



# Legislative Deficiencies in the Regulatory Aspects of Combating Illicit Enrichment: The Problem of the Financial Disclosure System in Iraq

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The fight against illicit enrichment includes several aspects that can be classified into two main parts. The first deals with the regulatory aspect that includes the persons whom the legislator believes must be subjected to the financial disclosure system, as well as the contents of the financial disclosure for these persons. The regulatory aspect also includes procedures for checking and verification of the accuracy and validity of the data mentioned in the disclosure. In addition, the second aspect of combating illicit enrichments deals with the criminal aspect related to the criminalization of illicit enrichments and other acts related to this crime. For the reason that it is not practical to attempt to investigate all aspects of the topic, the scope of this paper is limited to examining the regulatory aspect of combating illicit enrichments, without the criminal aspect, which in the view of the present author needs to be discussed in another complementary study. The financial disclosure of the subjected person is the basis on which the system for verifying the existence of whether the illicit enrichment is established or not. Otherwise, in the absence of such a disclosure and the absence of other alternative legal mechanisms, such as fighting tax evasion, as applied in some countries, it is impossible to verify any increasing of financial amount of the person's wealth. Therefore, in the light of such a situation, it will be impossible to apply the provisions of illicit enrichments against the offender. Given the great importance of revealing financial disclosure,

,an attempt has been made by the Iraqi legislature to regulate its provisions; but such regulation has been shrouded in many shortcomings, which is reflected in the effectiveness and implementation of the illicit enrichments system and as will be reiterated throughout this paper. Some of the legal provisions have failed to fully meet the objective standards in this regard. Hence, this paper tries to shed light on the most important aspects of the legislative deficiency that encompassed the texts regulating the financial disclosure system in Iraq and how to avoid these deficiencies in order to reach effectiveness and implement the provisions of illicit enrichments in Iraq, with the use of some relevant international standards.

**Key words:** *Financial, disclosure, illicit, enrichment.*

## **Introduction**

There is a legislative deficiency which has raised concerns in combating illicit enrichments, which reflected negatively on the increasing exacerbation of the phenomenon of corruption in Iraq.

Although there are no official data and statistics on the amount of money wasted or looted by acts of corruption, the estimates range in the tens of billions of US dollars compared to the amount of money allocated in the state's financial budgets for the years 2004-2019. It has been for more than 60 years since the issuance of the first law of illicit enrichments (No. 15) of 1958 in Iraq, but no one has been convicted of the crime of illicit enrichments, which is strange, anomalous and cannot be accepted, especially after the transition to democracy as stipulated in Iraqi constitution 2005 (khalid,2015).

It is known that the corruption crimes are often difficult to be discovered when the contents of the objective element of the crime are complex and difficult to be proved, due to the hidden methods of committing it, or the circumstances of its perpetration at times, which may constitute a real challenge before the judiciary in applying the law which ultimately leads to the impunity of the perpetrator. Perhaps the most prominent example of this is that in some corruption crimes such as bribery, embezzlement, exploitation of the job, waste of public money, the perpetrator is able in most cases to escape from punishment; this is due to the inability of the authorities concerned to discover the crime, due to the hidden methods used by the perpetrator of this type of crime, or the relevant authorities may be able to discover the crime or receive reports and prosecution about it, but the available evidence is not sufficient



to condemn, and thus it will be difficult to bring the offender before the justice ( muzlia *et al*, 2012).

Thus, the limitation must be taken into account and it seems that there is an urgent need to develop a legislative solution through enacting some sorts of supportive legal texts which should only be conducted on enrichment corruption acts; this is particularly by ensuring that transactions related to the income of persons are properly monitored, including real property transactions and enacting explicit legal texts that criminalize illicit enrichment and establish a clear mechanism to combat such offence.

The problem that this paper attempts to study is that the legal regulation of the issue of combating illicit enrichment in Iraq is facing great difficulties in implementation . The main question that this study tries to answer is: Does the legislative deficiency exist in defining the elements of disclosure of financial interests? Or does it exist in identifying the number of people subject to this disclosure and their huge number? Or is the reason due to the complex mechanisms of the authorities responsible for implementing and monitoring the system of financial interests?

The answer to the aforementioned questions will help in explaining the absence of prosecutions for perpetrators of illicit enrichment crime, although Iraq is one of the countries that ratified the United Nations Convention against Corruption of 2005 relatively early under Law No. 35 for the year 2007.

### **Definition of Financial Disclosure**

There is an argument that the issue of defining financial disclosure is related to the idea of disclosure itself by the person responsible for the disclosure of his wealth, so the definition came in harmony with this idea that: it's the document in which the person responsible for the financial disclosure to prove the contents of his wealth(Hassan,1983). While this issue is related to others with the idea of the system that is submitted for the approval of financial disclosure, so they defined it as: a system that aims to follow the increases to indicate the extent of the legitimacy of the increase that enters the wealth of exposed person. Others consider it as a declaration by someone that included his personal property, real estate, movable property, and cash money, in addition to the property of his family (wife / husband / and minor children.( Marina,2013 ).

All of the above definitions are distinguished by a specific feature, as the first and third definitions highlight the declaration submitted by the subjected person to reveal the elements of his financial liability, whereas the second definition is specifically based on the purpose of adopting the financial disclosure system. It is also noted that both methods of definition have



addressed some elements of the definition, but not all of them. In the sense that neither of them referred to the inclusion of the idea of the cause, which clearly reveals that the reason for the legislator's adoption of the financial disclosure system is mainly reflected in the statement of the extent of (integrity and functional integrity) of the employee in charge of submitting the declaration, by not using his position or trading in it to achieve illegal personal interests. There are those who focused on the idea of the purpose, through :

- Increasing transparency and confidence of citizens in those in charge of an important matter of public office and public service affairs, by revealing information about his/her property unless it appears that they have nothing to hide .
- Helping institutions concerned with transparency to prevent and resolve conflicts of interest among employees in order to enhance integrity within those institutions.
- Monitoring differences in wealth for politicians and civil servants, to discourage those characterized by misconduct from abusing their jobs, and to protect the honest from false accusations.
- Helping clarify the full range of illicit enrichment or any illegal activity by providing additional evidence for the judiciary.

Accordingly, one researcher tries to define financial disclosure system as: a formal declaration made and submitted by specific types of public officials, disclosing their assets, incomes and any properties gained from any resource or any other financial position for them and for their families. It appears that this definition includes the most important elements of the declaration required by the legislator from public officials by the provisions of disclosure of their financial disclosure. The statement of financial disclosure is merely a disclosure, announcement or statement of the person responsible for his financial disclosure, and that is in writing in accordance with the specific form that includes the required data. Furthermore, this declaration must be submitted to the authority competent to receive the declarations and according to the specified dates. ( Habershon and Trapnell,2012).

With reference to the Commission of Integrity Law No. 30 Of 2011, it could be noted that the Iraqi legislator did not adequately clarify the financial disclosure, nor did it regulate it in legal texts integrated with the issue of illicit enrichment, as it was done by laws in some countries that dealt with this issue in an independent law that addresses it in all aspects ( Ismail ,2011).

It appears that what the Iraqi legislator has done is a critical trend for several reasons, the most important of which is that the seriousness of the issue of financial disclosure and its close connection with the problem of illicit enrichment, has to be addressed explicitly through the provision of legislative texts at the level of the law, not to leave the matter to the executive authority or the concerned regulatory authority that doesn't have the authority to criminalize and punish, but rather it implements the law (the executive branch) or monitors its



implementation (the supervisory authority) (khalid,2015). On the other hand, perhaps setting an independent law for the regulation of illicit enrichment, including the most important issues to be addressed, facilitates the task of the executive authority in implementing the law and the judiciary in its application; it also facilitates the mission of Commission of Integrity as an independent oversight body with the text of the constitution in working on the issue of financial disclosure system. hence, it becomes an effective tool in fighting illicit enrichment (Habersshon and Trapnell,2012) .

It should be noted that the issue of financial disclosure has gained importance in some international and regional conventions, as an important means in preventing and combating corruption. Among these agreements is the United Nations Convention against Corruption of 2005, Article 5/8 states that: “Each State Party shall endeavor, when necessary and in accordance with the basic principles of its internal law, to put in place measures and systems that require public officials to disclose to the relevant authorities, among other things, what they have of external activities, employment, investments, assets, gifts, or substantial benefits that could lead to conflicts of interest with their duties as public employees”. In the same direction, there are the 1996 American Anti-Corruption Agreement followed in Article (9), and the African Convention against Corruption of 2003 in Article (1); despite these texts, there are no international standards or agreed work guides on how to design or implement financial disclosure requirements (Ivana and Laura,2012).

Indeed, the system of financial disclosure has quickly become one of the important tools for anti-corruption bodies and state governments to use in the fight against corruption. This system arose as an attempt to address citizens’ concerns about public service employees and politicians ,ensuring that resources are spent with transparency and wisdom, and helping citizens to obtain health care, education and a decent living(Burdescu *et al.*,2010).

### **Persons Subject to the Financial Disclosure System**

In Iraq, the regulatory aspects of the financial disclosure system have been addressed in the Financial Disclosure Regulations (1) of 2005 and in the Financial Disclosure Instructions No. (2) of 2017. The financial disclosure system intentionally requires the statement of persons who were subjected to submit an announcement about the contents of their wealth. The Iraqi legislation, like many countries’ legislation, took this matter into account (Safa,2015).

The Iraqi legislator may notice the importance of identifying the persons who are subjected to financial disclosure in the first law of illicit enrichment, No. 15 of 1958. Then the Financial Disclosure Regulation No. (1) of 2005 replaced the texts mentioned in the law regarding the determination of the person subjected to financial disclosure (Khalid,2015).

On the other hand, the legislator mentioned in the Commission of Integrity Law No. (30) of 2011 brief provisions in which he addressed the issue of illicit enrichment in Chapter Four in Articles 16-20. After deciding in Article (16) that the competent authority has the authority to issue a regulatory regulation to be published in the Official Gazette, to organize the provisions and principles of commitment to financial disclosure in accordance with the provisions of this law, Article (17), which came to define the persons subjected to the financial disclosure system .and they are the persons occupying one of the following jobs or positions:

**First:** The President and Vice-Presidents of the Republic.

**Second:** Members of the Legislative Authority (Ali,2018) .

**Third:** The Prime Minister, his deputies, the ministers, and their ranks and agents.

**Fourth:** The President of the Supreme Judicial Council and the judges.

**Fifth:** The heads of the regions, their prime ministers, their ministers and their agent .

**Sixth:** Governors and members of governorate councils.

**Seventh:** Heads of independent bodies, their agents and their deputies.

**Eighth:** Ambassadors, consuls and annexes (Ali,2018).

**Ninth:** Corps commanders, teams and heads of the security services.

**Tenth:** General Managers and their ranks, and Commission investigators. Eleventh: Officers in the armed forces, internal security forces, and security services of the rank of lieutenant colonel and above.

**Twelfth:** Every person the authority deems necessary for financial disclosure .

The legislator has done well to provide for persons subject to financial disclosure in Article (17). However, the text of this article was limited, as it was supposed to include in its ruling other persons whose nature and severity of their jobs require subjecting them to the financial disclosure system. Perhaps the most important of these jobs are:

1-The employees assigned to chair and become members of the committees for opening and analyzing tenders in public tenders and procurement, and each engineer is assigned to supervise and monitor its implementation.



2-Directors of the departments and directorates of taxes, real estate registration, customs, border outlets, their assistants and heads of departments therein (Ali,2018).

3-Presidents and founders of political parties and organizations.

4-Office managers who occupy the position of general manager and above.

In addition to the foregoing, the draft of the illicit enrichment law currently presented to the House of Representatives, included other categories and it was important to add them to the list of those subject to the financial disclosure system, namely: members of the Federation Council, investigators of the Supreme Judicial Council, heads of associations, federations, unions and organizations, heads and members of corporate boards to which the state contributes.

What is noticed on the above draft law is that it has included the teachers in Iraqi public and private universities among the persons subject to financial disclosure. This is considered critical due to the absence of justifications or logical reasons for this, because the financial disclosure system was designed primarily to monitor the inflation of the wealth of the owners of authority and the functional influence, whose source is mainly the nature of the job assumed by the person or the authority that he enjoys and the possibility of exploiting that authority or job to unlawfully enrich against public money or public interest. Besides, university teachers who do not hold an important position in the university, college, or institute do not have the authority to fear the acquisition of public money because the work environment in universities and institutes is essentially the provision of science, knowledge, and scientific research and has no contact with public money from any party. Therefore, it is important to abolish the teaching staff in Iraqi universities and institutes from the aforementioned bill, as mentioned earlier; there is no justification for that. It also reduces the responsibilities of Commission of Integrity charged with following up on financial disclosure for tens of thousands of people subject to financial disclosure if teachers were added to them. It leads to fatigue to the Commission of Integrity without justification like the same problem in Egypt (Shaban and Thoria,2011).

In addition to the foregoing, it is important to keep the text of paragraph 12 of the Article of Commission of Integrity Law, which gives this authority the authority to bind anyone who considers it necessary for financial disclosure. The importance of this is highlighted by the fact that other people, whether they are ordinary employees or non-employees in the public sector, have demonstrated that their wealth has been increased in obscene proportions that are not commensurate with the nature of the job they perform. It's important to note that they did not achieve these fortunes independently and transparently, but rather had suspicious links to employees or assignees of public service who took advantage of their jobs to illicit enrichment. Of course, the presence of the text without activating it does not achieve the desired goal. That is why it is very necessary and urgent to give this topic the most attention (Ali,2018).



As we mentioned earlier, the issue of financial disclosure statements in Iraq was not regulated in legal texts as it followed many laws of different countries that dealt with the provisions of graft, including the disclosure of financial disclosure by an independent law that deals with the issue in all its aspects. As for the Iraqi legislator's doctrine, it is critical for several reasons, the most important of which is that the gravity of the issue of illicit gain requires addressing it by developing legislative texts at the level of the law issued by the legislative authority, and not just regulatory texts issued by the executive authority that do not have the power to criminalise and punish. It only implements the law and does not legislate it as is known and that facilitates the mission of the integrity commission as an independent body with the text of the Constitution (Safa,2015).

### **Contents of Financial Disclosure**

The financial disclosure instructions number (2) of 2017 indicated the instructions for this statement, according to which the person must fill in the form designated for that which is sent to him from Commission of Integrity. In 2019, the Commission of Integrity prepared a disclosure form for financial disclosure consisting of 9 pages that include data on the subjected person, his wife, her husband and children, and his/her financial disclosure elements (real estate, shares, bonds, money, vehicles, precious constructions and jewelry, what he/she owes of debt, mortgage or loans. The person, his spouse, her husband or one of his/her children can be charged with providing for them legally or legally. Therefore, the disclosure of a person's financial disclosure includes the elements of his/her financial disclosure in his/her positive aspects (his/her money) and negative (his/her debts and obligations) (Perdriel - Vaissiere,2012)).

However, there are criticisms of the legislative regulating of the contents of financial disclosure, due to the omission of the financial disclosure form that the person discloses other things that may constitute an important aspect in his/her financial position and that some people are expected to resort to in order to avoid full financial disclosure. Perhaps the most important of these things are:

1- Grantee instruments, bills of exchange and debt receipts that a person possesses in exchange for depositing certain funds that he does not wish to disclose and do not want the authorities to know about them. For example, the person who was able to illegally seize public or private funds or took advantage of his position illegally benefited from it by depositing that money with a person or entity in exchange for securing guarantees from bonds, bills of exchange or others, which makes it impossible for the competent authorities to verify. The elements of the real financial liability of the subjected person, because he has not disclosed it as long as it remains a secret between this subjected person and the depositor with that money (Ali,2018).

2-The financial disclosure form did not include a statement of real estate that the person or his spouse or one of his children who was included in the text of an external sale contract that was not registered with the Real Estate Registration Department and was not disclosed. As a result, the authorities concerned cannot verify them, as they are not registered with the Real Estate Registration Department. By referring to the text of item (f) of the financial disclosure regulation, we find that the text is clear in its indication that this type of real estate is not covered by using the phrase “owned by the subjected person, his spouse, or his dependent children”. This is because the real estate sale contract in Iraq is one of the formal contracts that can only be completed by registering in the Real Estate Registration Department. This is a fundamental lack of legislation with which the necessity of legislative intervention is required to fill it by adding real estate that belongs to the person and others who are included in the text with a primary contract and others, but they did not register in the Real Estate Registration Department.

From a practical point of view, it is envisaged that the person responsible for submitting the return will resort to purchasing a property with a primary contract without registering it in the Real Estate Registration Department and at the same time surround himself with guarantees before the buyer obliges him to register at another time, and perhaps this time will be years after leaving the job or position. Consequently, this person will be able to escape prosecution because the text does not include real estate that is not registered in the Real Estate Registration Department. Also, the financial disclosure form is required to include all other funds, such as antiques, jewels and treasures, whose establishment may be very high (Khalid,2015).

3- The regulations stipulated that the financial disclosure regulation No. (1) of 2005 should include the following: The disclosure of the financial disclosure report includes the following: A - Any debt of the person or his spouse or one of his children responsible for providing for him legally and legally in excess of \$ 1,000 USD or the equivalent of that in Iraqi dinars (except the debt in which the creditor is a person’s relatives, spouse or one of his children responsible for providing him legally up to the third degree). It is noted in this text that the Iraqi legislator excludes a person and does not obligate him to disclose debts when he owes his wife or children who are legally responsible for providing for them and one of his relatives to the third degree. This text is critical because it exempts the subjected person from exposing those debts, which may be an unrealistic sham, the purpose of which is fraud and concealing illicit funds on the pretext that he owes his wife, one of his children or one of his relatives responsible for providing them legally or one to the third degree. So we do not see a justification for the existence of such an exception, and then it must be removed( Safa,2015).

4-According to the requirements of Financial Disclosure Instructions No. (2) Of 2017, the subjected person is obliged to submit three types of reports (the initial report, the periodic



report, and the final report). There are three notes that we find important regarding the text of these reports:

On the one hand, the preliminary report does not include the obligation to provide evidence, documents or tax calculation of his financial wealth before assuming the position in which he became (subjected to financial disclosure). This lack of obligation enables the person to fill out the financial disclosure form in the primary disclosure with false information which includes having a lot of money while he doesn't actually own it. The purpose of this step is to be able to add illicit money to his fortune later. Thus, when providing the following financial disclosure, there will be no unusual increase in its financial liability. As a result, the judiciary will not be able to ask him for unlawful enrichment as long as there is no unusual increase in his wealth. With this step, the person was able in his first preliminary report to defraud the competent authorities (Ali,2018).

On the other hand, the person is obliged to submit an annual report on his financial disclosure, and this means that the Integrity Commission undertakes the procedures of examination, investigation of tens of thousands and of those charged with methods and tools that are still traditional and routine that take time and effort, as well as difficult and complex mechanisms and an insufficient number of cadres working in the body. On this complex and thorny issue, which represents a huge burden that exceeds the ability of the Integrity Commission. Therefore, the matter requires increasing and preparing efficient job cadres and seeking the expertise available in other countries that have achieved tangible successes, as well as developing inspections and investigations, and investigating the payroll statements and using modern technology. It also requires the exchange of information, effective coordination and cooperation between all the authorities concerned in this matter with the Integrity Commission, and we specifically mention the real estate registration departments, banks, taxes, customs, money laundering office and the central bank.

In addition, the person is required to present the final financial statement when his relationship with them ends. This financial disclosure is extremely important, because when a person's relationship with his job or office ends and he has achieved an illegal gain while in public office and his matter has not been discovered, it will be very difficult to prosecute him; this is especially if he moved to a country with which Iraq does not have bilateral or international cooperation at the level of implementation of the United Nations Convention against Corruption of 2003 or other conventions and treaties. The current reality clearly reveals these concerns. Despite the spread of the phenomenon of corruption in Iraq, the results of combating this phenomenon are not satisfactory; there are still large funds in the pockets of the corrupt whom the competent authorities have not been able to prosecute until now and some of them have been prosecuted, but these prosecutions are ineffective and have not achieved tangible results in most cases (Ismail,2011) .



5-The financial disclosure form did not include the person's disclosure of crypto currency or digital currency exchanges such as Bitcoin and others. Trading this type of currency poses a serious challenge to the authorities concerned with examining and monitoring the financial disclosure form, especially since a very limited number of countries have recognized this currency.

6-Article (4 / 1 / s) of financial disclosure regulation No. (1) of 2005 excluded the gifts of relatives and some donations from the election campaigns from the contents of approving the financial disclosure in accordance with the regulations stipulated by the law. Note that these legal controls are not present, so the inclusion of this exception is extremely dangerous. Regarding the gifts of relatives, a person can resort to circumvent the provisions of the law by removing money and material benefits from the obligatory declaration submitted on the pretext that it is a gift from relatives. The matter becomes more dangerous when it comes to election campaign donations, on which large sums are spent. It is assumed that the election law or the political parties deal with this issue, but unfortunately, we do not find in the Iraqi election law in force a text on this issue. Also, the punishment decided by Article (46) of the Law on Political Parties in Force No. (36) for the year 2015 is a non-deterrent punishment. It is clear that this constitutes a legislative loophole that must be rectified by express texts that cannot be interpreted.

## **Conclusion**

The study reached several results, the most important of which was the failure of the Iraqi legislator to address the problem of legislative gaps in the regulatory texts to reveal financial disclosure, which reflected on the ineffectiveness of the application of the combating illicit enrichment. The Iraqi legislator omitted to provide for elements that are necessary in the form of financial disclosure, including security deeds, bills of exchange, and debt receipts that a person possesses in exchange for depositing certain funds that he does not wish to disclose and does not want the authorities to know about. Moreover, there are no legal texts enacted by the Iraqi legislator according to which the subjected person could be required to disclose his debts while he owes his wife or children responsible for providing for them legally or one of his relatives to the third degree. We have shown that this constitutes an unjustified exemption for a person who can be easily exploited to achieve unlawful enrichment.

It also became clear through the research that the legislator has determined the subjects are subject to financial disclosure, but this determination is not sufficient, as it was supposed to include in this ruling other employees whose nature and seriousness of their jobs require their inclusion in the description of those charged with providing the financial disclosure statement.



The Iraqi legislator does not require the person subject to financial disclosure to provide evidence, documents or tax calculation of his financial liability before assuming the position under which he became a subjected person. This constitutes a legislative loophole that some people can take advantage of by filling in the financial disclosure form (initial examination) with unreal information about the elements of his financial liability, such as mentioning that he possesses huge amounts of money while he does not own them in reality or incur unreal debt and obligations. This matter is critical because it enables the subjected person to obtain an illicit gain without being discovered by anyone. In addition, there is existence of serious difficulties in following up the disclosure of the financial liability of the subjects subject to the number of tens of thousands. These difficulties are due to several reasons, perhaps the most important of which is the lack of functional cadres working on this issue in the Integrity Commission compared to the large numbers of subject persons; this is as well as the traditional methods and routine procedures in the processes of collecting, auditing and examining financial disclosure statements and investigating the reliability of the data and information contained therein and those that were not included.

The fight against illicit enrichment should be a priority in the Iraqi legislator's attention list when dealing with the problem of corruption. This requires doing several things, perhaps the most important of which is the development of an effective system of financial disclosure, as well as financial disclosure for any other natural or legal person that the person may be related to, regardless of this connection from near or far. The sophistication, camouflage and concealment of illicit funds by thieves has outperformed the legislator's imagination in envisioning many actions that these thieves bring as an undisclosed method of obtaining public money and exploiting public office for personal interests.



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