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## The crime of obstructing justice in national legislations and international conventions

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### Abstract

This research explores obstructing justice as a severe legal issue that reduces the capability of legal frameworks and the duties of nation-states as well as international bodies. This research seeks to examine both the origins and effects of this criminal offense with attention to the differences between domestic laws and international agreements on handling such crimes.

The study employs a thorough analytical methodology which includes critical domestic law analysis and international mechanism evaluation together with national experiences comparison and existing research evaluation. The research method offers practical solutions to strengthen the harmonization between national laws and international agreements for fighting this type of crime.

The analysis organizes into four parts wherein the first introduces obstructing justice concepts followed by classifications of this offense. This essay explores judicial precedents about this crime through its four sections followed by a focus on the International Criminal Court as a primary tool against impunity.

This detailed research study provides complete understanding of legal frameworks which govern this crime and works to develop effective strategies for justice and rule of law enforcement at both national and international levels.

**Keywords:** Obstructing justice, national legislation, international conventions, legal framework

### Introduction

All legal systems needing equality and integrity in society must seek justice as their essential foundation. The administration of justice faces multiple worldwide difficulties which include a spectrum of crimes aimed at obstructing judicial processes. Legal proceedings and judicial processes face severe threats because of offenses that intend to obstruct the justice system.

### Research Importance

Researchers have established an objective to understand the criminal offense of obstructing justice as it stands among essential phenomena that influence national legal systems and their international duties. Research into obstructing justice allows us to create effective methods for countering the crime which strengthens both justice and the rule of law.

### Research Problem

The main problem exists between national laws and international agreements regarding the handling of obstructing justice cases. Legal instruments together with international conventions to combat this crime exist yet nation states face major differences when implementing and understanding them at a domestic level. National laws must adapt to international conventions to reduce the crime of obstructing justice: this forms the key research inquiry.

### Research Methodology

The research conducts an exhaustive investigative examination using both an examination of domestic laws and international tools which target justice obstruction. This research conducts both comparative country investigations of laws along with previous study evaluations and analysis of secondary data sources. This methodology aims to supply practical measures that boost international convention and national legislation performance when dealing with obstructing justice crimes.

### Research Structure

The research consists of four main parts. The starting segment delves into what obstructing

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justice as a crime actually means. The second division of the research explores all possible forms of obstruction of justice. A study of existing legal precedents involving obstructive acts against justice administration forms the third section. The fourth segment evaluates how the International Criminal Court functions as a weapon against impunity.

## Section One

### Definition of the Crime of Obstructing Justice

The crime of obstructing justice means attempting illegal activities which try to prevent justice from being served by courses of action including interference with courts at any level and threats or coercion of witnesses to provide false information and illegal jury bribes and evidence concealment. Grasping or attempting to interfere with justice makes a person legally responsible for a crime according to evidence.

Ensuring justice among individuals is one of the fundamental duties of the judiciary. The judicial system undertakes this noble mission with great difficulty and caution. To fulfill this responsibility, all participants in legal proceedings must contribute to the administration of justice. Anyone who disrupts this process should be subjected to severe punishment due to the significant harm such crimes cause, which extends to affect the entire nation. This type of crime undermines the realization of justice, which is a fundamental right for every individual in society.

The Iraqi legislator has stipulated that a lawsuit cannot be halted, discontinued, relinquished, or have its judgment suspended or enforcement stopped except in cases specified by law. Additionally, the Iraqi legislator has recognized the importance of various means of evidence in aiding the court in resolving cases. Therefore, special protection has been granted to evidentiary materials against destruction or concealment by third parties. Strict penalties have been imposed on anyone who intentionally damages or hides a document or piece of evidence to prevent its use in legal proceedings.

In this study, we will discuss the crime of obstructing justice by examining its various aspects.

Justice, in its terminological sense, refers to the judiciary, including courts, judges, and individuals entrusted with enforcing the law. As for the definition of crimes that obstruct the course of justice, despite their significance and the fact that legislative systems have addressed them, no explicit definition has been provided. However, these crimes can be understood as acts committed by individuals that may lead a judge to form a false perception, making them believe something to be true when it is, in fact, false.

Obstructing the course of justice is essentially an act of deception through unlawful means or actions primarily based on evasion and manipulation. It constitutes a serious criminal practice that is egregiously used against innocent individuals through the judicial system. The ultimate purpose of such deception is to harm others and undermine their rights by disrupting the smooth administration of justice.

## Section Two: Forms of the Crime of Obstructing the Course of Justice

The crime of obstructing the course of justice in Iraqi legislation manifests in several forms, as outlined in the following provisions:

### 1. Interfering with Judicial Proceedings (Article 233)

This article was repealed pursuant to Article (1) of the Law Amending the Penal Code No. 111 of 1969, Law No. 18, issued on 01/01/1999, and replaced with the following provision:

"Any public official or individual entrusted with a public service who mediates or attempts to interfere in the work of judges or influence their legal convictions in any manner, whether to benefit one of the litigants or harm them, shall be punished with imprisonment for a period of no less than six months and no more than one year."

### 2. Issuing an Unjust Judgment (Article 234)

This article was also repealed under Article (2) of the same amendment law and replaced with the following provision:

"A judge who issues an unjust ruling as a result of mediation, interference, or influence on their legal conviction in any manner shall be punished with imprisonment for a period of no less than six months and no more than five years."

### The original text of the article stated

"Any judge or magistrate who issues a judgment that is proven to be unjust due to mediation shall be punished by imprisonment, a fine, or both."

### 3. Influencing Judicial Officials through Publicity (Article 235)

"Anyone who, through any means of publicity, publishes matters that could influence arbitrators, judges responsible for adjudicating a case before a judicial body, members of the judiciary, or other officials shall be punished with imprisonment for a period not exceeding one year, a fine not exceeding one hundred dinars, or both penalties. This also applies to influencing defendants under investigation, experts, arbitrators, or witnesses who may be required to testify in that case or investigation, or to any actions that prevent a person from disclosing information to the competent authorities. If the publication is intended to produce such an effect or if the published materials are false, the penalty shall be imprisonment for a period not exceeding two years and a fine not exceeding two hundred dinars, or one of these penalties."

### 4. Publication of Restricted Legal Proceedings (Article 236)

"Anyone who, through public means, publishes: (1) a report about a trial that the law has determined to be confidential or that the court has prohibited from publication; (2) an ongoing investigation into a felony or misdemeanor, or any document resulting from such an investigation, if the investigative authority has prohibited its publication; (3) information regarding investigations or procedures in cases of paternity, social status, divorce, abandonment, separation, or adultery; (4) judicial deliberations; (5) reports on public court sessions in a manner that lacks integrity and good faith; (6) names or images of victims of rape and assault, as well as names or images of juvenile defendants; or (7) details of civil or criminal cases that the courts have decided to hear in closed sessions, or any details from investigations or procedures related to defamation or disclosure of secrets, shall be punished with imprisonment for up to two years, a fine not exceeding two hundred dinars, or one of these penalties. However, there shall be no penalty for merely

publishing a judgment if done with the permission of the competent court."

#### 5. **Illegal Seizure of Property or Persons (Article 237)**

"Anyone who unlawfully seizes property or a person whose custody has been revoked by a judicial ruling shall be punished with imprisonment for up to one year, a fine not exceeding one hundred dinars, or one of these penalties. The punishment may be doubled if the crime is committed with violence."

#### 6. **Failure to Appear Before Authorities (Article 238)**

"Anyone who is legally required to appear in person or through an agent at a specified time and place, pursuant to a summons, order, or notification issued by a court, judicial authority, or an official legally authorized to do so, and who deliberately fails to appear at the designated time and place or leaves the designated location before the permitted time, shall be punished with imprisonment for up to six months, a fine not exceeding one hundred dinars, or one of these penalties."

#### 7. **Destruction of Official Notices (Article 239)**

"Anyone who intentionally tears, removes, or destroys a notice or statement publicly posted by order of a court, judicial authority, or a public official shall be punished with imprisonment for up to six months, a fine not exceeding one hundred dinars, or one of these penalties."

#### 8. **Noncompliance with Official Orders (Article 240)**

"Anyone who disobeys orders issued by a public official, a person entrusted with a public service, municipal councils, or an official or semi-official body within their legal authority, or who fails to comply with such orders without justification, shall be punished with imprisonment for up to six months, a fine not exceeding one hundred dinars, or one of these penalties, without prejudice to any harsher penalty prescribed by law."

### **Judicial Precedents Related to Acts that Obstruct the Course of Justice**

This section presents a set of judicial decisions related to our subject, including the following rulings:

A cassation panel was formed at the Court of Appeals in Dhi Qar to apply Amnesty Law No. 19 of 2008 on 30/9/2012. The panel was presided over by Judge Farqad Saleh Hadi and included Judges Aziz Shanta Al-Jabri and Haider Ali Nouri, who were authorized to issue rulings in the name of the people. The following decision was issued:

- **Appellant:** The Deputy Public Prosecutor before the Committee for the Implementation of Amnesty Law No. 19 of 2008.
- **Appellee:** The decision of the Judicial Committee specialized in Amnesty Law No. 19 of 2008.

The Judicial Committee, established under Amnesty Law No. 19 of 2008, issued decision No. (621/Amnesty/2012) on 18/9/2012, granting amnesty to the accused (N.F.M.), as his crime was classified under Article 240 of the Penal Code, leading to the permanent suspension of legal proceedings against him.

Due to the accused's dissatisfaction with the decision, he filed a cassation appeal before this court, requesting a review and annulment based on the reasons listed in the

appeal memorandum dated 19/9/2012. Upon receipt of the case file, it was registered under No. 88/T/Amnesty Committee/2012 and forwarded to the Public Prosecutor at the Dhi Qar Criminal Court for review. The case was returned with the prosecutor's legal opinion dated 23/9/2012, in which he requested the annulment of the contested decision.

After thorough examination and deliberation, it was found that the appealed decision was incorrect and contrary to legal provisions. The committee responsible for implementing Amnesty Law No. 19 of 2008 at the Federal Court of Appeals in Dhi Qar had previously issued decision No. 143/A-R/2012 on 28/5/2012, ruling that the accused (N.F.M.) was not eligible for amnesty under Article 7 of Amnesty Law No. 19 of 2008, as the crime attributed to him occurred after the law came into effect. This decision was upheld by the cassation ruling No. 70/T/Amnesty Committee/2012 on 27/6/2012.

Since the matter of the accused's eligibility for amnesty under Law No. 19 of 2008 had already been adjudicated, the court decided to annul the contested decision and dismiss the request procedurally. The Judicial Committee responsible for the Amnesty Law and the Misdemeanor Court were duly notified.

This decision was issued unanimously on the 13th of Dhu al-Qa'dah, 1433 AH, corresponding to 30/9/2012.

Another important decision related to our subject is as follows: The Cassation Panel was formed at the Federal Court of Appeals in Baghdad/Rusafa on January 29, 2009, chaired by Deputy President Muwaffaq Ali Al-Abdali, with the membership of Deputy Presidents Muwaffaq Ali Al-Abdali, Khalid Jowad Ma'een, and Zuhair Abdul-Sahib Hussein, who were authorized to issue judicial rulings on behalf of the people. The following decision was issued:

- **Appellant:** Deputy Public Prosecutor, before the "Baghdad New Misdemeanor Court"
- **Appellee:** Decision of the judge of Baghdad New Misdemeanor Court in case No. 91/J/2008, dated 23/12/2008

The case was referred by the Baghdad New Investigating Judge in accordance with Referral Decision No. 195, dated 10/8/2008, to the Baghdad New Misdemeanor Court for trial under the charge described in Article 240 of the Penal Code. On December 23, 2008, in criminal case No. 91/J/2008, the Misdemeanor Court initially sentenced the defendant to six months of simple imprisonment in accordance with Article 240 of the Iraqi Penal Code, with the period of detention from 23/06/2008 to 30/06/2008 being considered as time served.

1. The General Directorate of Traffic reserves the right to claim economic and moral compensation due to the incident, and to review the civil courts when the judgment becomes final.
2. A sum of twenty-five thousand dinars is to be paid to the appointed lawyer, to be disbursed from the state treasury upon the finalization of the decision.
3. Fourth: An arrest warrant is to be issued against the convicted person in accordance with Article 240 of the Iraqi Penal Code, with the investigation and the issuance of the arrest warrant being communicated to all police stations for the enforcement of the sentence.
4. Contacting the Directorate of Passports and Travel to prevent the convicted person from traveling outside

Iraq and informing the border crossings about the arrest, while ensuring that a notification is sent to the nearest police station.

5. The guarantor is to pay the bail amount of five hundred thousand dinars, to be considered a final revenue for the state treasury, and an arrest warrant is to be issued against the guarantor, with an investigation in accordance with Article 119 of the Code of Criminal Procedure.

The decision was issued based on Article 182/A of the Code of Criminal Procedure, and the decision was subject to objection.

Due to the dissatisfaction of the Deputy Public Prosecutor with the decision, a cassation appeal was filed on 13/1/2009, requesting the annulment of the decision for the reasons outlined in the appeal.

### **Decision**

After examination and deliberation, it was found that the cassation appeal was filed within the legal time frame. Therefore, it was accepted procedurally. Upon reviewing the cassation judgment, it was found to be incorrect and in violation of the law, as the court did not consider the fundamental provisions of Article 143, particularly since the act attributed to the accused constitutes an important misdemeanor that should have been communicated to the guarantor through two local newspapers. The court also failed to take into account the provisions of Article 6 of the Public Prosecution Law, which obligates the Misdemeanor Court to notify the assigned Public Prosecutor of the trial date, allowing for the consideration of the Prosecutor's opinion and requests.

Moreover, the Misdemeanor Court imposed the bail amount on the accused's absconded guarantor under Article 119 of the Code of Criminal Procedure in the same decision. Regarding the defendant's punishment, the court should have issued separate orders for the guarantor, independent of the defendant's case, and taken the appropriate decision in this regard. The Misdemeanor Court issued its decision in this matter without considering the aforementioned points, which contradicts the correctness of the judgment.

In light of the above, all decisions in the case are annulled. The case is remanded to the lower court for a new trial in accordance with the points mentioned above. The decision was made unanimously, based on ruling No. 259/A/7, dated 29/1/2009, corresponding to 29/1/2009 in the Gregorian calendar and 2/2/1430 in the Hijri calendar.

**Judge Muwaffaq Ali Al-Abdali**  
**Chairman of the Cassation Panel**

### **Requirement Four**

#### **The International Criminal Court as a Tool for Combating Impunity**

Under the principle of "complementarity" enshrined in the ICC Statute, the ICC can only prosecute cases in which national authorities have failed to act. Its primary responsibility under international law is to ensure accountability for atrocity crimes as an international judicial body linked to the United Nations by a special agreement. The most serious crimes must be punished. It plays a significant role in realizing hopes for the improvement and expansion of the International Criminal Court's influence. When it is in the interest of a state to

avoid the intervention of the International Criminal Court, it can do so by holding genuine national trials. Therefore, the Office of the Prosecutor of the International Criminal Court wields substantial influence over national authorities in countries that do so.

In terms of investigations, this step is referred to as the "preliminary examination" of cases, which the Office of the Prosecutor has viewed as an opportunity. In policy and practice, the Office of the Prosecutor is committed to promoting national trials for crimes within the jurisdiction of the International Criminal Court during the preliminary trial phase. This grants the prosecutor's office an important role and may play an effective role in what is known as "positive complementarity," uniting the efforts of international partners, global organizations, and civil society organizations aimed at assisting national authorities in effectively prosecuting international crimes. These efforts include legal assistance, capacity building, support, and political dialogue to address litigation disruptions.

Although the initial references to positive complementarity primarily come from the Court's role, the term has since evolved. Especially before and after the 2010 Review Conference of the International Criminal Court in Kampala, Uganda, maintaining momentum has been difficult since the Kampala Conference, but the term has become more widely accepted.

It includes initiatives launched by various actors to support national prosecutions of international crimes. These efforts are essential because local prosecutions of international crimes often face significant obstacles. The availability of political will among national authorities to support independent investigations is crucial, but it is often lacking or of no real use. This is because such legal proceedings tend to interfere with local and international interests that oppose accountability. The prosecution of large-scale atrocities also requires significant expertise and specialized support, including witness protection. Typically, different countries are not sufficiently prepared to face these challenges. The Office of the Prosecutor's commitment to supporting positive complementarity in the preliminary examination process as part of this broader issue could lead to significant improvements in realizing the victims' rights to justice in human rights crimes.

As the International Criminal Court's influence increases on countries, litigation efforts face significant and difficult challenges in translating these political commitments into successful practice. A state demonstrates its rule of law commitment and commitment to accountability by prosecuting international criminals who committed their offenses inside state borders. The judicial process requires local investigators to prosecute perpetrators who commit grave offenses like genocide along with crimes against humanity. Courtroom assistance constitutes only one part of the international assistance requirement. Development agencies and rule of law actors can provide essential support to countries to ensure a fair and effective trial of serious international crimes in their courts.

This recognition was the main topic of the third Green Tree Conference on Complementarity Principles. The conference was held on October 25 and 26 at Green Tree Estate in Manhasset, New York, and included representatives from international actors involved in justice, rule of law, and development to study the needs and challenges faced by individual countries in prosecuting international crimes. The



experiences of four countries Colombia, the Democratic Republic of the Congo, Guatemala, and Côte d'Ivoire were reviewed, which helped focus the discussion. David Tolbert, President of the International Center for Transitional Justice, delivered a speech reflecting the ongoing development of principles. The International Criminal Court works through "Complementarity" when interacting with states to build national capacities for prosecutions against war criminals and offenders of genocide and crimes against humanity. According to Tolbert: "Impunity remains the focal point of Rome Statute operations." The Statute emphasizes that states must fulfill the duty to investigate and prosecute international offenses that fall under Rome Statute jurisdiction.

### Conclusion

This research into "The Crime of Obstruction of Justice in National Legislations and International Agreements" leads to multiple conclusions and suggestions.

### Findings

1. The study demonstrates how it is vital for countries and international organizations to synchronize national laws and international agreements to prevent obstruction of justice crimes so justice systems can be unified and complete.
2. International entities and countries must establish educational programs for officials to understand the threats of obstruction of justice while delivering practiced-based training for judges as well as prosecutors and law enforcement personnel to manage these offenses properly.
3. The administration of justice requires countries to improve their cooperation for information sharing and criminal extradition procedures along with mutual assistance agreements.
4. Enhancing accountability and oversight systems in law enforcement agencies will protect against immune perpetrators who should stand trial in a fair judicial system.
5. The International Criminal Court needs support from the international community to maintain its function of prosecuting those responsible for obstructing justice while stopping legal immunity from prevailing.

### Recommendations

1. National laws must receive updates for implementing penalties against people and organizations which create obstacles to justice through multiple methods.
2. The fight against crimes that impede justice requires countries to boost their international collaboration and data sharing about criminal expertise.
3. National laws and international organizations need to establish more severe penalties for people and corporations involved in justice obstruction criminal activities.
4. The criminal justice system must be transparent and accountable in order to wipe out all attempts at obstructing justice throughout nations.
5. The International Criminal Court requires international backing together with sufficient resources so it can properly investigate those responsible for obstructing justice felony.

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