



Constitutional reform and the struggle against corruption

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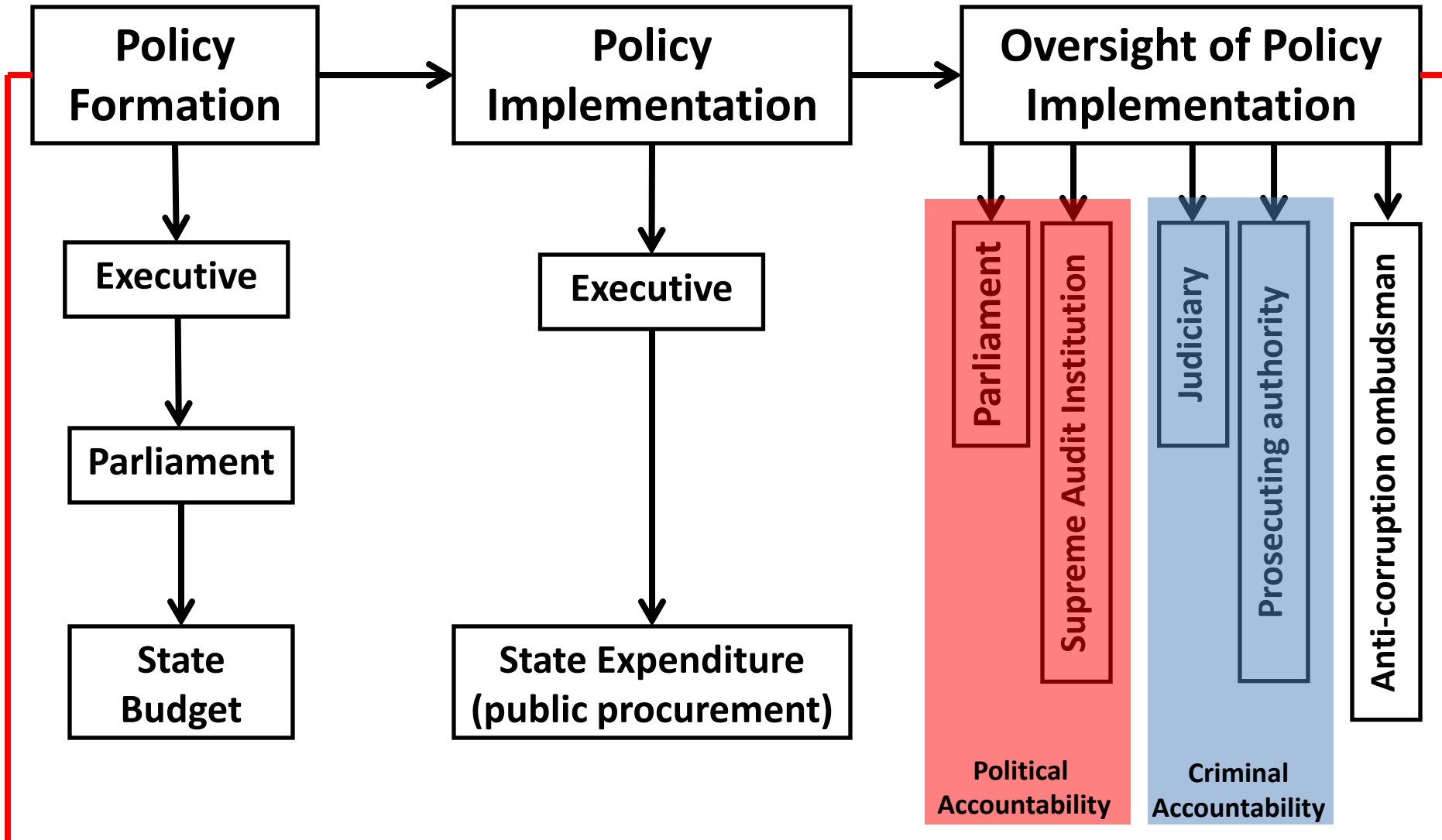
Introduction

- Previously, Arab constitutions allowed for small groups of individuals to monopolise power and access to public funds
- Arab spring forced many countries to draft new constitutions (M, A, T, L, E, J, Y, etc.)
- The absence of an autopsy (what went wrong?). Result is that constitutions not redrafted with anti-corruption in mind

Introduction

- New generation of Arab constitutions make improvements on design flaws, but many still remain
- Consequence: high prevalence of corruption in many cases is unlikely to be resolved until new and **deliberate** constitutional reform effort is engaged upon

Accountability under the Constitution



Accountability under the Constitution

- **Design flaws** in Arab constitutions have created **gaps** in the accountability framework, such that:
 - Judicial independence is not complete; and
 - parliament cannot exercise effective oversight.

Judicial independence

- All constitutions provide for judicial independence
- What does “independence” mean?
 - Freedom from interference
 - Freedom from dismissal
 - Freedom from transfer
 - Freedom from other disciplinary measures

Judicial independence



Iraq (1970):

Article 60: The judiciary is independent and is subject to no other authority save that of the law.

Article 42: The Revolutionary Command Council exercises the following competencies:

- (a) Issuing laws and decrees having the force of the law.
- (b) Issuing decisions indispensable for applying the rules of the enacted laws.

Judicial independence

Iraq (2005)

Article 88: Judges are **independent**, and there is no authority over them **except that of the law.**

No power shall have the right to interfere in the judiciary and the affairs of justice.

Judicial independence

Who controls the law-making process in Iraq?

(1) Draft laws (مشاريع) shall be presented by the President of the Republic and the Council of Ministers.

(2) Proposed laws (مقترحات) shall be presented by ten members of the Council of Representatives or by one of its specialized committees.

Judicial independence

- **Egypt (2012):** Judges are **independent, cannot be dismissed**, are subject to no other authority but the law, and are equal in rights and duties. The conditions and procedures for their appointment and **disciplinary actions** against them are defined and regulated by the law (article 170).

Judicial independence

- **Morocco (2011):**

Any intervention in the matters submitted to justice is forbidden. In his judicial function, the **judge may not receive injunction or instruction, nor be submitted to any pressure whatever.**

Each time that he considers that his independence is threatened, the judge must refer the matter to the **Higher Judicial Council.**

Any breach on the part of the judge of his duties of independence and of impartiality, constitutes a **grave professional fault**, without prejudice to eventual judicial consequences (article 109).

Judicial independence

- **Morocco (2011):**

The Higher Judicial Council sees to the application of the guarantees accorded to the magistrates, notably concerning their independence, **their appointment, their advancement, their retirement and their discipline** (article 113).

Higher Judicial Council is presided over **by the King**, and also includes 5 people **appointed by the King** (article 115).

Judicial independence

- **South Africa (1996):** A judge may be removed from office only if:
 - the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and
 - the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members (article 177).

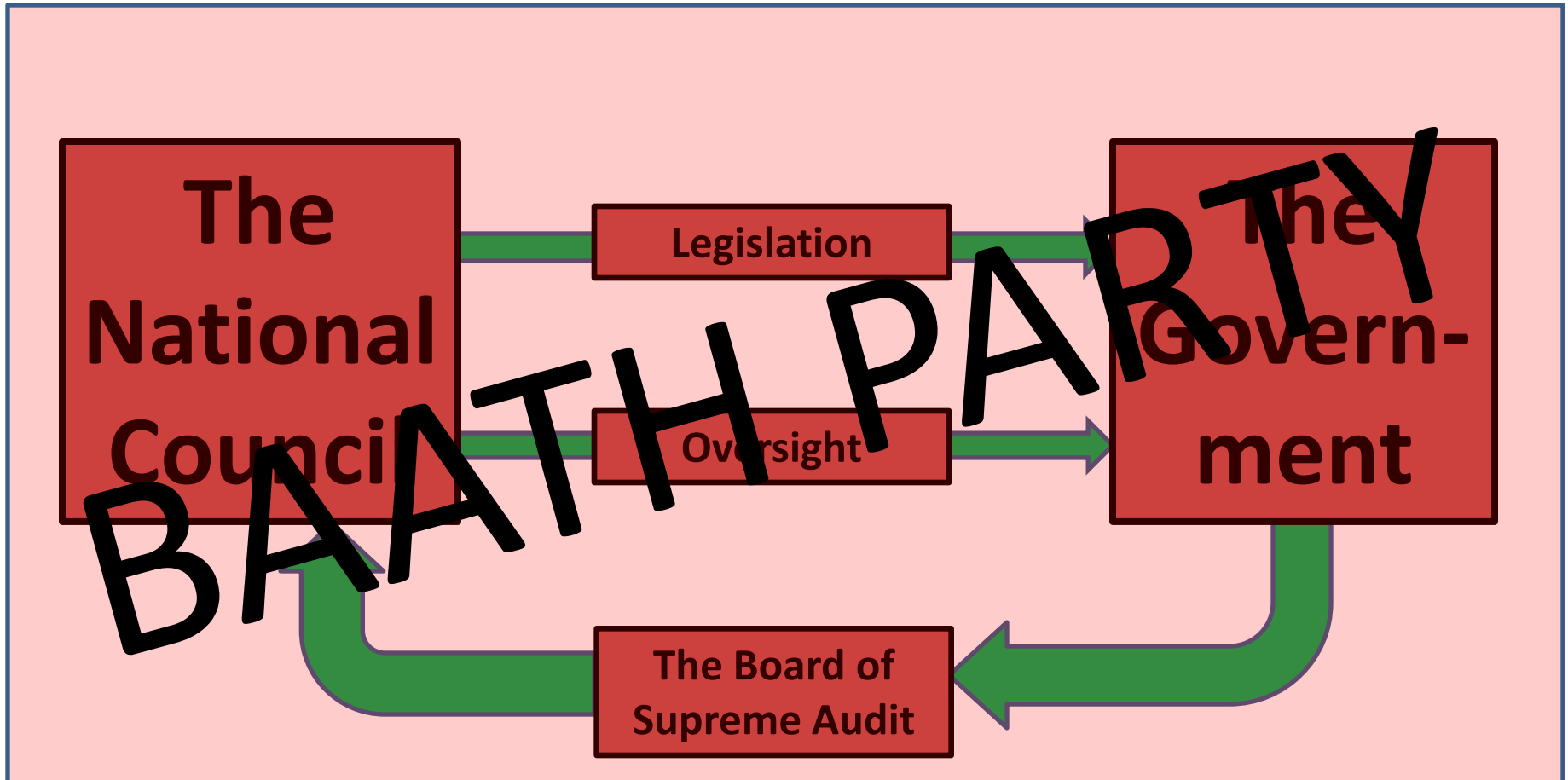
Parliamentary Oversight

- Parliamentary oversight is an essential function of most modern states:
 - One of two main accountability mechanisms (including judicial review)
 - Parliaments are assisted by ‘supreme audit institutions’ (eyes and ears)
 - Depends on audit institutions functioning properly and on their being truly independent

Parliamentary Oversight

- What does an audit institution's effectiveness depend on?
 - Training
 - Standard operating procedures
 - Full access to information
 - **Reporting lines**
 - **Independence**

Oversight under the 1970 Interim Constitution



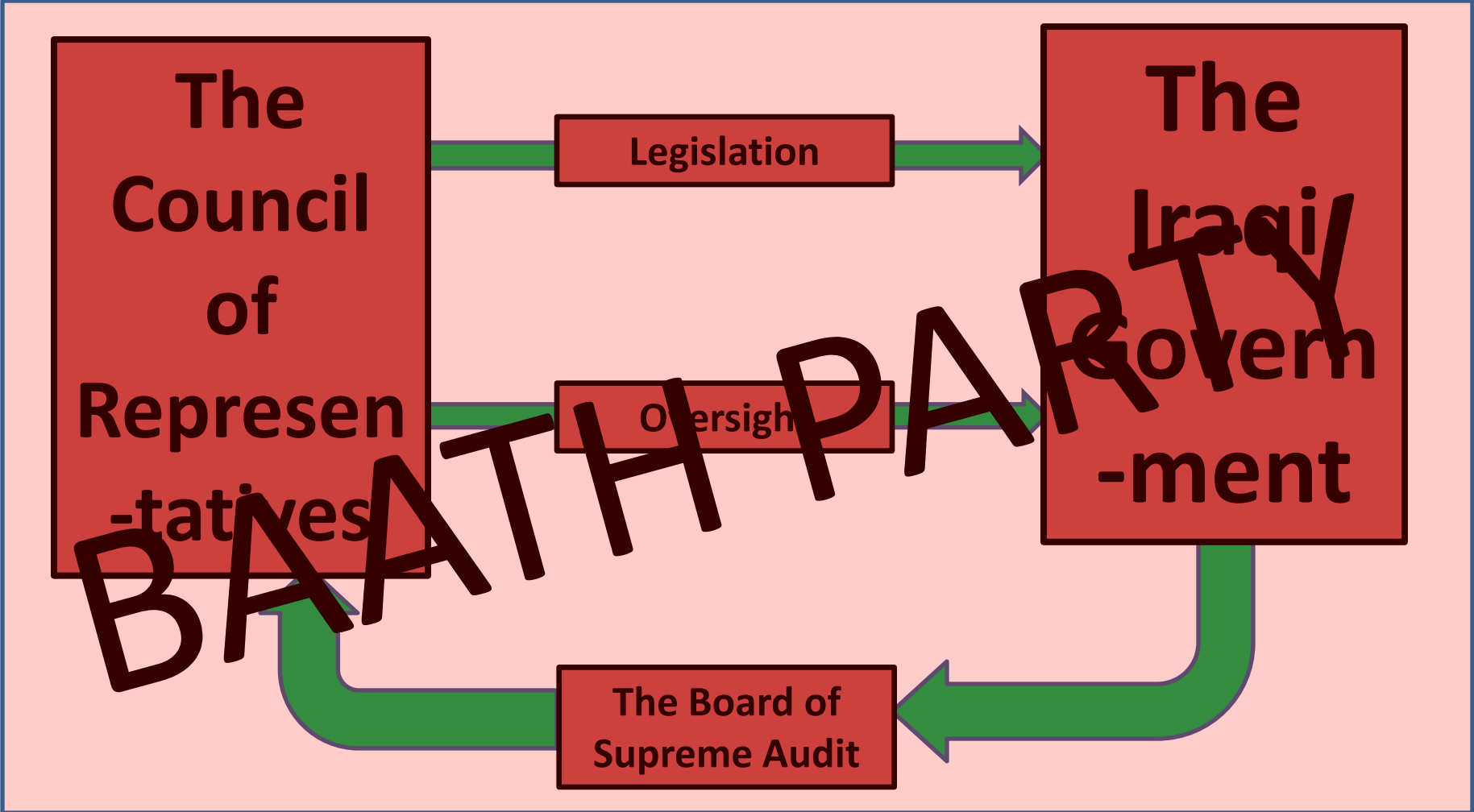
Oversight under the 2005 Constitution

- On paper, oversight was reinforced or guaranteed by the Constitution:
 - BSA granted constitutional status (art 103)
 - COR mandated by constitution to exercise oversight (art 61)
 - COR has authority to oversee work of not only ministers but also “*any other official in the executive branch of government*” (art 32 of the COR’s bylaws)

Oversight under the 2005 Constitution

- Unanticipated impact of changes to the electoral system:
 - Extremely permissive (30k votes enough for one seat)
 - Pmt populated by dozens of parties
 - Very large coalition government
 - COR lacking in experience, new institution

Institutional Breakdown



Institutional Breakdown

- From 2005 to 2009:
 - Almost none of the COR's members had read any of the BSA's reports
 - The Finance Committee was not certain how many reports it had received
 - BSA officials almost never travelled to COR for meetings
 - Not a single government official was called to provide evidence before the COR

Breakdown in Services

- What is the consequence of this failure?

- No account “Central ministries had spent only 4.4 percent of their investment budget as of August 2007”

for senior government officials

GAO
Accountability and Integrity
Highlights
Highlights of GAO-08-153, a report to congressional committees

January 2008
IRAQ RECONSTRUCTION
Better Data Needed to Assess Iraq's Budget Execution

Why GAO Did This Study
The President's New Way Forward in Iraq identified Iraq's inability to spend its resources to rebuild infrastructure and deliver essential services as a critical economic challenge to Iraq's self-reliance. Further, Iraq's ability to spend its \$10.1 billion capital projects budget in 2007 was one of the 18

What GAO Found
U.S. and Iraq reports show widely disparate rates for Iraqi government spending on capital projects. Accordingly, GAO cannot determine the extent to which the Iraqi government is spending its 2007 capital projects budget. In its September 2007 Iraqi benchmark assessment, the administration reported that Iraq's central government ministries had spent 24 percent of their 2007 capital projects budget, as of July 15, 2007. However, this report is not consistent with Iraq's official expenditure reports, which show that the central ministries had spent only 4.4 percent of their investment budget as of August

government in spending its capital projects funds.

For this effort, GAO reviewed Iraqi government budget data and information on provincial spending collected by the U.S. Provincial Reconstruction Teams. GAO also interviewed officials from the departments of the Treasury, Defense, State, and other agencies and organizations.

What GAO Recommends
We recommend that the Secretary of Treasury work with the government of Iraq and relevant U.S. agencies to enhance the department's ability to report accurate and reliable expenditure data from Iraq's ministries and provinces. Treasury agreed with our recommendation.

To view the full product, including the scope and methodology, click on GAO-08-153. For more information, contact Joseph A. Christoff at (202) 512-2879 or christoff@ga.gov.

U.S. agencies have undertaken a variety of programs to help Iraq execute its capital projects budget, although it is not clear what impact these efforts have had to date. U.S. agencies supported new efforts in 2007 targeting Iraq's ability to spend capital budget funds, including an office to provide procurement assistance to ministries and provinces and a new position in the U.S. Embassy to coordinate with senior Iraqi government officials on budget execution and oversee related U.S. assistance efforts. In addition, improving Iraqi government budget execution is part of a broader U.S. assistance effort to improve the capacity of the Iraqi government. For example, the U.S. Agency for International Development (USAID) has trained 400 ministry officials in procurement or budget execution. USAID also led an effort to implement an automated financial management information system for the Iraqi government, although this program was suspended in June 2007 following the kidnapping of five contractors involved in the project. In addition, U.S. advisors work directly with key Iraqi ministries to assist with budget execution and procurement, among other responsibilities.

Final Staff Government Accountability Office

Breakdown in Services

- Government inefficiencies reached unprecedented levels

Figure 4: Iraqi Government Expenditures in Relation to Budget, 2005 through 2007

Percentage
100

While Iraq's total expenditures increased from 2005 through 2007, Iraq spent a declining share of its budget allocations—73 to 65 percent from 2005 to 2007.

In each year, Iraq spent a greater percentage of its operating budget, including salaries, than its investment budget. For example, in 2007, the Iraqi government spent 80 percent of its \$28.9 billion operating budget and 28 percent of its \$12.2 billion investment budget.

The central ministries, responsible for providing essential services to the Iraqi people, spent a smaller share of their investment budgets than the Iraqi government as a whole. Further, their investment expenditure ratios declined from 14 percent in 2005 to 11 percent in 2007. Specifically, while

2006
2007

Source: GAO analysis of Iraq Ministry of Finance budget and expenditure data.

Breakdown in Services

United States Government Accountability Office

- GOI
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“Iraq generated an estimated cumulative budget surplus of \$52.1 billion through the end of 2009. [...] Adjusting for \$40.3 billion in estimated outstanding advances reduces the amount of available surplus funds to \$11.8 billion”.

In 2009, the BSA “concluded that weaknesses in accounting for advances could result in the misappropriation of government funds, the means by which ministries exceed their annual budgets, and the inaccurate reporting of expenditures”.

The MOD and the MOI “did not spend or set aside between \$2.5 billion and \$5.2 billion of their 2005 through 2009 budgeted funds—funds that could have been used to address security needs”



GAO-10-304

Breakdown in Services

- Leaked US Embassy memo provides some answers.
- The US embassy investigated the state of corruption in Iraq, and made a series of damning conclusions.

SENSITIVE BUT UNCLASSIFIED
Not for distribution to personnel outside of the US Embassy in Baghdad Iraq
Working Draft

This report analyzes the ability of Iraq to enforce its anticorruption laws. It seeks to provide a snapshot of Iraq's institutions created to fight corruption, the ability of the

Iraq is not capable of even rudimentary enforcement of anticorruption laws

Politicization and fear of accountability are serious impediments to the enforcement of anticorruption laws

empowered to conduct investigations the combined security situation and the violent

The Government of Iraq is making grudging progress in capability to investigate and prosecute corruption in Iraq and not at a level that would support any reasonable time line

The court system in Iraq remains weak, intimidated, subject to political pressure, and clogged with minor cases.
Reviews of the cases and interviews with CPI investigators and American advisors give a breakdown of the anticorruption efforts in the ministries that have provided 70% of the corruption complaints. The Ministry of Interior is seen by Iraqis as untouchable by the anticorruption enforcement infrastructure of Iraq. Corruption investigations in Ministry of Defense are judged to be ineffectual. With 196 complaints and only 8 being sent to court and only one person having been convicted in what is widely recognized as a troubled ministry, corruption investigations are clearly inadequate in the Ministry of Trade. The Ministry of Health is a sore point; corruption is actually affecting its ability to deliver services and threatens the support of the government. The lack of investigative capacity and the presence of militia make it beyond the reach of anticorruption efforts. The high number of dismissals in cases involving alleged political

Breakdown in Services

- Iraq was ranked close to bottom of TI's Corruption Perceptions Index through the Iraqi parliament's first term.

RANK	COUNTRY
154	Kenya
154	Laos
154	Papua New Guinea
154	Russia
154	Tajikistan
164	Democratic Republic of the Congo
164	Guinea
164	Kyrgyzstan
164	Venezuela
168	Angola
168	Equatorial Guinea
170	Burundi
171	Chad
172	Sudan
172	Turkmenistan
172	Uzbekistan
175	Iraq
176	Afghanistan
176	Myanmar
178	Somalia

Surveys Used & Confidence Range

Breakdown in Services

- Since 2010, some improvements not because of the constitution, but despite it

Parliamentary oversight

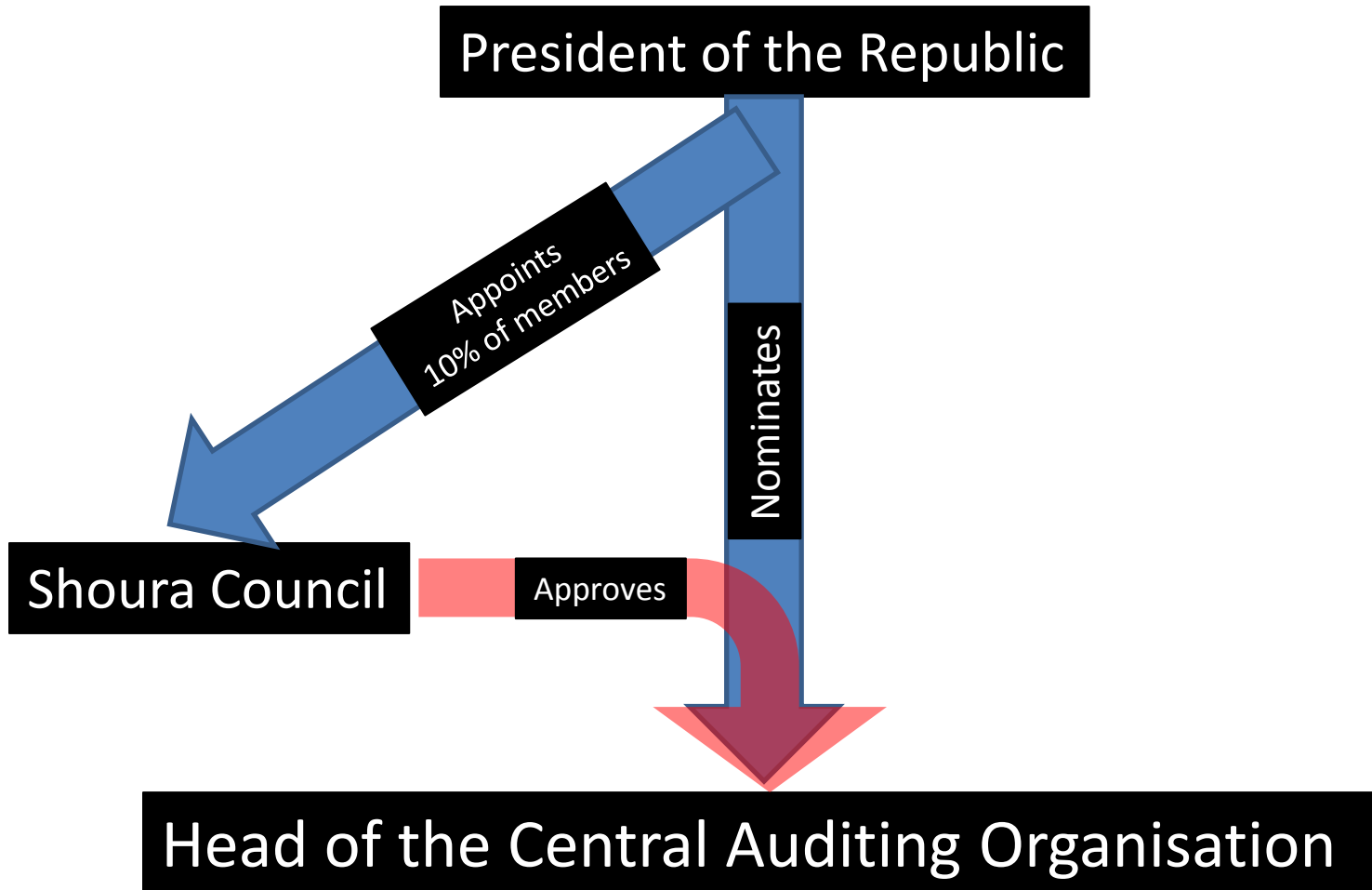
Egypt (2012):

- Central Auditing Organisation is mandated to control all of the state's funds (Article 205).
- Who appoints the head? The **President of the Republic appoints** the heads of independent bodies and regulatory agencies upon the **approval of the Shoura Council** (Article 202).

Parliamentary oversight

- Composition of the Shoura Council:
“The Shura Council has at least 150 members, elected by direct secret ballot. The President of the Republic may appoint a number of members not exceeding **one-tenth of the number of elected members**” (article 128).

Parliamentary oversight



Conclusion

- Under **previous generation** of constitutions, **flagrant design flaws** that allowed for public funds to be controlled without accountability by few individuals
- Under new generation, design flaws are **more subtle**, but still exist and will likely prevent new regimes from effectively curbing corruption
- Some countries have made progress, but others have not, in part because no autopsy carried out