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including the right to development**

Written statement* submitted by Maat for Peace, Development and Human Rights Association, a non- governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* Issued as received, in the language(s) of submission only.



The State of Judicial Corruption in the Middle East

Maat raises to the international community the serious issue of judicial corruption in the Middle East, with a particular emphasis on Turkey, Qatar, and Iran.

1. Introduction to Judicial Corruption

In some communities, corruption is very prevalent and intrinsic, and judicial institutions are not far from it. In these communities, corruption allows public official, private and interest groups to exert influence on the bench. Corruption in that context is defined as “acts or omissions that constitute the use of public authority for the private benefit of court personnel, and results in the improper and unfair delivery of judicial decisions”.¹ Examples of such acts are bribery, extortion, intimidation, smear campaigns and revealing damaging information against the judges, conflict of interest, interest collusion, appeal to the political branches or preferential treatment.

If corruption exist, the merits of the case is not important but rather the parties involved. Rich and well-connected citizens enjoy more advantages and protections in the courtroom than the other parties involved in the case.² There are many systemic causes that contribute to the pervasiveness of corruption. One of them is the unbalanced power between the judiciary and the other political branches i.e., the Executive and the Legislative branches. Some constitutions despite of their judicial independence clauses are full of articles that perpetuate in effect the dominance of the political branches, for example, by granting them hiring and firing power, disciplinary and promotion power, tenure and extension of retirement power, amongst others. Judges and prosecutors being human and rational beings who want to maximize their interests usually feel compelled to respond positively to these influences.³

In some other cases of judicial corruption, the legal rules are not to blame, but the existing culture that embraces corruption and tolerates it, as well as the personal assessment of the judge to either avoid retribution from his superiors or to owe the government a favour. The next part examines these conditions in Turkey, Qatar, and Iran.

2. Judicial corruption in the Middle East and North Africa

Many indices prove the link between corruption and judicial independence. A closer look at the three countries reveals that Qatar (and the United Arab Emirates) are the top performers in both judicial independence and controlling corruption. Turkey and Iran however have the most ill-functioning on both matters. The recent Transparency International’s 2020 Corruption Perceptions Index reveals that Qatar, Turkey, Iran, score 63/100, 40/100, 25/100 consecutively, with 100 meaning very clean and zero meaning highly corrupt. In this index, Qatar ranked the 30th on the world, Turkey ranked the 86th, and Iran ranked the 149th out of 180 countries examined.⁴

The World Economic Forum’s Judicial Independence Index arrive at the same conclusion. We used this dataset, and examined the three countries from 2010 to 2017, and concluded that both Turkey and Iran fall below the world median and even the region media of the Middle East and North Africa. Turkey’s yearly average growth is -1.38% and Iran with -0.67%, with the former achieving 3.06 and the latter achieving 3.63 in 2017. On the other hand, Qatar while higher than both the world and region medians, it has been experiencing yearly declines since 2012-13 until this point, a record low from achieving 6.20 in 2012 to 5.30 in 2017.⁵

¹ <https://www.extractiveshub.org/servefile/getFile/id/2407>

² Ibid

³ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx#:~:text=The%20judiciary%20shall%20decide%20matters,quarter%20or%20for%20any%20reason.>

⁴ <https://www.transparency.org/en/cpi/2020>

⁵ https://tcdata360.worldbank.org/indicators/h5ebaeb47?country=QAT&indicator=669&countries=IRN,TUR&viz=line_chart&years=2010,2017

On the nexus between corruption and judicial independence, V-Dem data on judicial corruption which measures the frequency of using "undocumented extra payments or bribes in order to speed up or delay the process or to obtain a favorable judicial decision"⁶, confirms the pattern between years 2010 and 2017 too, with answers falling between "usually" and "about half of the time" in Turkey and Iran, and "not usually" in Qatar.⁷

A. Turkey

Turkey's post-coup crackdown was a clear attack on judicial independence. In what has been deemed as a judicial purge, the Turkish Council of Judges and Prosecutors (HSYK) – Which is composed of mainly appointees by the parliament and the President⁸, stand accused of dismissing thousands of judges and personnel at the pleasure of the president, with 2,745 dismissed in 2016 alone.⁹

To respond to the gap created by the arrest and dismissal of judicial personnel in Turkey, the government has recruited en masse thousands of young, inexperienced new faces in the judiciary. Figures show that more than 9000 new judges have been appointed since 2016, which means that around 45 % of judges and prosecutors now in Turkey, have four years of experience or less.¹⁰ This is damaging in two ways. First of all, the newly appointed judges in fear of retribution similar to what happened to their predecessors, are more likely to issue government-friendly judgments. Hence, all due process consideration will be irrelevant. Secondly, because of their inexperience and inadequate training, these judges will be more prone to corruption and external influence as they are at the prime of their career.

B. Iran

Judicial corruption amongst high-ranking judicial officials in Iran is prevalent. In one prominent and recent case, Iran's former Chief Justice and head of the Judiciary Sadegh Amoli Larijani (2009 – 2019) came under media scrutiny, when information about 63 bank accounts under his name in which the judiciary had been depositing funds, was disclosed.¹¹ With no official investigation yet, media news has reported that Larijani has earned more than USD 66.5 million annually from these accounts¹². In 2018, then Member of Parliament Mahmoud Sadeghi has announced that members of Iran's General Inspection Organization – the state body responsible for supervising public institutions whose resources belong to the government, were arrested for " "accidentally" auditing bank accounts of the Justice Department".¹³ Similarly, it has been reported that bank staff who blow-the-whistle on these accounts were also arrested.¹⁴ The MP himself who brought this issue to the Parliament was surrounded by officers trying to arrest him at his house over his question to the Minister of Justice on these funds, despite his parliamentary immunity.¹⁵¹⁶

⁶ Judicial Corruption Decision Index <https://www.v-dem.net/en/analysis/VariableGraph/>

⁷ Ibid

⁸ https://www.coe.int/en/web/commissioner/country-monitoring/turkey/-/asset_publisher/IK6iqfNE1t0Z/content/turkey-new-council-of-judges-and-prosecutors-does-not-offer-adequate-safeguards-for-the-independence-of-the-judiciary?inheritRedirect=false

⁹ <https://www.lawsociety.org.uk/en/campaigns/international-rule-of-law/intervention-letters/dismissal-of-2745-judges-in-turkey>

¹⁰ <https://www.reuters.com/investigates/special-report/turkey-judges/>

¹¹ <https://www.al-monitor.com/originals/2019/08/iran-judiciary-chief-defend-internal-corruption-probe.html>

¹² <https://www.iranfocus.com/en/economy/34572-the-systematic-corruption-in-iran-s-judiciary/>
<https://en.radiofarda.com/a/iran-mp-sadeghi-demand-explanation-judiciary-funds/29417493.html>

¹³ Ibid

¹⁴ <https://www.theguardian.com/world/iran-blog/2016/nov/28/iranian-judicial-authorities-attempt-arrest-of-mp-mahmoud-sadeghi>

¹⁵ The Iranian Prosecutor is complicit in this move, he announced during that events that "The arrest warrant of parliament member Mahmoud Sadeghi was in accordance with the law and is still in force ...Mahmoud Sadeghi's actions of resistance against officers and inciting people for gathering and presence in front of his house is disruption of public order and considered an offence which is added

The new Chief Justice that succeeded Larijani had dismissed 60 judges in 2018 in what was described as “anti-corruption crackdown”.¹⁷ Recently, Akbar Tabari – Larijani’s right hand and deputy head of the judiciary, has been convicted in September 2020 by court for “setting up and heading a bribery network”¹⁸ and ordered to pay more than USD 1.65 million among other penalties. Two other judges have, Bijan Qasemzadeh and Hamidreza Alizadeh, have been additionally convicted in this case for peddling influence and receiving bribes.¹⁹ A fourth judicial official who was the defendant in this case, Gholamreza Mansouri, was found dead in Romania in suspicious circumstances in June 2020 after fleeing from the trial.²⁰ Until this moment, Larijani has not been charged.

These revelations are widely believed to be just the tip of the iceberg. Many judicial corruption incidents do not come from high-ranking officials and hence does not get the enough media coverage to force the authorities to act. In one example, two Revolutionary Court judges have been reported asking the defendants to either buy their freedom or to otherwise serve 10 years in prison.²¹

C. Qatar

The judiciary is used by the royal family to silence dissent. For the interest of space, we refer to you only the case of Sheikh Talal Al Thani – a senior royal arbitrarily arrested in 2013 by the Qatari government, and continuously denied legal representation, family visits, and medical care.²² His US attorney submitted an urgent complaint to the Special Rapporteur on the Independence of Judges showing that Sheikh Talal was arrested without a warrant, denied access to his legal records and a lawyer of his choosing, was often tried in absentia without summons, and was denied his right to a fair trial by an impartial tribunal, to effective remedy, and to regular judicial review.²³

Sheikh Talal’s wife fled to Germany with documents proving that her husband was detained after requesting his share of the inheritance from the government and was “duped into signing security checks”.²⁴ He was sentenced to 22 years in prison despite offering to pay the fabricated debt.²⁵ This is not an isolated case, but illustrates the failure of the Qatari judiciary.²⁶

to his previous charges and he should be held accountable" <https://www.ncr-iran.org/en/news/iran-a-world/iran-chief-justice-s-bank-accounts-scandal/>

¹⁶ <https://www.occrp.org/en/daily/10035-iran-new-conservative-chief-justice-fires-60-corrupt-judges>

¹⁷ <https://en.radiofarda.com/a/iran-ex-judiciary-official-gets-31-years-for-graft/30835058.html>

¹⁸ <http://anticorr.media/en/iran-sentences-ex-judiciary-official-to-31-years-in-prison-for-corruption/>

¹⁹ <https://www.washingtonpost.com/opinions/2020/06/27/judges-death-highlights-moral-rot-corruption-irans-legal-system/>

²⁰ <https://iran-hrm.com/index.php/2020/01/30/revolutionary-court-judges-extort-protesters-to-set-them-free/>

²¹ <https://www.eg24.news/2020/04/the-case-of-sheikh-talal-al-thani-stood-for-fear-of-his-claim-to-rule.html>

²² <https://www.foxnews.com/world/fear-grows-for-jailed-qatari-royal-amid-health-decline-as-wife-pleads-at-un-for-release>

²³ <https://www.arabnews.com/node/1738021/middle-east>

²⁴ Maat’s submission to the Human Rights Committee list of issues on the review of Qatar

²⁵ [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/QAT/INT_CCPR_ICO_QAT_42362_E.docx)

[QAT/INT_CCPR_ICO_QAT_42362_E.docx](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/QAT/INT_CCPR_ICO_QAT_42362_E.docx)

²⁶ Report of Special Rapporteur, Gabriela Knaul – Mission to Qatar, Human Rights Council, A/HRC/29/26/Add.1, 31 March 2015, at: <https://undocs.org/en/A/HRC/29/26/Add.1>. Working Group on Arbitrary Detention: Findings from its visit to Qatar, 14 November 2019, at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25296&LangID=E>