

## **A COMPARATIVE STUDY OF THE CHALLENGES AND LEGAL SOLUTIONS OF TRANSPARENCY IN GOVERNMENT CONTRACTS WITH NON-GOVERNMENTAL ENTITIES IN IRANIAN AND IRAQI LAW: A FOCUS ON THE DISSEMINATION OF INFORMATION**

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### **Abstract:**

Government contracts embody systemic corruption that necessitates strong legal frameworks to enforce transparency as a countermeasure. This study uses a comparative analysis of the legal systems of Iran and Iraq to identify transparency-related challenges and propose reforms. Key impediments include ambiguous administrative laws defining the scope of transparency, insufficient state oversight in systematic information management, and a lack of enforceable mechanisms to address violations. The research posits that constitutional effectiveness in institutionalizing transparency depends on resolving these challenges through legal disclosure of government data and incorporating e-governance models that harmonize transparency and public order. These measures are vital for enhancing citizen participation in oversight. Methodologically, the study adopts a descriptive and analytical approach based on global best practices to identify the dimensions of transparency in government contracts. Ultimately, the study emphasizes transparency as a procedural safeguard and a participatory tool in the fight against corruption.

**Keywords:** Transparency, Government Contracts, dissemination of information, Anti-corruption, Iraqi Law

### **Introduction**

The government is the largest customer group in many countries, and government contracts and purchases constitute a significant portion of transactions in these countries, which increases the potential for corruption in this sector. (Khezri et al., 2011, p. 64). In Iran and Iraq, there are countless opportunities for abuse due to the inadequacy of institutional structures and frameworks in the process of holding government tenders.

Iraqi law, for several years, has emphasized the importance of passing a law known as the Right to Information Act, which is the first pillar in the field of freedom of expression and the Law on Information Crimes. With the broad participation of the government and the scientific community, the draft law is drafted in eight chapters, the most important of which are public regulations, human rights, privacy protection, publishing obligations, whistleblower protection, and access to information.

A draft right to information law is under consideration in Iraq but there is concern that it will be blocked by political parties and the administrative bureaucracy.

Although research has been conducted on transparency in government tenders and transactions, the absence of comparative studies in these areas is evident. It is clear that one must first choose a criterion for examining the weaknesses of the legal system for government transactions, and then review the existing reality according to this criterion. Therefore, in this study, the author examines the challenges of transparency in government contracts in Iranian and Iraqi law, which lead to administrative corruption and collusion, and in the end draws on the experiences of other countries, such as the European Union system, and suggests strategies for legislators to achieve transparency in government contracts.

## **Part One: The Concepts and Generalities of the Principle of Transparency in Government Contracts.**

### ***1- The Concept of Transparency in Government Contracts:***

In administrative law, there are several definitions of transparency, all of which emphasize the responsibility of government officials and institutions to be responsive. Some define transparency as the holding of public meetings, the provision of information, and the right to access documents (Craig & de Brca, 2011, p. 541). Others believe that transparency is the sharing of procedures and decisions of third-party organizations, whether they are related to them or not (Pasquier & Villeneuve, 2007, p. 148). Transparency is the definition of all decisions made by government institutions based on the process of laws and regulations, and all information is readily available to those affected by these decisions (Hood & Health, 2006, p. 231). Transparency is a tool to clarify the relationship between tools and objectives in mechanisms, with a focus on informing people about government decisions and making it possible to respond. Its result in government tenders: Equality, competition, anti-corruption and ensuring legal security of contracts.(Rezaei et al., 2020, pp. 295-297).

Transparency helps fight corruption and waste of public funds by replacing traditional secretive methods in government tenders. A notable example is the European Union's 2004 rules (Article 17) on public service contracts.<sup>18</sup> the World Trade Organization's State Tenders Agreement, as well as the Model<sup>1</sup> Law on Tenders legislation, have accepted transparency as a principle (Mohammadi et al., 1398, 196) and have made explicit recommendations on the transparency of the government's trading system.

### ***2- Elements of Transparency:***

Transparency in public procurement is manifested at various levels including the establishment of norms underlying obligations and procedural requirements.(Shirlow, 2020, p. 74) (From 2013, p.146).

Transparency will only be effective if two conditions are met:

1. The subjects we want to be transparent are able and compelled to provide the necessary information.

2. Recipients of information can use this information to evaluate the performance of the subject according to accepted criteria (Khabaz et al., 2004, p. 529).

3. In addition to documenting and maintaining information about tenders, The right of access to information in order to respond to officials and ensure the transparency of tenders (including the possibility of mediation between the two parties) is essential. (Rezaei et al., 1399, 303-302) Transparency is not simply access to information but must be based on the accuracy, predictability, and up-to-date information and by established standards. (Tujerloo et al., 1395, 106) Transparency in tenders is not just about laws, but also about transparency in bidding procedures, selection criteria, evidence of bid rejection, and disclosure of personal benefits of state officials.(Beth, 2005, 48; quoted by Rezaei and Associates, former, 303)

Transparency and documented attribution are both necessary and indispensable. With state attribution, the possibility of rant abuse is eliminated, Tenderers are able to

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<sup>1</sup> Directives EC/2004/18. EC/2004/17

defend their rights, the system of oversight is strengthened, and Tenderers are replaced by a reciprocal view of the integrity of the transactions.(Rahmani and Associate, 1394, 153-152)

It is mandatory for international trade to be conducted in accordance with the State Administrative Procedures Act (Article 16/3 and 4): Naghdhari Tender Assignment up to 3 years after the contract is finalized, Responsiveness of the e-tendering process, including total number and total price.

Iranian law (Article 23 of the Tenders Law) requires the establishment of a national database of tender information, which includes recording the following information: 1-Details of the call 2-Details of the members of the tender committee 3-Bidders 4-Methods and stages of evaluation and results of qualitative evaluation of bidders 5-Minutes of meetings 6-Details and how the winner of the tender is selected. All transactions (other than confidential items approved by the government board) must be publicly posted on the National Tenders Network.

Iranian law Article 29(h) prohibits transactions from being authorized by the state body (in vague terms), while Article 3(b) of the Administrative Safety Law makes it mandatory to confirm all stages of the decision-making process; a contradiction between prohibition and transparency! Furthermore, Note 2 of this article states that any delays in entering information, incomplete entries, or the submission of false information will be considered administrative violations and subject to penalties. In addition to this, the Iranian legislator in an unprecedented ruling in Note 2 of Article 19 of the Law on continuous improvement of the Business Environment approved 1390, all public sector transactions that have not been informed are considered as an example of a violation of the competition under Article 45 of the Article 44 Law and the Competition Council is obliged to consider this issue. (See, also, 307)

### **3- *Public access to information on Iranian and Iraqi law***

Freedom of access to information was first recognized as a fundamental right by the United Nations in 1946 (Resolution 1/59), and then confirmed by Article 19 of the Universal Declaration of Human Rights (1948), which states the right to “seek, receive and impart information through any medium and without limitation.” The International Charter on Civil and Political Rights (The ICCPR) of 1966 also adopted the right to freedom of opinion and expression in the same circumstances as the said Declaration. Developed countries balance transparency with necessary secrecy (e.g., national security), while Iran's “culture of secrecy” is dominated by laws that prioritize secrecy over rights, with no whistleblower protection and no transparency of officials' assets. In Iraq, the constitution (2005) enshrines the principle of people's sovereignty, which recognizes citizen access to information, but broad exceptions (“public interest”) weaken enforcement, contradicting the International Covenant on Civil Rights obligations. (The ICCPR)

Iraq is a signatory to the International Covenant on Civil Rights (1966), which guarantees freedom of expression and exchange of information (Article 19). Constitutionally, Article 38 recognizes these freedoms with “public order” restrictions, but the right of access to information is not explicitly guaranteed in the Constitution (2005) despite being a prerequisite for strengthening democracy, showing a contradiction between international commitments and constitutional gaps.

A legislative contradiction in Iraq: Laws that criminalize the disclosure of public information by state officials (e.g. Law 14/1991), but vague provisions (Article 6(A) of the 2011 Press Law) that prevent its use in practice. This contradiction hinders

transparency and requires legal reform to ensure the right of access to information.

#### ***4 Transparency and the Fight Against Corruption in Government Contracts under Iranian and Iraqi Law***

In Iranian law, legislators view preventing corruption in government transactions in two ways. First, they create laws and regulations to better manage transactions and limit violations. Second, they establish laws to fight related crimes. (Creator and collaborator, 1397, 175)

The UNCAC requires the promotion of transparency in national laws. In Iran, Article 7(4) of the Accession Law (2008) mandates the review of tender laws through comparative studies to enhance transparency. The Financial Corruption Perception Index shows a catastrophic decline for Iran from 88 points (2004) to 25 (2013), reflecting a chronic corruption crisis in the region. Such alarming statistics reveal a critical truth: our systems need reform. The battle against corruption demands not just acknowledgment, but serious and swift solutions. (Hosseini and colleagues, 1398, 422-421) The absence of legal disclosure and institutionalized oversight mechanisms in Iraqi government contracts fuels corruption. Solution: Constitutional reforms that mandate the publication of details of tenders, incorporate ethical standards in governance, and ensure accountability of officials.

Iraq is committed to supporting international cooperation to prevent and fight corruption. Through Law No. 35 of 2007, it joined the UN Convention against Corruption. However, Iraqi law does not have a single comprehensive law. Instead, it offers many guidelines that explain how contracts are executed and related matters.<sup>2</sup>

#### ***5- The status of the element of transparency in the government contracts of Iran and Iraq***

Iran aims for transparency by joining the United Nations Convention against Corruption (Merida). Domestically, a key measure is the "Law on the Promotion of the Health of the Administrative System and the Fight against Corruption." The second chapter of this law aims to boost transparency. (Theoretical Race and Associate, 1395, 193)

Persistent administrative opacity, particularly in government contracts, remains a critical dysfunction in Iraq and the Arab world, where accessible data fails to enable meaningful public oversight. This systemic opacity fuels corruption, necessitating constitutional reforms to institutionalize transparency standards through enforceable legal accountability frameworks for authorities.

The Iraqi Constitution recognizes the following principles and regulations in the field of rights and freedoms:

Civil and Political Rights: Iraqis are equal to the law without any discrimination, and equal opportunity is a guaranteed right for all Iraqis, and the government guarantees it. Therefore, the Iraqi legislator has developed a new legal system for government contracts based on successful international experiences and practices, which aims to create new laws that encourage and guarantee transparency and public competition, operationalize

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<sup>2</sup> The reason for the implementation of government contracts in Iraq. (Guide to the implementation of

Iraqi government contracts), part one, the legal framework of contracts, at: <https://mop.gov.iq/>

accountability, and target reporting in the process of contracting government contracts.<sup>3</sup> The new system of government contracts started with general regulation. This original law took effect in 2004. It requires authorities in charge of organizations and institutions to follow key contract terms. These terms focus on cleanliness, transparency, and avoiding conflicts of interest. The Iraqi government's approach to contracts follows two main principles, and the Iraqi state institutions must comply with these principles.

#### **Competition and information**

##### ***2) Transparency and prevention of conflicts of interest***

##### ***6- Information process in the stages of implementation of Iranian and Iraqi government contracts***

Considering the adoption of some single laws in the field of tenders and government contracts in Iran and Iraq, to eliminate the diversity of laws and achieve transparency in the implementation of government contracts it is necessary to examine the extent to which these goals are achieved, whether the content of these laws in practice has led to the creation of integrity and comprehension and the Expansion of transparency in the laws, or have they been added to the problems and plagued by ambiguity and complexity?

In Iran, although the law on the holding of tenders in 1383(2004) is a very important step in the comprehensive and complete implementation of laws in the field of government purchases in Article 31 of the Law of Tenders, IT'S said that from the date of the adoption of this law, all laws and regulations contrary to the devices covered by this law are repealed and have somehow made implied Copies, but on the other hand we are witnessing the implementation of other laws such as the Law of Computing or that some public institutions, such as municipalities, which, despite their non-governmental nature, must be covered by this law, with different interpretations of this law it has been excluded from its inclusion (Lashgari, 1396, p. 32), and this will seriously disrupt the information and transparency within the framework of government contracts.

In Iraq, project notifications last for two weeks. These are shared in visual and written media by the interested entity. They include project documents, key information, distribution dates, and bid receipt details. The exact closing time for the proposed fund and the opening time are also provided. Some effects of non-transparency are clear. First, tender ads are not published in the country's popular newspapers. Furthermore, the bidding specifications and requirements are strangely elusive online. The institution's website is confusing. Information that should be clear is poorly presented or missing. This leaves bidders uncertain. Before 2013, reports indicated that corruption in Iraq peaked in offices linked to ministries with the biggest government contracts.

Implementation (2) of 2014, according to which: "A--, c- appointment of the executive and beneficiary of the project in writing with the Ministry of Planning<sup>4</sup> D - the cost estimate has been updated publicly... Strengthened by the table of values priced as a

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<sup>3</sup> Guide to the implementation of government contracts in Iraq, part one.

<sup>4</sup> C: Determine the executing entity and the beneficiary of the project when the Ministry of Planning is approached.



reference for the analysis, of tenders and the balance of prices of its clauses ..."<sup>5</sup> It is obligatory.

The term “public” is used vaguely here. To fight corruption, the government must be transparent. This means sharing clear project details on official websites. These details should include finances and guarantees for proper implementation. By doing this, the public can monitor every stage and aspect from start to finish.

#### **7- *Ensuring transparency in Iran and Iraq's rights***

The Iranian legislator mainly focuses on post-corruption measures. They often discuss how to handle corruption, but they overlook ways to prevent corruption in laws. (Jafari & Associate, 1394, 4) A weak political will for transparency has resulted in important laws that are either not adopted or poorly implemented. This hinders efforts to achieve transparency in Iran.

The law on the promotion of the health of the administrative system and the fight against corruption from 1390 aimed to improve health in the administrative system and fight corruption. While it had good provisions, it was not put into action. Now, this law is no longer valid or being tested. The Law on the Dissemination and Free Access to Information, adopted in 1387, is vital for transparency in the country. But, due to ambiguities, defects, and legal gaps, it hasn't met its intended goals.

Thus, although there are some transparent measures in the Iranian legal system, these measures have been neutralized and distorted by the methods used mainly by their opponents its operationalization has slowed, and as a result, the Iranian community has been deprived of the interests of transparency, which leads to a kind of distrust among the people. Corruption, particularly when fueled by information rents, has escalated into a troubling epidemic. The conventional accountability procedures are grappling with fundamental challenges and lack the persuasive power needed to be effective. This situation underscores the urgent need for these procedures to undergo structural changes and updates.

Given the current challenges in Iran—namely, the difficulties in enforcing laws and the absence of robust criminal legislation—it is imperative to criminalize administrative corruption. This should be accompanied by the establishment of appropriate criminal enforcement mechanisms and the introduction of non-criminal deterrent measures to ensure a comprehensive approach to combating corruption.

Iraq's transparency laws mandate publicizing laws/decisions via gazette & media, but selective disclosure of sensitive information (to avoid backlash) and weak enforcement undermine compliance. Ministries' annual reports lack oversight, resulting in incomplete/flawed data, and eroding systemic accountability and public trust. Other

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<sup>5</sup> the existence of an updated public estimated cost for contracting or for contracting the project prepared by a competent technical body based on the comprehensive study of prevailing market prices when prepared for the purposes of assignment is reinforced by the table of the quoted quantities for adoption as a measure of the analysis of bids and the extent of the balance of the prices of its paragraphs, excluding the controls on the estimated cost of contracts related to exchange prices international, taking into account the controls and circulars issued by the Ministry of Planning in this regard.

statutory provisions and regulations explicitly outline transparency obligations within the documentation of the Ministry of Planning. For instance, the sample contract for specialized services,<sup>6</sup> as stipulated in Article 3, Paragraph C, defines a breach of this obligation as 'engaging in acts that enable corruption or unlawful conduct.' Non-compliance with these transparency requirements may result in disciplinary action. Furthermore, Paragraph D emphasizes that volunteers, like formal personnel, are mandated to uphold transparency commitments in all activities.

It can also be mentioned in paragraph 3 of Article 329 of the Penal Code No. 111 of 1969, which guarantees the implementation of transparency legally. According to this Article: "any official or official who is against any person who has disclosed or with a clean hand commission, and The Office of the High Commissioner for property Control or any other governmental entity shall cooperate, act to expel, reduce the degree, transfer, threaten to scare, discriminate against him, harass, retaliate in any other way is punishable by imprisonment and A fine, or by one of the two."<sup>7</sup>

Therefore, it must be acknowledged that there is an urgent need for the serious entry of the Iraqi legislator to guarantee the strict and complete implementation of transparency, otherwise, there can be no clear future for it in government contracts.

## **Part II: Challenges of realizing the principle of transparency with the approach of informing government contracts in Iranian and Iraqi law**

Transparency laws suffer from structural imbalances due to their single-minded focus on economic aspects (such as internal bureaucratic oversight), while neglecting the interconnected political and informational dimensions, leading to corruption through opaque financial procedures and the absence of effective oversight mechanisms. This crisis is exacerbated by costly reactive practices (such as the creation of oversight bodies) rather than proactive solutions such as open data platforms, calling for comprehensive strategies that promote preventive transparency and integrate it into legislative structures.

### ***Rights of Iran***

Legislative gaps and inconsistencies in previous tender laws, and the absence of a unified database to document them, led to the issuance of the Tender Law in 2004 (1383 A.H.) in Iran, with the aim of promoting integrity and transparency in government transactions, ensuring fair selection of parties, increasing competition, and addressing abandonment of procedures or objections. Although the law is a progressive step towards regulating processes, it still suffers from legislative and

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<sup>6</sup> <https://uomosul.edu.iq/contract> .

<sup>7</sup> Article 329, paragraph 3: "The same penalties shall apply to an official or agent who discharges, departs, transports, threatens, intimidates discriminates against, harasses, retaliates in any other way from any person who reports or collaborates with the Iraqi Public integrity Commission, the Inspector General of the Ministry, the Supreme Financial Supervisory Office or any other government body competent to investigate and expose corruption and misconduct by officials of public institutions.

practical challenges, such as ambiguous texts and insufficiently effective oversight mechanisms, which undermines its optimal implementation.(Abuya et al., 2020, p. 295) Strong political institutions influence public policies, impacting state tenders and oversight of government contracts. Many institutions collaborate with companies tied to brokers or relatives, leading to hidden benefits and transparency challenges. This secrecy directly and indirectly distorts how contract information is perceived. It should be noted that the Iranian legal system is significantly ahead of the Iraqi system in enacting a law, at the very least, that would establish a solid foundation for organizing government contracts, free from corruption and suspicion and with high efficiency.

## **2- Rights of Iraq**

Unlike the Iranian regime which has passed a special laws to promote transparency in government contracts despite the challenges, Iraq relies on multiple guidelines and decisions that are not legally binding, despite its accession to the United Nations convention against corruption (2004), which is considered an ideal framework for a comprehensive transparency law. Key challenges in Iraq include:

- The absence of a freedom of information law, which denies the public and investors full access to contract details.

- Centralization of contracting in the central government without effective involvement of local governments, which weakens transparency and hinders great information transfer.

- Internal and external administrative challenges some of which are common to the Iranian regime such as weak oversight mechanisms and an inadequate unified legislative framework.

Accession to the International Convention (Law No. 35 of 2007) can form the basis for a legislative reform that transforms Iraq into a leading model of transparency by adopting a comprehensive law that obliges the government to publish information and promotes decentralization in contract management, while activating independent oversight mechanisms.

***We can classify the challenges of transparency outside the administrative system as follows:***

- Weak Legal Frameworks: Lack of enforceable laws to guarantee transparency, leading to unchecked violations.

- Legal Ambiguity: Unclear definitions of transparency in administrative laws and blurred state responsibility for information dissemination.

- Access Barriers: Institutions struggle to obtain accurate project/contract data, relying on slow, corruption-prone bureaucratic channels.

- Political Interference: Affiliated companies dominate tenders, suppressing public disclosure for monopolistic gains.

### ***Internal to Administrative System:***

- Inadequate Legal Mechanisms: No binding internal rules to enforce transparency in contract execution.

- Oversight Collusion: Contracting authorities ally with oversight bodies to bypass accountability.

- Financial Opacity: Ambiguous financial processes enable subjective interpretations, fostering corruption.

- Prioritization Gaps: Failure to institutionalize transparency as a core value, leading to staff apathy.



**Part three: Legal solutions for realizing transparency in the field of information in government contracts with non-governmental entities.**

Over the years, Iranian law has emphasized creating institutions to combat corruption and promote transparency but neglected addressing the underlying structures, processes, and regulations causing secrecy. This oversight has limited efforts to tackle transparency challenges at their root. Many established organizations have faced significant obstacles, achieving only limited success. Meanwhile, the International Organization for Transparency works globally by publishing a corruption index to raise awareness and promote transparency in governments (Habibi, 1375, P:9-8).

Given the corruption in the government contracts of Iran and Iraq and the low ratings in the corruption index and the results of research on the rights of the two countries, the following strategies can be considered to Achieve transparency:

**1-Public access to government documents**

A transparency law promotes democratic values by enabling citizen access to government information. Frameworks for sharing data about entities and contracts are crucial. The Iranian system and EU model demonstrate initiatives like centralized information databases. Addressing conflicts of interest remains essential in regulatory design, recognizing the inverse relationship between transparency and potential conflicts.

2- Diverse information and advertising tools for government projects support transparency, free access, and competition. However, implementation of government contracts faces legal challenges without proper notice.<sup>8</sup> The lack of precise knowledge by government contracting parties regarding contract details necessitates physical presence and direct interaction with officials, fostering administrative corruption and increased costs. Addressing this requires digitizing processes and enhancing information transparency,<sup>9</sup> can be solved by providing appropriate information and providing an electronic process and an important step in the fight against it such corruption and, as a Result, a significant reduction in government spending.

3- The general stabilization of the transparency and information processing systematic manner and adhere to it<sup>10</sup> through the creation of a guarantee of proper legal implementation clearly and explicitly.

4- The publication of contract information in three stages before the contract, during the execution of the contract, and after the submission of the contract, that is,

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<sup>8</sup> Aladariya in Algeria according to the presidential Morsi No. 247 of the role of advertising

(announcement) in transparency of the procedures for concluding contracts.

<sup>9</sup> These Tools are categorized into: 1-Planning (cost analysis, contract management, supplier tools, electronic auctions), 2-Supply (electronic catalogs, purchase orders, ERP systems), 3-Payment methods (shopping cards, cost management, secure electronic bills). Design must consider system security, electronic communication, and data exchange infrastructure.

<sup>10</sup> Health in the Seventh Development Plan: The need to pay attention to transparency to manage conflicts of interest, the file of the Islamic Consultative Assembly.

within the period of its validity, by the contracting party, so that it is possible to follow up and fully monitor the implementation of all stages of the project for the public.

### Conclusion:

A review of Iran and Iraq's legal system (despite Iran's good progress) shows that existing systems are not responsive to needs and require structural reforms. To achieve this, the political, economic, cultural and managerial dimensions of the infrastructure must be reformed and revised through the reform and enactment of the necessary laws. Iraq's legal system also needs to adjust its constitution to establish the principle of transparency, and it is only in light of these reforms that we can hope to establish proper information, transparency and ultimately fight corruption. Creating electronic infrastructure in various aspects of contracts, including transparency payments from government institutions, can guarantee transparency of government contracts and avoid corruption among government brokers. Creating independent institutions is essential for transparency and dealing with corruption. Transparency of non-governmental individuals and companies can help contribute to transparency in government contracts. It is important to select specialized managers according to the specialized needs of each position. Given the connection of corruption in contracts with political parties, transparency of their data and assets can limit the main sources of corruption.

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