب جباية وإنفاق أموال الإقليم والتصرف بها وطريقة إدارتها وإصدار تقارير دورية بشأنها.

٢- تقوم الهيئة بمراقبة مدى نزاهة القرارات والأعمال المنفذة أو الأعمال المتخذة في القطاع العام وإصدار تقارير دورية بشأنها.

٣- على الجهة الخاضعة للرقابة أن تقدم للهيئة وبناء على طلبها دون تأخير المعلومات والإيضاحات والمستندات والوثائق بما فيها السرية، أي كانت درجة كتمانها، وغير ذلك مما ترى الهيئة ضرورة الإطلاع عليها لأغراض الرقابة وفقا للقوانين النافذة.

٤- يعاقب بالحبس مدة لا تزيد على (٦) أشهر، وبغرامة لا تزيد على (١٠) عشرة ملايين دينار، أو بإحدى هاتين العقوبتين كل من يخالف أحكام البند (٣) من الفقرة (عاشرا) من هذه المادة.

٥- للهيئة تحريك الدعوى الجزائية ومتابعتها بموجب البند (٤) من الفقرة (عاشرا) من هذه المادة.

حادي عشر: اقتراح القوانين التي تدخل في مجال الوقاية من الفساد أو مكافحته.

ثاني عشر: للهيئة إلزام دوائر ومؤسسات القطاع العام بنشر بيانات أو معلومات أو وثائق معينة حول أية أمور ترى الهيئة ضرورة تطبيق الشفافية فيها بموجب آليات وقواعد تحددها الهيئة.

ثالث عشر: تنفيذ تدابير للحد من تورط القطاع الخاص في الفساد وتعزيز الشفافية في كيانات القطاع الخاص ومنع تعارض المصالح فيها.

رابع عشر: إصدار تعليمات منع تعارض المصالح في الإقليم ومراقبة الإلتزام بها وتشخيص مخالفة أحكامها، وإصدار تقارير دورية بشأنها.

خامس عشر: للهيئة إجراء ما تراه ضروريا في مجال مكافحة الفساد والوقاية منه.

**المادة (٧):**

تعديل الفقرة (الأولى) من المادة (السادسة) من القانون وتقرأ على الوجه الآتي:

أولا: يتولى البرلمان انتخاب رئيس الهيئة باقتراح سري بأغلبية ثلثي عدد أعضائه من بين ثلاثة مرشحين يرشحهم لجنة برلمانية، وفي حالة عدم فوز أي من المرشحين بثلثي أصوات أعضاء البرلمان، يعاد الانتخاب بين المرشحين الحاصلين على أغلبية الأصوات، ويعد الفائز من يحصل على الأغلبية، ويعين الشخص المنتخب بمرسوم إقليمي بدرجة وزير.

**المادة (٨):**

تعديل الفقرتان (خامسا و سادسا) من المادة (السابعة) من القانون وتقرأ على الوجه الآتي:

خامسا: للبرلمان استجواب رئيس الهيئة وفقا لإجراءات استجواب الوزراء، ويعفى الرئيس من منصبه بقرار من البرلمان بأغلبية الثلثين لأعضائه في إحدى الحالات الآتية:

١- إذا صدر قرار قضائي بات يادانته بارتكاب جنائية عمدية أو جنحة مخلة بالشرف.

٢- إذا ثبت تقصير أو إهمال جسيم في أداء مهامه وواجباته.

٣- إساءة استعمال السلطات.

سادسا: يصدر قرار إعفاء الرئيس من منصبه في الحالتين (٢، ٣) من الفقرة (خامسا) من هذه المادة، بناء على توصية لجنة تحقيقية تشكل بقرار من البرلمان بأغلبية ثلثي عدد أعضائه، برئاسة رئيس محكمة التمييز في الإقليم وعضوية (٢) اثنين من أقدم أعضاء المحكمة.

**المادة (٩):**

تضاف أربعة بنود بتسلسل (٦، ٧، ٨، ٩) إلى الفقرة (ثانيا) من المادة (التاسعة) من القانون وتقرأ على الوجه الآتي:

٦- فتح فروع الهيئة في محافظات وإدارات الإقليم على أن يدير كل فرع مدير عام حاصل، في الأقل، على شهادة جامعية أولية.

٧- تأسيس أكاديمية لمكافحة الفساد على مستوى مديرية تتولى واجبات بناء القدرات والتدريب ونشر مفاهيم النزاهة والمساءلة والشفافية ومكافحة الفساد.



٨- اقتراح ميزانية الهيئة والموافقة على إنفاقها.

٩- لمجلس الهيئة استحداث أو دمج أو إلغاء مديريات وأقسام وشعب الهيئة حسب متطلبات العمل.  
**المادة (١٠):**

تعديل المادة (العاشرة) من القانون وتقرأ على الوجه الآتي:

يمارس الرئيس الاختصاصات الآتية:

أولاً: إدارة وأداء أعمال الهيئة وضمان تأدية واجباتها في حدود القانون بما يضمن تحقيق أهدافها.

ثانياً: تعيين وترفيح وضبط موظفي الهيئة بموجب القوانين النافذة.

ثالثاً: طلب توفير محققين عدليين للهيئة من الجهات المعنية.

رابعاً: تقديم تقارير دورية إلى البرلمان كل ستة أشهر أو كلما اقتضت الحاجة تتضمن نشاطات الهيئة وموجزا عن القضايا التي تم التحقيق فيها والتي تم حفظها أو غلقها والتي تمت إحالتها إلى المحاكم المختصة وتقوم الهيئة بنشرها في موقعها الإلكتروني ويضعها تحت يد وسائل الإعلام المختلفة.

خامساً: إصدار التعليمات المنصوص عليها في هذا القانون.

سادساً: القيام بالمهام والواجبات وممارسة الاختصاصات المنصوص عليها في هذا القانون أو أي قانون آخر نافذ.

**المادة (١١):**

تعديل المادة (الحادية عشرة) من القانون وتقرأ على الوجه الآتي:

أولاً: يكون لرئيس الهيئة نائب يعين بمرسوم إقليمي بدرجة وكيل وزير، بناء على ترشيحه من مجلس الهيئة، وفقاً لشروط الرئيس

ذاتها، وفي حالة غياب الرئيس لأي سبب، يحل محل الرئيس ويمارس جميع اختصاصاته.

ثانياً: لرئيس الهيئة تخويل بعض اختصاصاته لنائبه أو المدراء العامين.

ثالثاً: يعفى نائب رئيس الهيئة أو أحد المدراء العامين من مناصبهم بمرسوم إقليمي بناء على توصية رئيس الهيئة مشفوعاً بتقرير لجنة

تحقيقية يشكلها رئيس الهيئة لهذا الغرض.

**المادة (١٢):**

تعديل المادة (الثانية عشرة) من القانون وتقرأ على الوجه الآتي:

تتكون الهيئة من:

أولاً: دائرة التحقيقات: يرأسها مدير عام حاصل، في الأقل، على شهادة جامعية أولية في القانون وله خبرة في مجال اختصاصه مدة لا تقل

عن (١٠) عشر سنوات، وترتبط بها مديريات تحقيق تفتح بأمر رئيس الهيئة في كل محافظة من محافظات الإقليم وتتولى الدائرة المهام الآتية:

١- الكشف عن حالات الفساد، وجمع المعلومات بشأنها بالاستعانة بالأجهزة الفنية.

٢- تسلم الإخبار والمعلومات وشكاوى الفساد.

٣- التحقيق في جرائم الفساد والتعاون في مجال مراقبة الإنفاق والاستحصال والتصريف بأموال الإقليم وطرق إدارتها.

٤- إعادة المتهمين الهاربين إلى الخارج واسترداد الأموال والثروات المهربة إلى الخارج.

٥- تبادل المعلومات والتحقيقات المشتركة الدولية.

ثانياً: الدائرة القانونية: يرأسها مدير عام حاصل، في الأقل، على شهادة جامعية أولية في القانون وله خبرة في مجال اختصاصه مدة لا

تقل عن (١٠) عشر سنوات، ويتولى المهام الآتية:

١- إبداء الرأي والمشورة في المسائل القانونية التي تعرض على الهيئة، وتمثيل الهيئة في الدعاوى التي ترفعها أو التي ترفع عليها بوكالة

رسمية صادرة عن رئيس الهيئة.

٢- الترافع أمام المحاكم المختصة فيما يتعلق بجرائم الفساد أو مراجعة طرق الطعن بشأنها.

٣- تمثيل الهيئة في اللجان التحقيقية المشكلة بناء على طلب الهيئة.

٤- إعداد الدراسات والأبحاث القانونية الخاصة بقوانين مكافحة الفساد والاتفاقيات الدولية في هذا المجال.

- ٥- تقديم طلب المعونة القانونية الدولية المتبادلة.
- ٦- الرقابة على نزاهة قرارات وأعمال القطاع العام.
- ٧- وضع تعليمات منع التعارض في المصالح في الإقليم.
- ٨- اتخاذ الإجراءات لرقابة مدى نزاهة قرارات وأعمال القطاع العام وإصدار تقارير دورية في هذا الشأن.
- ٩- إعداد مقترحات ومشاريع قوانين في مجال القضاء على الفساد ومكافحته.
- ثالثا: دائرة الوقاية والشفافية: يرأسها مدير عام حاصل، في الأقل، على شهادة جامعية أولية وله خبرة في مجال اختصاصه مدة لا تقل عن (١٠) عشر سنوات ويتولى المهام الآتية:
- ١- تَسْلُمُ كشوفات المصالح المالية والتعامل مع البيانات الواردة فيها، والتحري عن الحقائق، ومتابعة المتخلفين عن تقديمها، ومراقبة زيادة أموال المكلفين بتقديم كشوفات مصالحهم المالية واتخاذ الإجراءات القانونية في حق من يثبت وجود زيادة كبيرة في أمواله أو في أموال زوجة أو أحد أولاده التابعين بموجب أحكام هذا القانون.
- ٢- التعاون مع المنظمات غير الحكومية والمجتمع المدني والإعلام في تنفيذ تدابير مشتركة للحد من الفساد ومكافحته.
- ٣- تنمية وتطوير العلاقات من الجهات المماثلة.
- ٤- إدارة برامج التدريب وإقامة المؤتمرات بالتعاون مع الوزارات والجهات المختصة ومؤسسات القطاع الخاص.
- ٥- نشر ثقافة النزاهة والشفافية والمساءلة والالتزام بمعايير الخدمة العامة.
- ٦- التعاون مع الجهات ذات العلاقة لوضع مناهج دراسية وطنية لتعزيز النزاهة ومكافحة الفساد.
- ٧- وضع تعليمات قواعد السلوك الوظيفي ومراقبة الالتزام بها والتأكيد عليها.
- ٨- وضع تعليمات كشف الذمة المالية.
- ٩- وضع أنظمة وأليات وقواعد لنشر البيانات والمعلومات والوثائق جبرا.
- ١٠- وضع وتنفيذ تدابير الحد من الفساد ومكافحته وتعزيز الشفافية ومنع تعارض المصالح في القطاع الخاص.
- ١١- متابعة وتحري الحقائق فيما يخص تعارض المصالح في القطاع العام وإصدار تقارير دورية بشأنها.
- رابعا: دائرة الشؤون الإدارية والمالية: يرأسها مدير عام حاصل، في الأقل، على شهادة جامعية أولية، وله خبرة في مجال اختصاصه مدة لا تقل عن (١٠) عشر سنوات ويتولى واجبات إدارة الموارد البشرية وتوفير التدريب اللازم وبناء القدرات.
- خامسا: يعين المدراء العامون بمرسوم إقليمي بناء على ترشيحهم من رئيس الهيئة.
- سادسا: مكتب رئيس الهيئة: يرأسه موظف بدرجة مدير حاصل، في الأقل، على شهادة جامعية أولية.
- المادة (١٣):**
- تعديل الفقرة (أولا) من المادة (الثالثة عشرة) من القانون وتضاف إليها (٣) فقرات بتسلسل (ثالثا، رابعا، خامسا) وتقرأ على الوجه الآتي:
- أولا: لمحقيقي الهيئة سلطات المحقق حسبما هو منصوص عليه في قانون أصول المحاكمات الجزائية النافذ في الإقليم، ولهم سلطة الإطلاع على المستندات والوثائق الرسمية بما فيها السرية، مهما كانت درجة كتمانها، ويجب تسهيل مهمة دخولهم إلى الدائرة المعنية مع الأجهزة التي تقتضيها طبيعة عملهم وتوفير الحماية لهم ولا يجوز تجريدهم من الأجهزة المتعلقة بأعمالهم.
- ثالثا: لمحقيقي الهيئة، فضلا عن المخصصات الخاصة والامتيازات الممنوحة لهم باعتبارهم من موظفي الهيئة، سلطات وحقوق وامتيازات المحققين ذاتها وفقا لقانون أصول المحاكمات الجزائية.
- رابعا:
- ١- للهيئة بقرار من رئيسها حفظ الإخباريات أو المعلومات أو الشكوى دون عرضها على قاضي التحقيق إذا لم يتضمن إشارة إلى وجود جريمة أو إذا ثبت لدى الهيئة بعد التحري والتحقيق الابتدائي أن الإخبار غير صحيح أو كاذب.

٢-لقاضى التحقيق أو عضو الإدعاء العام المختص طلب أي إضبارة محفوظة بموجب البند (١) من هذه الفقرة واتخاذ ما يراه مناسباً بشأنها وفقاً لأحكام القانون.

خامساً:

١-كل من يحكم عليه بجريمة فساد عمدية يفقد أهلية شغل الوظيفة العامة ولا يجوز للقطاع العام التعاقد معه كمقاول أو مورد خدمات أو سلع.

٢-كل موظف يحكم بإدانته بجريمة فساد عمدية يعد مباشرة معزولاً من وظيفته بوصول الحكم إلى درجته القطعية.

**المادة (١٤):**

تعديل الفقرة (ثانياً) من المادة (الرابعة عشرة) من القانون وتقرأ على الوجه الآتي:

ثانياً: يعد استغلالاً، وفقاً لما تقدم، كل زيادة كبيرة تطرأ في ثروة الشخص أو زوجه أو أحد أولاده التابعين، بعد توليه وظيفة عامة أو تكليف عام أو صفة، متى كانت لا تتناسب مع مواردهم المشروعة، وعجز عن تسببها بسبب مشروع.

**المادة (١٥):**

تلغى المادة (الخامسة عشرة) من القانون ويحل محلها ما يأتي:

يعاقب بالحبس أو السجن لمدة لا تزيد على (٧) سبع سنوات، وبغرامة مساوية للكسب غير المشروع وبمصادرة هذا الكسب، كل شخص يحصل لنفسه أو لغيره على كسب غير مشروع.

**المادة (١٦):**

تعديل المادة (السابعة عشرة) من القانون وتقرأ على الوجه الآتي:

أولاً: لا يمنع انقضاء الدعوى الجزائية بالوفاة من رد الكسب غير المشروع بحكم من المحكمة المختصة بناء على طلب الهيئة خلال مدة (٣) ثلاث سنوات من تاريخ الوفاة وتسترد من أموال الورثة بقدر استفادة كل منهم من الكسب غير المشروع.

ثانياً: على المحكمة المختصة أن تقرر في مواجهة الورثة المستفيدين من الكسب غير المشروع بتنفيذ الحكم بالرد من أموال كل منهم بقدر ما استفاد.

**المادة (١٧):**

تعديل المادة (الثامنة عشرة) من القانون وتقرأ على الوجه الآتي:

يعفى الشريك من العقوبة في جريمة الكسب غير المشروع إذا قام بإبلاغ السلطات المختصة عن الجريمة قبل كشفها أو تعاون أثناء التحري والتحقيق على كشفها أو كشف الأموال الناتجة عنها وردها، ولا يخل حكم هذه المادة بوجوب الحكم بالرد.

**المادة (١٨):**

تعديل المادة (التاسعة عشرة) من القانون وتقرأ على الوجه الآتي:

يعاقب بالحبس مدة لا تزيد على (٣) ثلاثة أشهر وبغرامة لا تقل عن (٣) ثلاثة ملايين دينار ولا تزيد على (١٠٠) مائة مليون دينار أو بإحدى هاتين العقوبتين كل مكلف بتقديم كشف مصالحه المالية ارتكب عمداً أحد الأفعال الآتية:

أولاً: التلطف عمداً مدة تزيد على (٣) ثلاثة أشهر عن تقديم تقرير كشف المصالح المالية في المواعيد المقررة من قبل الهيئة.

ثانياً: إعطاء بيانات غير صحيحة مؤثرة في تقرير كشف المصالح المالية.

ثالثاً: عدم ذكر مصالح أو أموال مملوكة له أو لزوج أو لأحد أولاده التابعين في كشف مصالحه المالية.

**المادة (١٩):**

يصبح نص المادة (الحادية والعشرين) من القانون الفقرة (أولاً) وتضاف إليها فقرة بتسلسل (ثانياً) وتقرأ على الوجه الآتي:

ثانياً: لمجلس الهيئة منح قدم لمدة (٦) ستة أشهر للموظف الذي يبذل جهوداً بارزة، أو يحصل على نتائج رفيعة المستوى.

**المادة (٢٠):**

تعديل المادة (الرابعة والعشرين) من القانون وتقرأ على الوجه الآتي:

أولاً: تضع الهيئة نظاماً خاصاً بحماية الشهود والمخبرين والضحايا والخبراء، ويضع نظام تشجيع الجمهور والإعلام والمجتمع المدني والمتهمين على التعاون مع الهيئة وتخول سلطة تنفيذه والإنفاق عليه.

ثانياً: لرئيس الهيئة إصدار التعليمات اللازمة لتسهيل تنفيذ أحكام هذا القانون.

**المادة (٢١):**

تلغى المادة (الخامسة والعشرون) من القانون.

**المادة (٢٢):**

لا يعمل بأي نص قانوني أو قرار يتعارض وأحكام هذا القانون.

**المادة (٢٣):**

على الجهات ذات العلاقة تنفيذ أحكام هذا القانون.

**المادة (٢٤):**

ينفذ هذا القانون من تاريخ نشره في الجريدة الرسمية (وقائع كردستان) .

### **الأسباب الموجبة**

بغية زيادة ضمان استقلال هيئة النزاهة لإقليم كردستان – العراق، ومن أجل دعم سلطاته، ولترسيخ وتعزيز إجراءات الحد من الفساد ومكافحته، و نشر مفهوم النزاهة والشفافية والمساءلة في مؤسسات القطاع العام والخاص، فقد شرع هذا القانون.

## Appendix No. (6)

Photos of the decrees of the seminar on the situation of independent bodies













## The Pay Institute for Education and Development Publications

### First: in Kurdish language:

- 1- خستنه پوووی 101 گيروگرفتی په روه رده یی له پیناو چاره سه رکردنیان، نامه یه کی کراوه بۆ به ریز وه زیری په روه رده، هه ولیر، 2014.
- 2- گرفته کانی خویندنی بالاو گه ران به دواي چاره سه ردا، خستنه روى (140) گرفت، له نامه یه کی کراوه دا بۆ به ریز وه زیری خویندنی بالا، هه ولیر، 2014.
- 3- دیارده ی وازه تیان له خویندن له هه ریمی کوردستاندا، گرفت و چاره سه ر، هه ولیر، 2014.
- 4- چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی یه که م، (2013/11/6-2014/11/6)، هه ولیر، 2014.
- 5- کارى هاوبه شى ریکخواه کانی کۆمه لگه ی مه دهنی و داموده زگه کانی خویندنی بالا له هه ریمی کوردستان، هه ولیر، 2015.
- 6- چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی دووهم، (2014/9/1-2015/2/28)، هه ولیر، 2015.
- 7- چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی سییه م، (2015/3/1-2015/8/31)، هه ولیر، 2015.
- 8- چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی چواره م، (2015/9/1-2015/11/12)، هه ولیر، 2015.
- 9- چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی پینجه م، (2015/9/1-2016/2/29)، هه ولیر، 2016.
- 10- چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی شه شه م، (2016/3/1-2016/8/31)، هه ولیر، 2016.
- 11- چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی حه وته م، (2016/9/1-2017/2/28)، هه ولیر، 2017.
- 12- چاودیری کردنی په رله مان له پوانگه ی ئەندامانى په رله مانى کوردستانه وه، راپۆرتی هه شته م، هه ولیر، 2017.
- 13- تۆمارى دهنگدەرانى هه ریمی کوردستان له نیوان بیگه ردى و ساخته کاریدا، راپۆرتی تۆیه م، هه ولیر، 2017.
- 14- چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی ده یه م، (2017/3/1-2017/11/15)، سلیمانی، 2017.
- 15- رهوشی خویندنی پیشه یی له پارێزگاکانی سلیمانی و هه له بجه، سلیمانی، 2017.
- 16- خویندنی ناحکومی له نیوان کوالیتی و بازرگانیدا، سلیمانی، 2017.
- 17- چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی یانزه هه م، (2017/11/6-2018/3/6)، هه ولیر، 2018.
- 18- چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی دوانزه هه م، (2018/3/6-2018/11/6)، هه ولیر، 2018.
- 19- په روه رده له به رده م ئالنگاری و گرفته چاره نه کراودا، هه ولیر، 2019.
- 20- خویندنی بالا له به رده م ئالنگاری و گرفته چاره نه کراودا، هه ولیر، 2019.
- 21- راپۆرتی چاودیری بۆ هه لباردنی خولی پینجه می په رله مانى کوردستان، راپۆرتی یه که م، دهنگدانى تاييه ت، سلیمانی، 2018.
- 22- دهسته سه ربه خۆکانی هه ریمی کوردستان له نیوان په یوه ستببون به یاساو پیشیلکاریدا، راپۆرتی پینجه م، به شیکه له پرۆده ی چاودیری و هه لسه نگانندی کاره کانی خولی پینجه می په رله مانى کوردستان، هه ولیر، شوباتی 2021.
- 23- راپۆرتی چاودیری بۆ هه لباردنی خولی پینجه می په رله مانى کوردستان، راپۆرتی دووهم، دهنگدانى گشتی، سلیمانی، 2018.
- 24- هه لسه نگانندی بۆ کاره کانی خولی چواره می په رله مانى کوردستان، راپۆرتی سیانزه هه م، (2013/11/6-2018/11/6)، هه ولیر، 2019.
- 25- راپۆرتی پرۆده ی چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی یه که م له خولی پینجه م، (2018/11/6-2019/8/31)، هه ولیر، 2019.
- 26- راپۆرتی پرۆده ی چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی دووهم له خولی پینجه م، (2019/9/1-2020/2/29)، هه ولیر، 2020.
- 27- راپۆرتی پرۆده ی چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی سییه م له خولی پینجه م، (2020/3/1-2020/8/31)، هه ولیر، 2020.
- 28- راپۆرتی پرۆده ی چاودیری و هه لسه نگانندی کاره کانی په رله مانى کوردستان، راپۆرتی چواره م له خولی پینجه م، (2020/9/1-2020/12/31)، هه ولیر، 2020.
- 29- راپۆرتی دهسته سه ربه خۆکانی هه ریمی کوردستان له نیوان په یوه ستببون به یاساو پیشیلکاریدا، راپۆرتی پینجه م، هه ولیر، شوباتی 2021.

## Second: in Arabic language

- ١- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير الاول، (٢٠١٣/١١/٦-٢٠١٤/١١/٦)، اربيل، ٢٠١٤.
- ٢- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير الثاني، (٢٠١٤/٩/١-٢٠١٥/٢/٢٨)، اربيل، ٢٠١٥.
- ٣- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير الثالث، (٢٠١٥/٣/١-٢٠١٥/٨/٣١)، اربيل، ٢٠١٥.
- ٤- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير الرابع، (٢٠١٥/٩/١-٢٠١٥/١١/١٢)، اربيل، ٢٠١٥.
- ٥- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير الخامس، (٢٠١٥/٩/١-٢٠١٦/٢/٢٩)، اربيل، ٢٠١٦.
- ٦- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير السادس، (٢٠١٦/٣/١-٢٠١٦/٨/٣١)، اربيل، ٢٠١٦.
- ٧- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير السابع، (٢٠١٦/٩/١-٢٠١٧/٢/٢٨)، اربيل، ٢٠١٧.
- ٨- تقرير الرقابة علي البرلمان من وجه نظر نواب برلمان كردستان، التقرير الثامن، اربيل، ٢٠١٧.
- ٩- سجل الناخبين في اقليم كردستان بين النقاء والاحتيال، التقرير التاسع، اربيل، ٢٠١٧.
- ١٠- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير العاشر، (٢٠١٧/٣/١-٢٠١٧/١١/١٥)، السليمانية، ٢٠١٧.
- ١١- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير الحادي عشر، (٢٠١٧/١١/٦-٢٠١٨/٣/٦)، اربيل، ٢٠١٨.
- ١٢- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير الثاني عشر، (٢٠١٨/٣/٦-٢٠١٨/١١/٦)، اربيل، ٢٠١٨.
- ١٣- تقرير الرقابة علي انتخابات الدورة الخامسة لبرلمان كردستان، التقرير الاول، التصويت الخاص، السليمانية، ٢٠١٨.
- ١٤- تقرير الرقابة علي انتخابات الدورة الخامسة لبرلمان كردستان، التقرير الثاني، التصويت العام، السليمانية، ٢٠١٨.
- ١٥- تقييم اعمال الدورة الرابعة لبرلمان كردستان، التقرير الثلاثة عشر، (٢٠١٣/١١/٦-٢٠١٨/١١/٦)، اربيل، ٢٠١٩.
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- ١٧- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير الثاني للدورة الخامسة، (٢٠١٩/٩/١-٢٠٢٠/٢/٢٩)، اربيل، ٢٠٢٠.
- ١٨- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير الثالث للدورة الخامسة، (٢٠٢٠/٣/١-٢٠٢٠/٨/٣١)، اربيل، ٢٠٢٠.
- ١٩- تقرير مراقبة وتقييم اعمال برلمان كردستان، التقرير الرابع للدورة الخامسة، (٢٠٢٠/٩/١-٢٠٢٠/١٢/٣١)، اربيل، ٢٠٢٠.
- ٢٠- تقرير الهيئات المستقلة في اقليم كردستان بين الالتزام بالقوانين والانتهاكات، التقرير الخامس، اربيل، شباط ٢٠٢١.

## Third: In English

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- 2- Monitoring and Evaluating, For the Kurdistan Parliaments Work, Second report, (1/9/2014-28/2/2015), Erbil, 2015.
- 3- Monitoring and Evaluating, For the Kurdistan Parliaments Work, Third Report, (1/3/2015-31/8/2015), Erbil, 2015.
- 4- Monitoring and Evaluating, For the Kurdistan Parliaments Work, Fourth Report, (1/9/2015-12/11/2015), Erbil, 2015.
- 5- Monitoring and Evaluating, For the Kurdistan Parliaments Work, Fifth report, (1/9/2015-29/2/2016), Erbil, 2016.
- 6- Monitoring and Evaluating, For the Kurdistan Parliaments Work, Sixth Report, (1/3/2016-31/8/2016), Erbil, 2016.
- 7- Monitoring and Evaluating, For the Kurdistan Parliaments Work, Seventh Report, (1/9/2016-28/2/2017), Erbil, 2017.
- 8- Monitoring parliament by members in kurdistan Parliament, Eighth report, Erbil, 2017.
- 9- Voters Registration Records between Transparency and Fraud, , Ninth Report, Erbil, 2017.
- 10- Monitoring parliament by members in kurdistan Parliament, Tenth report, (1/3/2017-15/11/2017), Sulaymaniyah, 2017.
- 11- Monitoring and Evaluating, For the Kurdistan Parliaments Work, Eleventh report, (6/11/2017-6/3/2018), Erbil, 2018.
- 12- Monitoring and Evaluating, For the Kurdistan Parliaments Work, Twelfth report, (6/3/2018-6/11/2018), Erbil, 2018.
- 13- Monitoring and Evaluating, For the Kurdistan Parliaments Work, Thirteenth report, (6/11/2013-6/11/2018), Erbil, 2019.
- 14- Monitoring Report on The Fifth Session of the Parliament of Kurdistan, , first report, Sulaymaniyah, 2018.
- 15- Monitoring Report on The Fifth Session of the Parliament of Kurdistan, , Second report, Sulaymaniyah, 2018.
- 16- Monitoring and Evaluating, For the Kurdistan Parliaments Work, The first report, (6/11/2018-31/8/2019), Erbil, 2019.
- 17- Monitoring and Evaluating, For the Kurdistan Parliaments Work, The second report, (1/9/2019-29/2/2020), Erbil, 2020.
- 18- Monitoring and Evaluating, For the Kurdistan Parliaments Work, The third report, (1/3/2020-31/8/2020), Erbil, 2020.
- 19- Monitoring and Evaluating, For the Kurdistan Parliaments Work, The Fourth report, (1/9/2020-31/12/2020), Erbil, 2020.
- 20- Independent Boards of Kurdistan Regional Government, Between Commitment to the law and violations, Fifth report, Erbil, February 2021.



## **PAY Institute for Education & Development**

PAY institute was registered by Kurdistan Regional Government's Foreign Relations Office on 26, November, 2013 as a non-profit non-governmental institute. PAY is working with a new optimistic view for public interest and for a mature ruling system. PAY aims, through scientific and strategic research, to make a sound contribution to improving and bettering the educational, legal, health, and economic sectors of the ruling system in Kurdistan Region, which would prove a true aid and a bridge to connect all civil society organizations seeking to achieve a civil, happy and welfare society in Kurdistan Region.

### **An Overview of PAY Institute projects:**

1. The project of joint work between civil society organizations and the Ministry of Higher Education and Scientific Research
2. The project of monitoring Kurdistan Parliament
3. The project of monitoring Ministry of Education works and activities
4. The project of monitoring Ministry of Higher Education and Scientific Research works and activities
5. The project of monitoring the High Independent Commission for Elections and Referendum
6. The project of monitoring the Independent bodies in the Kurdistan Region.

## **PAY Institute for Education & Development Publications**

**No. 67**



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