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Democratic Transition and Humain Rights Support Center

DAAM's periodical N° 03

Combating corruption and its implications for the process of democratization

content N° 03

General framework

The democratic transition is the set of interactions and processes that are related to transition from a non-democratic system to a democratic system of governance, which is a stage that can be characterized with great risks, in which those who were in power try to control the situation and bring back the past by all means, while democratic and national powers try to push the country into safety. The citizens' confidence in State institutions .is one of the most important guarantees to pass this stage peacefully

Corruption is considered to be a destabilizing force that overshadows the economy, security and political order. Even more, corruption has been one of the most prominent causes of the changes in the Arab region, especially those that have known popular revolutions as the spread of corruption was one of the most prominent causes of these movements. How not? When this phenomenon makes citizens lose their confidence in the State and whoever represents it, it even sometimes lead citizens to lose their feeling .of belonging to their homeland

This means that combating corruption is one of the most important foundations on which every system and its institutions are based on in order to achieve a democratic transition and at the same time, makes ordinary citizens regain their confidence in State institutions and makes them feel that a real change occurred in public policy, and In turn, it makes them .engage in combating this phenomenon and supporting the path of change

We have chosen the title "combating corruption and its implications for the process of democratization" so as to try to highlight the role of combating corruption at this difficult stage, in countries that are witnessing a transition to a democratic system, and to monitor developments in these .countries in the past years, i.e. , in the post-revolutionary period

Combating corruption and its implications for democratic transitions in" the Arab world" is the topic we chose as an editorial for this edition to simplify the related concepts for readers and put them at the heart of the topic. It was prepared and issued by Khaled Ali who is an Egyptian human rights .lawyer and politician

After that, we move to talk about a country that is witnessing a democratic transition by addressing two topics: "The legislative path to combating corruption in Tunisia after the revolution: Approaches and results"

through which Professor Katheer Bouallègue – a human rights activist, lawyer and former Secretary-General of the National Anti-Corruption Commission- presented the Tunisian legislative framework for combating corruption in the post-revolution period through a critical view by addressing possible alternatives to fill the Tunisian legislation gaps and shortcomings. The second was presented by the lawyer and activist Sharaf Al-Din Al-Kaleel by the title of "Effects of the administrative reconciliation law on combating corruption in Tunisia", through which the professor highlighted the negative effects of this law on combating corruption in a country that still trying to figure out the right way to fight .this phenomenon

And then we discuss another country that is witnessing a democratic transition phase, Libya, and that would be also through two topics: "The Libyan legislative policies against corruption", which was prepared by Professor Jazia Shaitir and the second goes by the title of "Systematic mad corruption, and inability to holding accountability: The Libyan Accountability Board report of 2017", which is presented to us by Mr. Mar- .wan Al-Tashani

After this mosaic of various articles, we chose to address the issue of combating corruption and its implications for the democratic transition in a different way through a dialogue with Miss Manal Ben Ashour, the project coordinator of I watch, a Tunisian organization that works mainly .in the field of combating corruption

DAAM Center wishes that we have been successful in our choices, and that this edition represent a real addition to the literature of comba- .ting corruption and its implications for the process of democratization

!We wish you a pleasant reading experience

Combating corruption and its implications for the democratization process in the Arab world

Khaled Ali
Egyptian human rights lawyer and politician

Corruption linguistically means: abuse, anything against common good, and to deviate from the right path, it comes in many forms according to the context corrupt/corrupted/ corruption etc. Corruption may also refer to damage, or failure, or inappropriateness. It is also means voidness, so as to say that something is void, in conclusion, as aforementioned; the expression comes to refer to several meanings according to the context1.

As a term: It means abusing official powers and authorities that are granted to public or government officials, whether related to public money, influence, or laxity and negligence in applying laws and regulations, in order to maximize personal interests and gains, causing harm at the expense of the public interest. There is, of course, no one universal comprehensive definition for corruption, as there are many definitions for it, but mainly it is the abuse or exploitation of public office's power for private benefits, whether through bribery, extortion, power to exploit influence, favoritism, embezzlement, fraud or paying ex gratia payments to expedite given services.

The World Bank defined it as "the abuse of public office for private gains"2.

Corruption might be rampant in the

1- Almaany dictionary https://www.almaany.com/ar/dict/ar-ar/%d9%81%d8%b3%d8%a7%d8%af

2- see World Bank report "The State in a Changing World, Development in the world" 1997, p.112

private sector, just as it is rooted in the government sector, in fact, the private sector is often the channel to involve government officials or political and executive officials in government corruption, mostly cases that involves misuse or wasting or facilitating expropriation of public money, profiteering, seeking services of personal gain nature, abuse of official power or influence in exchange for money or services, or breach of public interest for gaining private privileges.

Corruption has many forms in all aspects of life, it is a complicated concept that has multiple dimensions and varies from one point of view to another, and the United Nations Convention against Corruption has given1 States the authority to address different forms of corruption that may emerge in the future, especially since the term corruption is flexible which makes it adaptable and differ from one society to another. And since defining corruption is a difficult and complicated process, and since corruption has various manifestations in which through it can spread and be involved in all domains of our daily life, the convention only mentioned several examples of its forms [Bribery offenses, trading in influence, Embezzlement, misappropriation or other diversion of property by a public official, abuse of functions, illicit enrichment, Bribery in the private sector, laundering of proceeds of crime. And we can consider realistic definition for corruption.

Corruption is an epidemic disease that is damaging nations' capabilities,

Corruption is an epidemic disease that is damaging nations' capabilities, peoples' future, and their right to sustainable and equitable development, as it is an impediment for States progress in all political, cultural, social and economic .aspects

1 - United Nations Convention against Corruption 31/ 10/ 2003

peoples' future, and their right to sustainable and equitable development, as it is an impediment for States progress in all political, cultural, social and economic aspects.

The world has recognized the dangers of corruption, and that it is a scourge in all its manifestations, it is the greatest impediment to all attempts of making progress, and the main undermining obstacle for all foundations of development. All that make its effects and damages even more lethal and effective than any other form of disorder. It's devastating role is not limited to some aspects of life, but extends to almost all aspects of life such as the economic, social and political aspects2.

On the economic level, corruption leads to:

- Impeding economic growth and this leads to undermining all targets of long- and short-term development plans.
- Wasting, or at the very least misusing State resources which destroys any opportunity to make the best use out of them.
- Escape of investments, whether national or foreign, due to lack of incentives.
- Undermining fair distribution of income and resources, and this weakens economic efficiency and increase the gap between the rich and the poor.
- Weakening the public revenue of the State as a result of evading payment of customs, taxes and duties by using fraudulent means and circumventing the laws in force.
- Raising the negative impact of poor public expenditure on State resources by wasting them in mega projects, thereby depriving important sectors such as health, education and services of benefiting from these resources.
- Low efficiency of public investments and poor quality of public infrastructure due to bribes paid to overlook required standards.

On the political level, corruption leads to:

- Distorting the Government's required role in implementing State policy and achieving the development plans objectives.

2 - See Kuwait's Anti-Corruption Authority website, through this link: http://www.nazaha.gov.kw/AR/pages/effects-of-corruption.aspx

- The collapse and loss of the State's institutions, and State of law concepts, which can no longer be trusted by individuals.

- Weakening all pro-democracy reform efforts leading to political unrests and instability.

- Excluding honorable and competent individuals from leadership positions, which increases the state of anger among individuals and makes them not willing to cooperate with the State's institutions.

- Obstructing and undermining all regulatory efforts to monitor the government and private sector business.

On the social level, corruption leads to:

- The collapse of the social fabric of society and the spread of the spirit of hatred among its classes and groups as a result of inequality, injustice, and lack of equal opportunities.

- Direct and indirect impacts of economic and political corruption on security, stability and social peace.

There is no society that is totally free from corruption, but it can even be declared that we are facing a global phenomenon, this prompted the United Nations to issue its anti-corruption agreement in October 2003, which is an international recognition of the seriousness, extent and impact of this phenomenon to the extent that it has prompted the United Nations to move toward international cooperation in order to combat it, and this effort has been preceded and followed by many conventions that seek the same purpose, such as:

- Inter-American Convention against Corruption (1996).

- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997).

- Criminal Law Convention on Corruption (Council of Europe, 1999).

- African Union Convention on Prevention and combating of Corruption (July 2003).

- The Arab Anti-Corruption Convention (December 2010).

It is worth to be noted that, the UN Convention against Corruption was published and adopted at the end of 2003, has been signed by 124 countries, including 13 Arab countries, and has been ratified by 25 Arab coun-

tries, including Egypt (February 2005), Algeria, Jordan, Djibouti, and Tunisia (February 2008).

While corruption is a global phenomenon, and there is no society that is totally free of it, the fundamental difference between all these societies is the will to confront it, to recognize its risks, to control it and to reduce its spread. There are States that seeking confronting it, and other countries that create a fertile environment for the growth and spread of corruption until it becomes one of their instruments and an essential pillar of governance.

Combating corruption means all legislative, administrative, security, procedural and judicial processes, procedures and policies adopted by the State which detect corruption, collect evidence, track and investigate those who are involved, bring them to trial, enforce sentences upon them without

facilitating their impunity, protect public money and recover what has been seized from it.

The real fight against corruption does not take place after committing these crimes but it is usually preceded by an Avoidance and prevention phase... "Avoidance" means taking the necessary means to make the society and individuals unwilling to commit the prohibited act. "Prevention" means protection from harm, prevention of crime before it occurs, and both will be achieved only through providing and paving the way for (accountability, transparency, integrity).

"Accountability" means that everyone is subject to the law, especially those who are in public office, no matter how high the position they hold, and that none of them is subject to be immune against any claim.

Accountability enables all regulatory agencies, whether judicial, legislative, administrative or popular, to enforce the law on all public officials, especially those who are at the top of the hierarchy, whether elected or appointed, so that their work is confirmed to be consistent with democratic values, and with the law that defines their functions and tasks, which is the basis for their continued acquisition of legitimacy and support from the people.

"Transparency" means the creation and enforcement of a legislative environment that allows, through the right to know and free circulation of information, knowing the functioning of government organs, the clarity of its relationship with employees [who are beneficiaries of services or financing them] and the publicity of actions, procedures and objectives, and that apply to the government's work as well as to the work of other non-governmental institutions.

"Integrity" is the system of values of honesty, dedication and professionalism at work.

Despite the convergence of the concepts of transparency and integrity, the second relates to moral values, while the former relates to practical systems and procedures. Both need an institutional environment that helps their availability.

One of the most important problems of combating lies in how to strike a balance between individual rights on one hand and the society's public interest on the other, and to achieve political, economic, and social stability in an open international society that is dominated by globalization, free-market economies, multinational corporations, and transnational corporations.

Corruption's implications are not limited to economic aspects only, but it also affects the societies' stability and security, and undermines the institutions of democracy, moral values and justice, jeopardizes development and the rule of law, and hinders all the paths of democratic transition that peoples seek.

Our Arab countries are the best example for that, as we have enormous wealth, but we are the least developed countries, we are the biggest importer of weapons in the world, and the forces of colonialism control parts of its land, drain its wealth, control its vital decisions, leading to a situation where our Arab homelands fight within itself instead of facing its enemy, crimes against humanity and hunger are besieging Yemen, and the Syrian people are suffering from the most severe waves of asylum in the world, Sudan is being divided into two countries, Iraq and Libya are threatened by this same danger. Terrorism, oppression and poverty are grinding the Egyptian people and putting them at crossfire. Lebanon is at a top of volcano that is about to erupt, Saudi Arabia, the UAE and Qatar are getting their capabilities drained in their struggle for dominance, influence and interests in the Arab world, and competing with Oman to scramble for public normalization with Israel, and economic and social conditions ruthlessly crush the people of Jordan, Tunisia, Morocco, Mauritania, Algeria, Somalia and Djibouti..

This was not a coincidence, but it is a reflection of our Arab homeland's ruling corrupt systems, in which many rulers treat the country's wealth as their own treasurer for them and for their ruling close buddies.

For some researchers1, corruption has rea

1- See the researcher's Walid Mansour - the role of security agencies in the fight against corruption in the light of the United Nations Convention against Corruption - PhD Thesis - Mubarak Academy for Security - Faculty of Graduate Studies.

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sons ranging from personal reasons to internal public reasons and external ones1.

Some summarize these reasons as follows:

- Capital's ascendancy in a globalizing and market-oriented world.

- The spread of poverty and poor social and economic conditions that lead to scarcity of sources needed to create jobs and promote public services performance, which increases competition for limited employment and services, as well as seeking the help of intermediary persons to win employment opportunities or use services.

- These stifling social and economic conditions sometimes result in some trading influence or using the public functions to provide services for a ridiculous expensive price.

- The public and governmental employees' low salaries are among the well-known causes of corruption, and many researchers agreed that as salaries fall, there is a continuous rise in prices and living costs, which represents an environment for some governmental workers to search for other financial sources, including bribery, which is a crime of corruption2.

- Widespread ignorance, lack of knowledge of individual rights, the prevalence of traditional values, and close ties and links based on descent and kinship that facilitate benefits.

- Failure to comply with the principle of separation of State powers, and the encroachment of the executive authority on the legislative and judicial branches constitutionally, thereby violating the principle of mutual control between authorities.

- The weak, marginal and limited role of civil society institutions in monitoring the government's performance and the fact that some of them are not neutral when they carry out their work3, or that the Authority seeks to make them lose their independence.

- There are some external reasons for corruption, the ones which result from the existence of business interests and relationships with partners or producers from other countries; it mainly can be addressed as the use of illegal means by companies to obtain privileges and

1- Ibid - Walid Mansour - the book (references) «the Arab integrity system in the face of corruption» from the publications of Transparency International, the Lebanese Center for Studies, Technopress Press 2005, p. 204 and beyond.
2 - Ibid-Walid Mansour - Dr. / Ahmed Abu Rayah, - Corruption: ways and mechanisms to combat it - Publications Coalition for Accountability and Integrity Aman - First Edition - p. 10.

.Ibid, p.9 - 3

monopolies within the State or through this network of interests and relationships to sell their corrupt goods4.

- International and regional economic institutions that impose on peoples development paths that drain money and wealth and deepen circles of poverty and social injustice, as privatization of the public sector companies proceeds, in fact that is being applied in Egypt since 1996, until in 2015 its revenues reached 28 billion Egyptian pounds only5, whereas the arbitration ruling issued against Egypt for its abstention from exporting a gas share reached 2 billion dollars, which is equivalent to 36 billion Egyptian pounds.

- Unfair international and bilateral trade agreements that impose a resolution system for investment disputes by international commercial arbitration, thereby undermining States sovereignty and facilitates the issuance of high cost judgments against developing countries.

Corruption is also a major impediment to economic development because it increases the cost of projects and deals, limits investment motives, limits state revenues from tax collection, enables service providers and entrepreneurs to ignore quality and professional standards which harm countries and their economies, and facilitates economically unjustifiable transactions and contracts, at an expensive cost, without genuine tenders or competitiveness, or through conceptual competition, so eventually enterprises and land will not be offered for those who provide a better service at a lower cost, but for those who pay better bribes and commissions6.

The main reason for the spread of corruption in our Arab world is the absence of the rule of law and its culture, both at the popular and formal levels. The relationship between the rule of law and corruption is an inverse relationship, the more the law is a fair and objective tool in regulating the relationship between individuals and society, and between the ruler and the ruled, and applied by all, without discrimination or bias the more corruption is controlled and reduced, and vice versa7

Thus, the struggle between the rule of law and corruption is an eternal and decisive conflict as it is an existential conflict. An environment that encourages rule of law enables combating corruption and reducing its effects, accordingly, corruption resist and obstructs the adoption of any legislation that would limit its spread, and seeks to weaken the institutions and control them to serve its own interests and objectives.

4 - Ibid.

5 - National Planning Institute - Planning and Development Issues Series (No. 278) - Mechanisms and means of reforming the public business sector in Egypt - July 2017

6- See - Dr. Daoud Khairallah - El Lewaa International Newspaper - An article entitled Corruption and obstacles to development in the Arab world

7 - Ibid- Dr. Daoud KhairAllah

The main reason for the spread of corruption in our Arab world is the absence of the rule of law and its culture, both at the popular and formal .levels

Needless to say that corruption prevents building of democratic systems, and that freedom of information, transparency, integrity, accountability, and independence of regulatory and judiciary authorities are the most important pillars and foundations of any democratic system, pillars that are indispensable in the fight against corruption and confronting it.

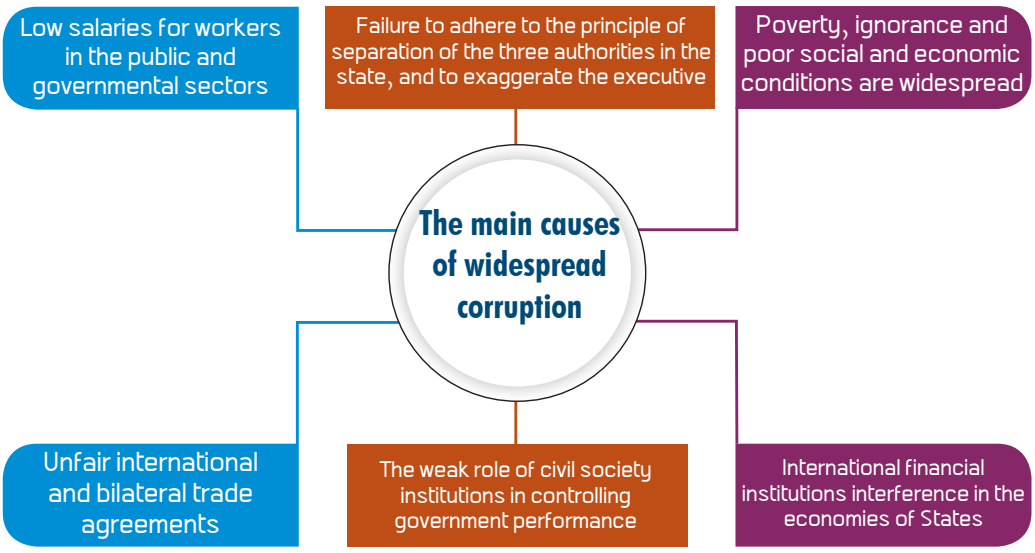
The same fact can be affirmed through considering Transparency International's Corruption Perceptions Index (CPI) which monitors and documents the relationship between transparency and lack of corruption in most democratic countries and states, and it can be easily found that corruption spreads in totalitarian and authoritarian regimes and vice versa.1

And who ever closely observes the Arab world and its governing systems, can clearly see the wide gap between rulers and those who are ruled which keeps increasing and getting deeper and deeper. It is difficult to find in an Arab state a ruler who represents the aspirations and interests of his

1 - Ibid- Dr. Daoud KhairAllah

people, and derives his ruling's legitimacy from his people's will, a will manifested through constitutional institutions that transparency and fairness guarantees. Whoever observes can also see the security chaos and destruction in many Arab countries which are the result of a political blunder and the absence of State's components and institutions that guarantee the security of any nation, and create and facilitate conditions of its growth and development. It is noted that in our region the concept of freedom has not been really deepened, and that the scientific mindset, and confidence in the ability of man, not only on understanding his society, but also on developing it has declined greatly from what it used to be for decades. Any perceptive observer notes accurately that the world nowadays has available enormous economic potential, but our countries are among the least developed countries economically.

This Arabic scene which can be characterized as a politically blundering, chaotic in terms of security, scientific backwardness and economic reces



sion is one that cannot be an environment for development and growth, it is a reflection of many obstacles1, the most notable one of them is corruption. Development, whether economically, socially or politically is usually historically coupled with the concept of freedom and awareness of human beings of their mental abilities and using them to understand their society and work to develop it for their own benefit.

I am convinced that any development can be expected in the Arab world will only be a reflection the concept of freedom's evolution that would naturally be emanating from self-confidence, Arab's mental potentials and a [2].desire to keep up with our time's progress in all areas of life

Democracy is a number of mechanisms and tools that enable people to express their wills and participate in public affairs. It is also the accumulation of culture acquired by citizens' practice and experiences. And because democracy involves, in nature, material, moral and symbolic dimensions, it requires a long period of time to cultivate the land for it to be available and ready to be embraced and to nurture its development and continuity, before it become the value shared among people, regardless of their color, sex, or their beliefs or economic, social and political backgrounds. 3

However, the real democracy experiences with all what it contains of acquired culture by society members comes through practice and the accumulation of experience and expertise, and from the many critical readings of global indicators to measure democracy and the interdependence that

Ibid - Daoud Khairallah - 1
Ibid- Daoud Khairallah - 2
See- Hisham Yahia- Democracy and the problem The relationship between the patterns of corruption and crime Anizh- - 3
https://goo.gl/mWj5B4

exists between knowledge and application, and understandings of democratic practice, it emphasizes that the issue of measuring democracy in its comprehensiveness, dimensions, quantitative the qualitative indexes is a very complicated issue and varies from one country to another according to different circumstances, and we cannot also separate democracy applications forms from every society's political, social and cultural aspects which primarily control Democracy index's composition and its assessments in any country4

The disposal of corruption networks needs an integrated vision that aims to dismantle its foundations, on legislative, financial, administrative or cultural terms. And the existence of a real democracy that allows direct control on local bodies and authorities, starting from the smallest employee in the localities and to the governor himself, a system that prevents the spread of corruption crimes in local government in particular and in the state apparatus in general. The peaceful transfer of power will not allow any party to keep corruption crimes hidden, because he will be in power today but tomorrow his opponent will take his place.5

Any strategy to combat corruption requires the use of a comprehensive means supported by the State's true will to address it, these means include the following:

1. Adopting a democratic system that is based on democracy, citizenship rights, and respect for the Constitution and the principle of flexible separation of powers, the rule of law, the judiciary's independence, and the respect and subordination of all to law equality before courts, and the implementation of law provisions to all parties equally, in other words, a system that is based on accountability, transparency, and integrity.

2. Building an independent judiciary system that is strong and honest, and free of all influences that could weaken its work and to make sure that the executive branch is committed to respect its judgments.

3. Activating laws related to combating corruption at all levels, as the law on disclosure of financial accounts for those who hold governmental official positions, racketeering law, the law of free access to information, and the tightening of law provisions on combating bribery, nepotism and abuse of public office in the Penal Code

4. Developing the role of the legislative bodies on oversight and accountability through the various parliamentary tools in this field, such

Ibid- Hisham Yahia - 4

Dr. Adel Amer –Almasryoon newspaper - an article entitled Anti-corruption mechanisms - 5

as questioning ministers and putting forward topics for discussion public, investigation and interrogation procedures, and government confidence motions

5. Strengthening the role of public oversight bodies as an observer over the State's activities, and strengthening the role of financial and administrative oversight offices and boards of Grievances, which tracks cases of mismanagement, abuse of power, lack of financial and administrative legal commitment in state institutions, and lack of transparency in procedures relating to exercising power in public offices.

6. Focusing on the ethical and moral dimensions and cultivating humans to fight corruption in public and private business sectors, though stressing out all religions calls to fight corruption in its various forms, as well as through the civil service laws or regulations and conventions relating to exercising functions (codes of conduct)

7. Providing the press the needed freedom and enabling them access to information and granting immunity to journalists to enable them

doing their part in disseminating information and carrying out investigations that reveal corruption cases and perpetrators

8. Developing the public's role in the fight against corruption through spreading awareness of this scourge and its risks and cost on the state and its citizens, and promoting the role of civil society institutions, universities, educational institutes and intellectuals in the fight against corruption and in raising sectorial and public awareness

9. Discontinuation of all impunity policies and legislation

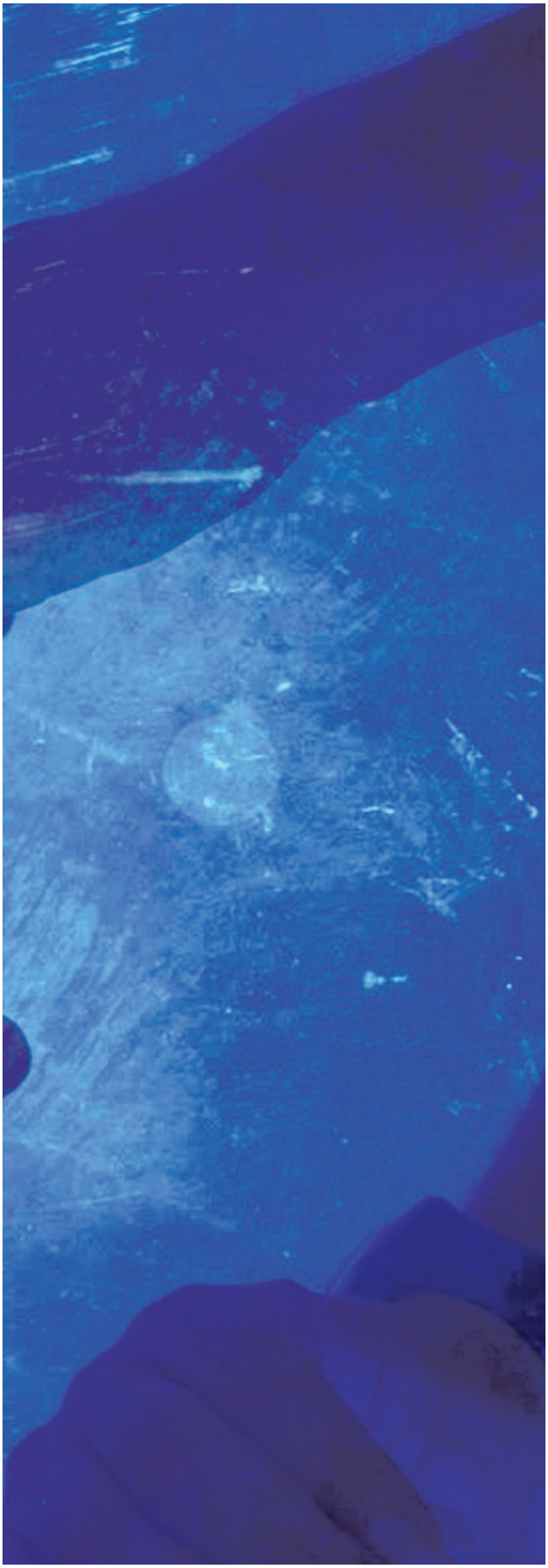
10. Reviewing all international trade agreements, and adopting new agreements models that would restore balance between investments and protecting the developing countries rights and sovereignty over their resources

11. Discontinuation of emergency laws and all special or military law systems

12. Dealing with corruption as a human rights violation will open up new prospects to combat corruption, control and reduce it

The legislative track to combating corruption in Tunisia after the revolution... Approaches and results

Katheer Bouallègue
Tunisian lawyer, human rights activist and Former Secretary General of the National Commission against Corruption



Introduction:

There is no doubt that corruption was one of the main causes of the Tunisian revolution as everybody was talking about ruling family mafias, affinity relationships, well-connected families of the former regime, and senior officials both in the ruling party and in the state who are related to them due to their reconciled common interests.

So, it is no coincidence that the revolution's slogans that the demonstrators all over the country used to raise and repeat reflected a clear indignation from this scourge which eroded the national economy and made the country's capabilities exclusive to a group of influential hypocrites, so slogans as "Bread, Freedom, Social justice" or "Bread, Freedom, National dignity " and " Employment is a right... you gang of thieves" has become a reflection of complaining about corruption and thus combating corruption has become a national and popular request.

And perhaps the political response was not too late in responding voluntarily or involuntarily to this popular demand to achieve that after the revolution as it came only in months after the regime's collapse as the Higher Authority for Realization of the Objectives of the Revolution, Political Reform and

Democratic Transition (Which was the only consensual political reference tool in that period) requested the issuance of decree number 7 for the year 2011 " of 18 February/January 2011" on The National Commission on Investigating Cases of Corruption and Bribery" which was entrusted –in its first stage- to research and investigate suspicions of corruption related to the former regime.

The trend of accelerating this committee's formation didn't obstruct the Higher Authority for Realization of the Objectives of the Revolution, Political Reform and Democratic Transition's intention to adopt a long term policy that is based primarily on reconsidering rebuilding the whole political system, and there was a consensus among the Authority on the fact that the predominance and full control of the executive branch over various aspects of political life and all state's authorities was a major point of weakness for the Tunisian political system that defected powers' balance and distribution, the fact that led to the judicial and legislature's authorities' lack of autonomy.

This predominance of the executive body on the expense of the other state's authorities was the corner stone for unilateral ruling and tyranny, and thus it was essential to think deep to come up with a methodology to create the necessary guarantees so as not to repeat this horrible experience, and from this point the idea of creating higher independent authorities began to emerge, to work as modifying authorities that has some of the powers that the executive branch was exclusively controlling and at the same time have general authorities independent from the executive branch approval even if they disagreed.

The major concept then in combating corruption is that it is a task exercised by the executive branch of authority through a combination of regulatory and restraining mechanisms which is mainly the following:

First: Supervisory bodies of an administrative nature:

Public inspections:

- Public Control Authority for Public Interests:

It was established under Chapter 86 of Law No. 100 of 1981, dated 31 December 1981, concerning the financial law of 1982, which was issued in implementation of Order No. 6 of 1982, dated 5 January / January 1982, on the Basic Law on members of the Public Control Authority for Public Interests, which canceled the public inspection for administrative interests.

- State Comptrollers Authority:

This body was established according to Order No. 2131 of the year 2002/ 30 September 2002 concerning the creation of the prime ministry's structures.

- Public Finance Control Authority (CGF Ministry of Finance):

This body was established according to Order number 7 of 1982/ 5 January 1982, which was signed under review Order No. 2886 of 2000/ December 7, 2000, on the organization of Public Finance Control Authority and its working procedures.

- The Public Control Authority of State Domains and Land Affairs (Ministry of State Domains):

The Public Control Authority of State Domains and Land Affairs was established under the provisions of Chapter 6 of Order No. 1070 of 1990 /18 June 1990 on the organization of Ministry of State Domains and land affairs.

- High Administrative and Financial Control Committee:

The President's High Administrative and Financial Control Committee was established according to Order No. 906 of 1993/ 19 April / May 1993, before being subject to Law No. 50 of 1993/ 3 May 1993.

Second: Bodies of judicial nature:

- Court of Audit:

The Court of Audit was established pursuant to the provisions of the First Republic's Constitution of 1959, which stated in

The trend of accelerating this committee's formation didn't obstruct the Higher Authority for Realization of the Objectives of the Revolution, Political Reform and Democratic Transition's intention to adopt a long term policy

article 69 and revised by the constitutional law number 65 of 1997/ 27 October 1997, that: "The State Council is composed of two bodies:

1) The Administrative Court,

2) The Audit Office

The organization of the State Council and its two bodies are set by law, as well as the jurisdiction of these bodies and the procedures applicable before them».

The Court of Audit or "The Audit Office" was established according to Law No. 8 of 8 March 1968, on the organization of the Court of Audits and according to the revised and supplementary Law number 7 of 20 April / May 1970, Organic Law number 82 of 29 October 1990, Organic Law No. 75 of 17 July 2001, and Organic law number 3 of 29 January 2008, and it has the form of a supreme control body that ensure the proper management of public funds through judicial and modifying tasks and also handles assembly permits to honor the gains for some staff categories.

- The court of financial discipline:

This circuit was established according to Law No. 74 of 1985/ 20 July 1085 concerning the determination of the errors of conduct committed against the State and administrative public institutions, local public groups and public enterprises and the control of the penalties applicable thereto and the establishment of the financial discipline circuit.

Despite the importance of the theoretical and hypothetical roles of these different bodies but their results in combating corruption in the public sector remained limited and remained a captive of the ruling political system as it was only a tool to eliminate staff undisciplined staff opponents who refuse to carry out high rank officials instructions, it is also noted to be said that the material and human resources of these bodies was never sufficient for them to carry out their required observatory role, and thus these bodies' role turned into gathering news and information and provide them to officials to address and confront the phenomena of corruption in public section especially that they are not bound to publish their reports to the public, for example, the Audit Bureau which was established in 1968 published its first report in 2013.

According to this, the members of "Higher Authority for Realization of the Objectives of the Revolution, Political Reform and Democratic Transition" decided to give the fight against corruption the attention needed

through establishing an independent body to full the Tunisian State's obligation that it was committed by when it ratified the UN Convention against Corruption in 2008, the convention on which the National Fact-finding Committee on Bribery and Corruption missions were based on, the very Commission which has taken the convention's approaches and put them into effect by proposing a bill for establishing the Independent Commission Against Corruption (ICAC) which was subsequently according to Decree No. 120 of 14 November 2011.

"Corruption: Any conduct committed that is contrary to the law and regulations in force prejudicial or likely to prejudice the general interest, any act that contains abuse of power, influence or function for personal benefit, that include all forms of bribery in public and private sector, embezzlement, misappropriation or wasting of public funds, abuse of power and trading in influence, all cases of illicit enrichment cases, dishonesty, misappropriation of juridical person's property, money laundry, conflict of Interest, insider trading, tax evasion, obstruction of justice, and all acts that threaten public health, safety or the environment" Organic Law No. 10 of 2017

The principle and the heart of the matter is therefore, in establishing an independent anti-corruption body, to establish it far away from the executive branch and assign this national task to a body that is totally independent from the executive branch's control to carry it out and be responsible for identifying its functions, requirements , objectives and strategies. And this is not as easy as we can imagine as in this case not only would the executive branch no longer has the power and mechanisms for combating corruption but also it would become subject to the Commission's authority to monitor, investigate and thus they would be obliged to comply with the law.

However, as we will try to make it clear through this study, the executive branch and its deep state management have not only stood by and watch this flood of laws and legislative measures that attempt to detect and combat corruption, laws which found its best support in the current revolutionary tide, but instead they had attempts and efforts in manipulating and deactivating laws, rebelling against applying them and even pushing toward issuing laws that are against the overall orientation of combating corruption.

All this, of course, should not be concealing, the citizen's dealing with the problem of fighting corruption, nor the judiciary's dealing with the same issue.

But before addressing all this, let us reflect first on the definition of corruption as a concept in Tunisian law as this definition has evolved since 2011, the first definition we had for corruption was in Article 2 of Decree-law 120 of 2011 as it stated that: "Corruption: Abuse of power, influence or function in order to obtain a personal advantage. Corruption particularly includes all forms of offenses in public and private sectors, embezzlement, mismanagement or wasting of public funds, abuse of authority, illicit enrichment, dishonesty, squandering people's funds or juridical person's money and money laundering"

Another definition was provided by Organic Law No. 10 of 2017, dated 7 March 2017 relating to the reporting of corruption and the protection of whistleblowers in its Article 2 when it stated that: "Corruption: Any conduct committed that is contrary to the law and regulations in force prejudicial or likely to prejudice the general interest, any act that contains abuse of power, influence or function for personal benefit, that include all forms of bribery in public and private sector, embezzlement, misappropriation or wasting of public funds, abuse of power and trading in influence, all cases of illicit enrichment cases, dishonesty, misappropriation of juridical person's property, money laundry, conflict of Interest, insider trading, tax evasion, obstruction of justice, and all acts that threaten public health, safety or the environment"

Undoubtedly, The second definition i more comprehensive and precise than the first one that was mentioned in Decree-law no. 120, and it also

was included in a higher-value legal text than the Decree, but nevertheless we observed the following :

1. The issue of corruption in the private sector remains a blurred one, especially since it is known that the crime of giving and conceiving bribes is only applicable in the public sector and is not considered an offense if it comes to private sector.

2. Acts that may constitute corruption in accordance with the definition requirements mentioned may not be actually crimes or not fall within the scope of criminalization. In this sense, the Anti-Corruption Authority may find it difficult to deal with them outside the framework of amendment proposals provided to the administration.

3. The legislature did not address the issue of funding political parties and electoral campaigns, although it is one of the most complicated problems of political corruption.

Let us therefore try to mention the most important legislative texts on combating corruption, which can be summarized according to their time line as follows:

- Decree No. 120 of 2011, dated 14 November 2011.

- Decree No. 2012-1425 dated 31 August 2012, amending and completing decree n° 2010-3080 dated 1st December 2010, establishing Higher Advisory councils.

- The Constitution of 27 January 2014.

- Organic law No. 2016-77 of 6 December 2016, relating to the economic and financial judiciary pole

- Organic law No. 2017-10 of March 7, 2017, relating to the reporting of acts of corruption and the protection of whistleblowers

- Organic Law No. 2017-59 of August 24, 2017, on the Constitutional Commission for good Governance and Anti-Corruption.

- Organic law No. 2017-62 dated 24 October 2017, relating to the reconciliation in the administrative field.

- Law No. 2018-46 of 01 August 2018, on the authorization of gains and interests, the fight against illicit enrichment and conflicts of interest.

- Organic law No. 2018-47 of 7 August 2018, relating to provisions common to independent constitutional bodies

We will address the laws referred to above in the context of series fundamental questions that will be specific to legislative strategies of combating corruption and, therefore, in the light of these texts, we will study carefully the following detailed issues:

1- The legislative initiative relating to combating corruption

2- The financial issue

3- The limits of investigation into corruption suspicions

4- The problem of not enforcing laws

5- Legislating laws that conflict with the philosophy of combating corruption

First: legislative initiatives to combat corruption

However, the legislative initiative cannot be reduced to the technical and procedural data when submitted to the Assembly of the Representatives of the People, but they shall be necessarily subject to indispensable logic, namely applying policies adopted by the legislatures of the Constitution itself who definitely wanted to provide constitutional bodies-including the Constitutional Commission for good governance and anti-corruption- the necessary independence and mechanisms to conduct surveillance on administrations, the executive branch in particular.

Perhaps the biggest proof of that is what the Organic law for reporting corruption and protection of whistleblowers provided as its second article stated –among others- identified the public structures that are subject to the oversight authority of the Anti-corruption committee and that included, inter alia, the Presidency of the Republic and its affiliated institutions and the Prime ministry and various structures that are under its control internally and abroad.

The issue then relates to the Anti-corruption committee scope of intervention to monitor the proper functioning of the executive branch and suspicions of corruption that might arise within its administrations, which means that the executive branch of the State, which is primarily responsible for combating corruption became after concluding the constitution of 2014 and after the legislature's intervention with in the frame of the law for reporting corruption and protection of whistleblowers subject to mo-

nitoring and following up investigations which is one of the powers of the independent authority.

According to this logic, which requires referral of the executive branch's powers to the independent authority we cannot imagine that the initiator of legislating laws could be the same body that would theoretically be affected by those laws by having some of its powers taken from

It is well - known also that the initiator has a great control on presenting its point of views and protecting their interests and powers as it is the one that draw the line and set the philosophy

And it is strange that this is exactly what happened, as all legislative initiatives related to combating corruption was submitted by the executive branch and that of course opened the door for making legal traps in the legislated proposed texts so they can keep the upper hand in controlling the fight against corruption and be sure that whatever they lose can easily retrieve

Second: the financial issue

It is known that business is based on money, and thus we cannot imagine an independent structure that is entitled to fight corruption withal its aspects and dimensions without having a budget that enables it from assigning human resources and applying its strategies and objectives.

And perhaps the mere declaration of adopting the principle of administrative and financial autonomy is not sufficient to achieve this independence and au

Perhaps the biggest proof of that is what the Organic law for reporting corruption and protection of whistleblowers provided as its second article stated –among others- identified the public structures that are subject to the oversight authority of the Anti-corruption committee and that included

tonomy, as financial autonomy as stated in the UN Convention against Corruption and reinforced by a series of comparative experiences requires first that discussing the budget terms of the Commission be isolated from the impact of the executive branch, as it is pointless when the executive branch can identify the Commission's budget terms through the minister of finance, and that issue was subject to a heated debate when the law of common provisions of constitutional bodies was discussed before the Assembly of the Representatives of the People when the Commission's representatives insisted on applying on of two choices before the parliamentary committee :

. Either thinking about assigning valuable resources for the Commission that shall be taken as a percentage from the total funds that the Commission shall help in its retrieval for the benefit of the nation or any other valuable resources similar to what is applied in Italy as percentages normally got taken from public transactions.

. Or to discuss the budget directly with the Head of the competent Parliamentary Committee and decide the budget without any interference from the Executive branch.

Of course, this position taken by the Commission was strongly confronted by the government which insisted on what it considered as the necessities of taking into account the country's capabilities and the principal of budget unity and thus decided imposing its legislative initiative which is that the Commission's budget should be discussed by the Minister of Finance after a proposal made by the Commission that includes a proposed budget and a detailed program for its disbursement and then it should be referred to the Assembly for approval and inclusion in the general budget.

What is clearly known then through what we have mentioned here, is that the Executive Branch does not only has full unilateral control over legislative initiatives related to combating corruption but controls as well determining the budget of the independent entity and how it should be spent, in the same context the budget is subject to a governmental body which can pay in installments or stall in paying endlessly

The Report of Council of Europe noted this dilemma 14 June 2017 as it stated that:

In Europe, anti-corruption agencies are generally attached to another body (*the Ministry of Justice or the Ministry of the Economy, Finance and Budget*) and thus have its financial resources from the budget of the state. This can sometimes pose problems in terms of budgetary independence

since certain politicians fear investigating these agencies or persons that can limit their budget and their possibilities of action.

En Europe, les agences de lutte contre la corruption sont en général rattachées à un autre organisme (le ministère de la justice ou le ministère de l'économie, des finances et du budget) et ont ainsi des ressources financière provenant du budget de l ' etat. Ceci peut parfois poser des problèmes en matière d'indépendance budgétaire puisque certains hommes politiques craignant les investigations de ces agences contre leur personne peuvent être tentés de limiter leur budget pour limiter leurs possibilités d'action}.

Third: limits of the investigation mechanisms and investigating suspicions of corruption

Everyone agrees about the importance of investigation and oversight missions on suspicions of corruption crimes as an effective mechanism for combating corruption and non- impunity assurance that are assumed by an independent structure made especially for that purpose, and the Tunisian legislative course has known two phases, the first was framed by Decree 120 relating to organizing the work of the Anti-Corruption National Commission, and the second was formed by Organic Law no.59 relating to regulating the Work of the Constitutional Commission for good governance and the fight against corruption

Phase I: Investigation under Decree 120

The Decree provided the newly formed Anti-Corruption National Commission a special body called the special authority for prevention and investigation which was regulated according to Articles 22 to 33, the mission of the authority especially as set forth in Article 31 is as the following:

"The Prevention and Investigation Authority is responsible for investigating corruption crimes, and shall in this context, collect information, documents and certificates that shall enable it from revealing the truth about suspicions related to committing corruption crimes by any natural or juridical person, public or private or any organization, association or commission, whatever its nature is, and shall enable it also form confirming the validity of this information and collected documents before referring them to the competent judicial authority to prosecute the perpetrators. It also has the authority to carry out inspection missions, seizure and confiscation of documents and properties for all professions even the private ones if it views that it needs to be inspected without any other procedures to be made. And the transcripts and reports issued by the Prevention and Investigation Au

thority is considered to be legal evidence that cannot be challenged except by allegation of forgery"

What is really relieving at this level is that Decree no.120 was clear in enabling the Investigation Authority affiliated to the Anti-Corruption Commission from all the judicial mechanisms that facilitate its work and duties in investigating and configuring files, and it even gave its reports a legal effect as a proof that can only be challenged through allegation of forgery, and even more importantly in my estimation, is that it made it not functionally subject to Public Prosecution when it gave it an equivalent judicial power which with it, it can carry out all investigative tasks needed, including arrests and inspection and thus referring the file in its complete form to Public Prosecution to do whatever it views necessary, referring it the Judicial authority or archiving it

But at the same time, it is a sad fact that this Authority that is supposed to be established by a governmental order according to Article 22 of the Decree was not established till the very moment of writing these letters despite having more than 7 governments in power and despite the several demands made by The Anti-Corruption National Commission on several occasions.

Phase II: Investigation under the provisions of Organic Law no. 59 on Good governance and Anti-Corruption Commission

This law has witnessed a serious setback since the issuance of the first draft that blew up all the possible independence for the Commission towards the executive branch as it gave the anti-corruption department agents a subsidiary judicial power and the direct supervision of the Public Prosecution whose members are nothing but obedient employees for the Minister of Justice, a member of the supposedly monitored government.

This situation is already chaotic, as Article 19 stated that when anti-corruption department agents exercise their duties have the right to exercise judicial powers in accordance with the Code of Criminal Procedure and the provisions of this law , and they have the authority receive testimonies, gather information and evidence, carry out inspections, archive documents, seize portable properties and equipment, issuing transcripts and reports with the possibility of using the help of public force, and the agents of this department have the authority while investigating an issue if any corruption suspicions arises while investigating that issue about another issue, to investigate the later and to make an arrest after taking the permission form the judiciary.

So, What it is clear is that the hypothetical Commission's independent investigation authority vanished by the power of the new law and despite the fact that it is being challenged on the basis of unconstitutionality for breaching the principle of independence, the Provisional body responsible for checking the constitutionality of bills considered that this law is valid and it considered that the judiciary is the only protector of the rights and freedoms and therefore there is no room for investigation whatsoever out of its scope of authority, and as a consequence, agents of the Commission's implementation department would carry out their tasks as law enforcement forces as stipulated on Article 9 of the Code of Criminal Procedure

And that is Disastrous especially that the Public Prosecution Authority suffers from great problems that can be summarized as follows:

The case of Article 20 M E C

Revealing the truth about corruption and crimes surrounding it, is an essential part of Public Prosecution's work in instituting proceedings and this falls exclusively within the Public Prosecution's jurisdiction as it is well known that public prosecutors institute and manage cases proceedings according to (Article 20), they are the holders of that power whether it was preceded by a complaint or a flagrante delicto.

A power that is bounded only what the legislature provided for the aggrieved do on the responsibility when a decision of archiving the issue is taken, i.e., the public prosecutor as the original holder of monitoring authority has the right to refer to the investigation department or other felony circuits as well as the authority to archive the whole issue.

In the first case, i.e. referring the investigation, the victim has the right to initiate proceedings to protect his/her personal and civil right before competent judicial circuits.

In the second case, i.e. archiving the issue and not initiating proceedings, the victim exercises his personal right by revitalizing the issue on his own responsibility, as in in this case and despite of the archiving decision by the public prosecutor, the proceedings and the case would continue to be considered by the judiciary regardless of this decision.

But the question arises when the public prosecutor chooses to negatively refrain from issuing any order or take a position towards the case, as in this case the investigation would not be carried out and issue would not be even archived so as to let the victim revitalize it and initiate proceedings on his own responsibility.

The Tunisian Code of Criminal Procedure did not explicitly stated how to deal with the public prosecutor's negative decision of refraining to take a decision or issue an order, as the law did not bind the Prosecution to issue its order in a specific time limit and did not state a way to challenge it by an objection or appeal or a reconsider petitions or any other way.

The prosecutor as the original holder of investigation authority towards perpetrators can open the gate for them to impunity in a legal way through not investigating the issue, as the investigation is not bound by a legal time limit while the crime itself has a limitation and could be time barred for failure of complaining and investigating within the time limit (Article 6 E C)

Some comparative penal legislation noticed this imbalance in procedures so it restricted the prosecution's authority to initiate proceedings with in a time limit of 6 months or year from the date of filing a complaint or a petition , and thus if the public prosecutor didn't take any action or investigate or archived it, the victim has the right to directly initiate proceedings of a case on his own responsibility and end any opportunity of impunity.

The case of Article 31

The Tunisian punitive system has chosen to enable the Public Prosecution to initiate investigation through "an investigation judge" without carrying out a whole legal investigation when entitled with case that is vague or committed by an unknown suspect, as Article 31 considered that " Public Prosecutors has the authority, if the complaint did not amount to enough reasoning or justification to request a temporary investigation by an "Investigation Judge" until the time of charging a person or where appropriate requests are made against a particular person"

Usually, the prosecutor initiates an investigation and refers it to one of the investigation judges those who are entitled to those missions, and from the moment of the referral they become totally free to take any decision whether to initiate hearings, investigations, seizure, inspections, referral or archiving, and that was stated in Article 51 m e c " Cases are ultimately and irreversibly entitled to an investigation judge according to an investigative order"

And the difference between the cases stated in Article 31 and Article 51 that the investigation judge in the first has a restricted authority and subject to the public prosecutor while the second case he has an absolute authority after the issue gets irreversibly referred to him.

Article 31 M E C can be considered an open door for legislative

impunity for the following reasons

Investigations are temporary and against unknown persons, i.e., the investigation judge has no authority to identify the accused or the charges, as he act under the authority of the public prosecutor as one of his assistants.

The investigation order does not include specific charges against defendants, and this render the Criminal Proceedings law meaningless specially to legal statuses as there is no charged persons or a victim or a legal case. In another words, the complaint that was filed by specific person against specific perpetrators eventually ended, no longer has a legal effect and tuned eventually into some papers with another legal file, i.e., it does not give its filers the right to access investigations, testimonies and supporting evidences.

_ Article 31 protects defendants as it turns them into witnesses before the investigation judge who does not has the right according to Article 31 to question them as defendants.

_ The investigation judge is not bound by a time limit to carry out his duties and return it to Public Prosecution and thus this initiative investigations could take years without reaching any result. And as long as the public prosecutors do not have the right to provide documents or hear witnesses or make demands most of these cases are archived with no further investigations to be made.

The case of Article 49

According to Article 49 M E C, the Pu

Perhaps the biggest proof of that is what the Organic law for reporting corruption and protection of whistleblowers provided as its second article stated –among others- identified the public structures that are subject to the oversight authority of the Anti-corruption committee and that included

blic Prosecution is an authority has an unrestricted authority to choose one of the existing investigation judges in their circuit to carry out the investigations. And this unrestricted authority to choose cannot be challenged in any way except in two cases:

_ If the case is being viewed by an exceptional court, The investigation judge reviews the assured work done and then take a decision (VQ 2 p-52)

_ if the case was challenged on the basis of the court's jurisdiction, which is a rare case stated in Article 75 of this law.

So, the rule here is that the public prosecutor is free to choose the investigation judge, and if there is a case that an investigation judge has already taken charge of and is related to another case that was referred to another investigation judge, his work in his would remain incomplete as the truth has been fragmented and divided on a number of investigation judges, and there is no procedural rule that regulates automatic reviewing other investigation judges work so would be aware with all the facts in ongoing cases.

And thus we can consider that the Public Prosecutor's absolute authority to choose investigation judges an open door for impunity.

Fourth: the dilemma of not activating laws

We have already aforementioned to the ultimate dilemma which is the reluctance of successive governments after the revolution to issue an order to appoint members of the investigation authority stated in Article 22 of Decree 120 that regulates the Commission's work which is still in force until now, which restricted the Commission powers and made it unable to carry out any effective serious investigation that would reveal corruption or prepare files that would include official clues and evidences that would amount eventually in forcing the Public Prosecution to refer them to judicial circuits(investigation or trial according to the characterization of the alleged acts of suspects), but instead as a consequence of this , The Commission only initiate investigations according to its procedural allowed capabilities , i.e., The Commission now operates under the limits mentioned in Article 30 of Criminal Procedures Code which stated that "The public prosecutor strives to reach a conclusion towards complaints and notifications he/she receives" , it became in the same legal rank of any natural person's knowledge of a committed crime and he/she reported it and thus all legal procedures became exclusively an authority of the Public Prosecution to initiate legal proceedings and manage it as it views.

However, the issue of non-activation of laws is not just an isolated in-

cident, as other examples can lead us to the assertion that it comes in a systematic policy of trimming nails and controlling the layout and results.

Decree No. 2012-1425 dated 31 August 2012, amending and completing decree n° 2010-3080 dated 1st December 2010, establishing Higher Advisory councils

This decree invented a government advisory board called "The Higher Council for Fight against Corruption, the Recovery and Management of the Assets and Property of State" it is of a high rank combination constituted of the government (7 Ministers), concerned bodies and committees with the possibility of appointing members from civil society organizations, and that exactly was stated in Article 25 ter, which identified the Council's composition as follows:

-The Minister to the Head of Government in charge of governance and the fight against corruption,

- The Minister of Justice,
- The Minister of the Interior,
- The Minister of Foreign Affairs,
- The Minister in charge of Human Rights and Transitional Justice,
- The Minister in charge of State Property and Land Affairs,
- The Minister of Finance,
- The chairman of the national authority for fight against corruption,
- The chairman of the national com

we can consider that the Public Prosecutor's absolute authority to choose investigation judges an open door for .impunity

mittee for the recovery of ill-gotten assets existing abroad,

- The chairman of the national commission for the confiscation of the assets and moveable and immoveable property,

- The chairman of the national commission for the management of the assets and property subject to confiscation or recovery in favor of State,

- Five members of the assembly vested with legislative power, appointed on its proposal,

The chairman of the council may, if necessary, invite any person whose presence he deems useful to the works of the councils. He may also invite any authority, organization or association on a proposal from the Minister in charge of their activity sector.

And it was assigned to carry out a number of tasks according Article 25 bis as follows:

The higher council for fight against corruption, the recovery and management of the assets and property of State is notably in charge of the following:

- The follow-up and coordination of the works of the different commissions and national bodies in charge of the confiscation, recovery and management of the ill-gotten assets and moveable and immoveable property attributable to the State, existing either inside or outside the country,

- The follow-up of the results of the works of the national authority for fight against corruption,

- Proposing legal mechanisms to facilitate the tasks of these commissions and bodies and provide the necessary support to accelerate the pace of their work within the framework of efficiency and effectiveness,

- Providing the necessary guidelines and recommendations in order to develop their performances within the framework of the missions entrusted to each of them.

- Proposing solutions ensuring the good management of the confiscated assets and property, concerning the transfer of their

ownership and exploitation or the development of their investment.

The council, which was entrusted with the task of coordinating the efforts of all actors in this important file, remained regrettably ineffective and did not hold except two meetings the last of which was in 2013, and did not issue any reports or recommendations which means the unwillingness of the executive branch to activate this board.

Organic law No. 2016-77 of 6 December 2016, relating to the economic and financial judiciary pole

This law is an urgent requirement for all those who are involved in the fight against corruption because fiscal corruption crimes specifically are of a complicated nature and transboundary and need multiple competencies and specialization in order to dismantle, decode it and prepare its judicial cases in addition of taking acre of the financial revenues of these cases

And the Organic law relating to the economic and financial judiciary pole has stipulated explicitly on this approach in Article 1 " a Department in Tunis Court of Appeal an economic and financial judicial pole is established to be responsible for investigation, prosecution and judgment at first instance and on appeal of complicated economic and financial offenses within the meaning of this law and its related offenses"

What is important in this law is compiling serious cases of financial corruption in the judicial pole and made investigation judges exclusively entitled with the , and what is even more important is what was stated in Article 7:

"The economic and financial judicial pole includes a technical section made up of specialized technical assistants. The technical specialties of the specialized technical assistants as well as the conditions and procedures for their recruitment and their remuneration are determined by government decree."

This accumulative legislation is the most successful in addressing economic crimes, in an economy that more of its real half percentage is a parallel economy that is based on smuggling and tax evasion and thus it was conceived with great welcoming from Civil society, as judges will finally have a specialized department for taxes, accounting issues and international trade.

It will necessarily accelerate the decision on files and investigations, but until now the necessary needed governmental decree was not issued yet

in order to initiate forming the technical department which without its existences no real change will occur in cases that involve high rank perpetrators.

3. Organic Law No. 10 of 2017, dated 7 March 2017 relating to the reporting of corruption and the protection of whistleblowers

In addition to not issuing the two governmental decrees included in this law namely:

- Article 3: Related to special governmental decree that specifies conditions and incentives provided for public structures which responds to best practices recognized nationally and internationally in the field of preventing corruption.

- Article 29: Related to special governmental decree which defines, formulas and criteria for rewarding whistleblowers and which is a clear evidence that the Executive branch is has no real desire to encourage anti-corruption measures

This law cannot have any effectiveness unless the entire administration i.e. all involved departments referred exclusively in Article 2 be committed to deal with independent Anti-Corruption Commission and apply Article 7 which provides as follows:

"Each public structure subject to the provisions of this law must designate an administrative structure within it to receive and investigate complaints of suspected corruption which are referred to it by the Commission, hereinafter referred to as "the competent administrative structure"

And every public structure subject to the provisions of this law within two months from the date of publication of this law in the Official Gazette of the Republic of Tunisia is entitled to send to the Commission telephone and fax numbers and an e-mail and publish it through its official website.

The aforementioned article 7 is considered the heart of this law, as the dealing of the Commission with the complaints it receives inevitably passes through the stage of enabling the competent public structure or administration to investigate the alleged corruption suspicions according to procedures and timelines mentioned in the law, however, practical experience proved an undoubted mutiny of administrations against complying with Article 7's requirements as within more than 1,200 structure the Anti-Corruption Commission received only 78 correspondents that specify the competent department within administrations specialized in receiving cor-

ruption complaints and investigating them.

And perhaps it is surprising to note the executive branch's silence and negligence toward this problem, specially the prime ministry which is entitled to implement the law, as it appears that they don't encourage their subordinates of public structures to apply the law, despite the fact that the Commission has demanded repeatedly to take measures to activate Article 7, especially that Article 15 of the Constitution of January 2014 stated that: " Public administration is at the service of the citizens and the common good. It is organized and operates in accordance with the principles of impartiality, equality and the continuity of public services, and in conformity with the rules of transparency, integrity, efficiency and accountability"

It is worth to note also that what serious lack of special protection measures the law raised as it cut off whistleblowers relation with their profession as there is no coordination between whistleblowers law and labor law or public professions law, and the time limits and deadlines provided for in the law is too short too and thus this heavily burdens public structures as they have other tasks to carry out.

The result is therefore, the protection of whistleblowers and reports of corruption suspicions is weak and inadequate.

Law No. 2018-46 of 01 August 2018, on the authorization of gains and interests, the fight against illicit enrichment and conflicts of interest.

I have already written an article that was published on DAAM's website on this law in particular, which in turn included a number of government decrees that are supposed to be issued in a reasonable period of time following the publication of this law in the Official Gazette

And we should not criticize or comment now, we should wait in order to judge on the subject of activating this law, but we can say that the structure stated in the law of Constitutional body for good governance and anti-corruption will encounter many difficulties in order to be applied by the looks of the complicated missions and tasks it is supposed to carry out, especially by the look of the enormous numbers waiting to have authorizations for gains and interests, please review our published article that goes by the title of " Law of revealing sources of money and assets(The Law of where did you got that from?) ..... between achievements and miracles)

Fifth: Legislating laws that contradicts with the philosophy

of combating corruption:

Whoever reflects on the Tunisian situation in combating corruption can easily understand the executive branch's reluctance to issue laws that frames the economic system, addresses smuggling, tax evasion and parallel economy in the form of a law that adopt open governance and e-government, in which databases are compiled to support transparency of public utility, develop monitoring measures or a law that change the current currency and reduce financial transactions in cash and other laws that are adopted by most of democracies around the globe to reduce the phenomenon of corruption, but we find difficulty in understanding – especially when the executive branch bragging about combating corruption- is the issuance of "Administrative reconciliation law" or Organic Law No. 62 of 24 October 2017 on Reconciliation in the Administrative Field Law, which can be considered a legal amnesty for public officials and whoever hold a similar position who were involved in the crimes stated from Articles 82 to 96 in the Criminal Code and includes those who are under investigation as well as those who were tried and a final judgment of conviction was issued against them.

And Article 1 of the law justified its issuance by saying that it is restoring trust in the Administration, promotes the national economy and achieves reconciliation while actually it will destroy the transitional justice course stated in the constitution and shall promote impunity and interfere in the judiciary's job.

And despite the fact that 40 Members challenged that law on basis of unconsti-

So, we can say, that the road for the Tunisian legislative system to become up to the level of the declared war on corruption is still long and full of .impediments

tutionality and justified that by stating that the law violates Article 13 of the Constitution, The Temporary Commission for Monitoring the Constitutionality of Laws refrained from deciding the issue stating that the needed majority to issue their decision is not available and thus they referred the whole matter to the President of the Republic who ratified and sealed it despite the wide range condemnation and rejection of this law by civil society organization. The Conclusion then, according to the aforementioned is that the Executive Branch and its heads whether the Prime Minister or The President has always sought to have the upper hand in the issue of combating corruption despite the inclusion of their speeches the subject of combating corruption as a priority, the devil is in the details, as when we reflect on the legislative course after the revolution we find that law texts was intentionally full of traps in a way that makes them a media advertisement more that effective laws that are successful in combating corruption.

So, we can say, that the road for the Tunisian legislative system to become up to the level of the declared war on corruption is still long and full of impediments.

Effects of Reconciliation in the Administrative Field Law on combating corruption in Tunisia

Mr. Sharaf al-Din Al-Kaleel
Lawyer and human rights activist - Tunisia

General preview

This study falls within a series of legal and political approaches, which " DAAM's Periodical" - issued and reviewed by DAAM Center for Democratic transition and Human Rights- have been regularly addressing, and this study discusses and analyzes the entitlement of combating corruption and its relation to democratic transformation policies in Tunisia and Libya with an almost absolute focus on the role of Reconciliation in the Administrative Field Law (Organic law n ° 2017-62 of 24 October 2017, relating to reconciliation in the administrative field, published in the Republic of Tunisia's Official Gazette in edition No. 85 of October 24, 2017, p. 3625), this law cleared a lot, and the vast majority of civil, political and legal actors have interacted with, and for over two years has been the main focus of the various political, and legal debate and approaches that are concerned with the issue of anti-corruption .

In order to respect DAAM's officials faith and trust that they put in me as this study's writer, and in order to follow the right tools and rules of scientific and methodological analysis, I view the importance of addressing for the readers the difficulties that encountered me during carrying out this study which can be summarized in adhering to scientific neutrality when analyzing a law that me and my colleagues at " Manich Msamah Movement" (We Would Not Tolerate) considered as a law for " Cleaning the corruption's reputation and retaining the corrupt" and we have always struggled, along with thousands others of different age, profession, social, civil and political groups of the Tunisian people, to bring it down.

However, despite the magnitude of this difficulty, I have tried as much as possible to respect the scientific integrity and to accomplish this work, which, like all human work has some

defects which I apologize for in advance, and it will always remain subject to criticism and discussion, and that exactly what I wish for when debate and interaction about it occur.

Introduction

The entitlement of ending tyranny and the past's scourges which was adopted by the revolution of freedom and dignity has always been a common and public aim for all successive governments since that date, and it was always regarded by both experts and civil and political activists as an indispensable prerequisite for a sound democratic transition and responsible initiation for building a democratic State that is based on rule of law, well-established institutions and respect for citizens' rights and human rights.

To achieve that high end, there were numerous official and non-official, legislative and institutional, political and civil initiatives, which all engaged in examining ways and mechanisms to ensure that successful and effective mechanisms of ending the past's scourges that was full of gross human rights violations of various types of corruption offenses against public and private property that illegitimately wasted the nation's resources.

Despite these initiatives' multiplicity, most of these initiatives have agreed on the fact that the best way to address that past fairly, democratically and decisively with all revenge, exclusion and selectivity we have here is through a transitional justice system.

And despite the numerous reservations, misgivings and political polarization that have marred the work of the Constituent National Assembly while drafting the Transitional Justice Law, which was overshadowed by - as many Tunisian and international experts and many organizations of national and international civil society testified- partisan struggles over quotas, but regardless, the Assembly's work resulted in ratifying Organic Law No. 53 of 24 December 2013 on Establishing and Organizing Transitional Justice and also in electing the members of the public authority that supervised that matter which is the Truth and Dignity Commission, by order No. 1872 of 2014/ 30 May 2014.

Since then, the Truth and Dignity Commission's mandate started, the Commission which was been entrusted by law to address serious human rights violations and offenses since July 1955 until the promulgation of Law No. 53, which has not excluded offenses relating to "electoral fraud, financial corruption and violations related to public money" (Chapter 8).

Despite the shaky performance of the Truth and dignity Commission and the accumulation of differences and arguments whether among some of its members, or between them and some other state institutions, such as the Presidential Office, the Administrative Court and the Military Justice Department, and despite the significant change that has stigmatized the political scene during the 2014 legislative and presidential elections, which re-introduced many known political figures who were affiliated to the former regime and who were strongly supported by money from many businessmen and high rank state employees suffering from trials and legal precautionary measures such as travel ban, freezing their bank accounts, and confiscation of their money, and there was some sound voices and initiatives that emerged to back up those businessmen and statesmen which was promoted by various audio, visual and electronic media and they stressed the urgent need to get a resolution and find a solution for to liberate them and their money "because it is of positive value to the economic and financial cycle of the country", it even got to the point of publicizing clear demands for issuing a legislation to provide them amnesty, and so, the President issued his first legislative initiative in accordance with his constitutional authority (it was the only one after nearly four years in office) concerning the "draft law on economic and financial reconciliation" which the Cabinet approved on 14 July 2013.The bill was then submitted to the Assembly of the Representatives of the People for deliberation and approval.

But while all that was going on, various popular groups, that are different in their affiliation and interests, many civil and political society organizations, various initiatives and activities took it to the streets in the form of multiple focused and direct movements, and in the forefront was the

representatives of "Manich Msamah Movement" (We Would Not Tolerate) who raised a slogan for all of their movements "No reconciliation before accountability", and all these movements condemned this presidential initiative and considered it a "presidential pardon" for the favor of the corrupt, a clear normalization with the past's corruption, and a cleansing of its different manifestations, practices and images.

They based their rejection on many legal, economic and constitutional studies and proposals issued by many organizations, experts and community researchers that proved that this initiative is an unconstitutional that violates several laws in force and unfeasible financially and economically, and thus, they all demanded withdrawing this initiative.

However, nearly two years later, winds did not blow as the rejecters' vessels wish, as pressures on the legislative initiator increased which was accompanied by an economic and social explosive crisis, and that's why when many elections especially the municipal elections with its important needed financial provisions, the President's initiative returned to the scene with taking into account some requests and modifications, namely:

- The initiative now includes public officials and their likens in article 82 and article 92 of the Penal Code, and thus these articles no longer applies to businessmen and others.

- The initiative now does not include bribery and seizure of public funds, even if the perpetrators are public officials or holding similar positions.

- The authority supervising the implementation of this initiative provisions is no longer a mixed one and subject to the supervision of the Prime Minister, but it has become a purely judicial one that is supervised by head of Court of Cassation and the representative of the Public Prosecution participate in its deliberations.

Despite this apparent retreat form the executive authority in the content of this initiative, which has become called the "reconciliation in the administrative field bill", this did not satisfy its opponents who continued their different form protests whether on field or on media, and through courts before the Provisional Authority Responsible for Checking The Constitutionality of Law Bills. The new draft was approved by 115 votes in the plenary session of the People's Assembly, while most members refused to attend the voting process during the 13th September 2017 session.

Indeed, 38 members sought refuge in this Authority, which was entrusted according to the Constitution with monitoring the constitutionality of bills

(while the Constitutional Court jurisdiction is in applying Article 115 of the Constitution). However, this Authority, in a serious precedent, in its decision No. 8/2017 of 17 October 2017, decided to "refer the bill to the President of the Republic because of the absolute majority didn't occur to pass the decision, as required by Organic Law No. 14 of 18 April 2014.

And accordingly the law was referred to the President of the Republic who is the initiator to be signed on 24 October 2017!! And it is the same day where it was signed and published in Tunisia's Official Gazette, which clearly demonstrates the determination of the Presidency to end any discussion about this law and pass it.

Today, nearly a year after this Organic Law's entry into force, we have the right to question the credibility of this bill's preparatory draft which included the reasons of its issuance, as it stated that: "this law aims to end the past's corruption, and face the spread of misappropriation of public money manifestations, nepotism and sabotaging the administration". We also have the right to question the practical productivity of "creating an appropriate environment that encourages, in particular, the liberalization of the spirit of initiative in the administration, the promotion of national economy and the strengthening of confidence in the State's institutions in order to achieve national reconciliation". Just as we also have the right to question the financial and economic success of this law and the extent to which it contributes to economic advancement and facilitating the Tunisian administration management, as alleged by advocates of this law?

These are all legitimate questions that I think this researcher should address to answer the following:

- Has the Law the Law of Reconciliation in the Administrative Field contributed to understanding the phenomenon of corruption, curbing its scope and addressing its various forms, or has it, on the contrary, increased its spread and granted immunity for those who are responsible for it from being tracked and punished?

- Was the Law of Reconciliation in the Administrative Field a mechanism of eliminating the past's corruption or a way of replicating that past?

To respond systematically to these questions and problems far away from the logic of the fanaticism and prejudices, we should initiate this research by reviewing the most important critics of combating corruption (first) and then addressing the reasons for the entry into force of this law, despite the importance and magnitude of the opposition that the law has

witnessed in (second) The success of this law at various levels (Third)

First: The Law on Reconciliation in the Administrative Field: Numerous critics and detailed judicial appeals

"A vague arrangement made during the darkness of night" this was the phrase which was used by one of the members who rejected the law to describe the ratification of the law by the president and its entry into force.

In fact, this was neither an exaggeration no in crier a misleading description, as whoever reflects on this law's procedures would found various violations since it was just a bill, it was full of substantial constitutional violations, as an example of that, the law violates the principles of equality established in the constitution as it exempted 0.05% of the Tunisian people exclusively from crimes committed by them against the nation, while 5.2% of adult rational Tunisian people are under punitive surveillance in crimes that are less serious than violations of corruption related to public money. Another example is ignoring to what was stated in the Constitution's preamble and Article 10 "The state shall ensure the proper use of public funds and take the necessary measures to spend it according to the priorities of the national economy, and prevents corruption and all that can threaten national resources and sovereignty." As impunity of public officials and their likens and not holding them accountable for their crimes can only be described as cleansing their image which is a clear violation by the state for its obligation to address and combat corruption.

In the same context, the law guarantees in its general philosophy and procedure, an explicit violation for rules of transparency, integrity and accountability set forth in Article 15 of the Constitution, which states: "Public administration is at the service of the citizens and the common good. It is organized and operates in accordance with the principles of impartiality, equality and the continuity of public services, and in conformity with the rules of transparency, integrity, efficiency and accountability" as the amnesty granted by law to public officials involved in crimes of abuse of power, disrespecting procedures and causing damage to the administration would eventually contribute to promoting illegal practices which were already spread in the former Tunisian administration, and it would also contribute to concealing the whereabouts of the looted public money and the means of stealing it.

In addition to these obvious constitutional violations that marred this law in various chapters, the method in which this law was ratified by the Assembly was unconstitutional that led some to talk about "legislative

corruption" based on manipulating and misinterpreting or even ignoring clear legal texts and provisions, an example of that is that the Assembly deliberately ignored the constitutional requirement imposed by Article 114 of the Constitution and Article 42 of Organic Law No. 34 of 28 April 2016 concerning the Supreme Judicial Council which states that draft laws related to justice and administering judiciary should be addressed by the Supreme Judicial Council so as to provide their opinion about it, an obligation which Head of Parliament decided to ignore for unknown reasons.

This law was also in violation to the spirit and explicit requirements of the United Nations Convention against Corruption of 31 October 2003, which was ratified by the Tunisian State by Act No. 16 of 25 February 2008. The Convention, like all treaties was ratified by the Parliament, and it is considered to have status superior to laws as set out in Article 20 of the Constitution.

The United Nations Convention against Corruption included a set of obligations that bind States in combating corruption especially what was stated in Article 1 "To promote and strengthen measures to prevent and combat corruption more efficiently and effectively" and also the obligation that was stated in Article 5 "Each State Party shall endeavor to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption." In addition to other duties as the duty to establish and promote effective practices aimed at the prevention of corruption, and adopting appropriate legislative and administrative measures to criminalize abuse of functions and position by public officials in order to gain directly or indirectly an undue

the law guarantees in its general philosophy and procedure, an explicit violation for rules of transparency, integrity and accountability set forth in Article 15 of the Constitution, which states: "Public administration is at the service of the citizens and the common good. It is organized and operates in accordance with the principles of impartiality, equality and the continuity of public services, and in conformity with the rules of transparency, integrity, efficiency and "accountability

advantage.

Accordingly, it is self-evident that the Reconciliation in Administrative Field Law is unconstitutional and is not in accordance with the United Nations Convention against Corruption as it decriminalizes acts of corruption and grants impunity and immunity for perpetrators.

In addition to these constitutional and international treaties violations, the Reconciliation in Administrative Field Law also included grave risks as it tends to fortify corruption and clean its image instead of legally addressing and combating it, particularly through its clear violation of the Transitional Justice Law and its philosophy, which, as mentioned above, was issued in order to get rid of the past's scourges such as corruption and tyranny and to guarantee its non-repetition so as to achieve a comprehensive national reconciliation.

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And although paragraph 9 of Article 148 of the Constitution stipulates that "The state undertakes to apply the transitional justice system in all its domains", and despite the fact that the Venice Commission (European Commission for Democracy through Law) has stressed the importance of ensuring that the reconciliation law achieves the transitional justice system's lofty goals when the "Truth and Dignity Commission" requested their opinion on the draft law on financial and economic reconciliation in its issued opinion No. 818/2015 of the 104th meeting, which is dated 27 October 2013, (point no.36) but the law in its final version completely ignored the constitutional immunization of the transitional justice system, just as it ignored pursuing the transitional justice's lofty goals.

The Tunisian approach to transitional justice is based on five sequential and reliable phases, namely, revealing the truth of violations, accountability, and then the reparation and rehabilitation of victims, institutions reform, and finally reconciliation, which is the culmination of that integrated course.

But, quite the contrary, the procedures approved by the reconciliation law have completely ignored the fact-finding phase, since the law requires from whoever wants to benefit from its to provisions to only reveal the

The Tunisian approach to transitional justice is based on five sequential and reliable

total sum of money which he/she gained for his benefit or for others benefit without obliging him/her to reveal how they used it or how they gained it.

The law also did not include even an implicit reference to victims of corruption, including citizens, private institutions and other parties, and they all were not provided by a mechanism to compensate and rehabilitate them which confirms that the only beneficiaries of this law are the perpetrators accused of corruption and not victims and this of course contradicts with different transitional justice experiences, which considered victims its cornerstone and foundation.

Thirdly, and judging from what the experts in the field of combating corruption approved, corruption is a complicated phenomenon and there is no way it could be dismantled and confronted without understanding and analyzing the various human, administrative and legislative factors that are contributing to its existence, spread and development, and thus, this law is not only considered a hide out that can cover practices of corruption but also a real obstacle that stands in the way of understanding, dismantling those practices and clearing the public administration of it and its causes.

Thus, we may affirm that the law is violated the most important concept -in our discretion- of transitional justice which is combating the past's corruption, getting rid of it and guaranteeing its non-repetition and institutional reform as Article 14 of the Transitional Justice Law That "Institutional reform aims at dismantling and rectifying the system of corruption, oppression and tyranny so as to guarantee the non-repetition of the violations, the respect of human rights as well as the establishment of a State of Law. Institutional reform namely includes revising the legislations, vetting State institutions and utilities where responsibility for corruption and violations has been proven as well as updating and restructuring their methodologies and rehabilitating their staffs", Which contradicts with what the Reconciliation in Administrative Field law stated, as it replaced eradicating corrup

tion which marred the State's institutions with granting it legitimacy and allowing it to spread even more, and instead of trying to understand the mechanisms of corruption within the State's institutions so as to prevent if rom spreading as a precaution , it offered to cover-up for the perpetrators and their networks, it also chose to honor them and give immunity for them against all trials, tracking forms and penal punishment instead of clearing the institutions of their existence, and the same could be said for the administrative laws and legislation regulating the public administration, as the law chose through adding provisions to provide impediments for combating corruption and making it easier for it to spread more instead of clearing the former texts that was already forming impediments for such a process, the same legislation also is contributing to emptying the transitional justice system from its content of serious productive tools of combating corruption, it is making the entitlement of combating the past's corruption and guaranteeing its non-repetition just an imprisoned slogan existing in the Constitution's and the Transitional Justice Law's pages, a slogan that is unable to be applied practicality.

These are all critics and deficiencies that there's no study related to the Reconciliation law that didn't include or mention them, but -despite their importance and seriousness and despite popular protests against it-they never found any one to consider them in the Representative's Assembly and never convinced the political majority members in it to abandon this law which leads us to question the real reasons of passing such a law.

Second: the reasons for approving the Reconciliation law despite the existence of a consensus on its inability to deal with the past's corruption

Most democratic transition periods which people go through are usually characterized by fragility that is reflected on both the institution's performance and the political actors performance, this fragility requires to overcome and avoid the return of the system's tyranny through managing issues in accordance with the principles of reconciliation, unity and consensus, and it is a set of conditions that wasn't fully taken into account since the beginning of the debate on the Reconciliation law bill, as the bill sponsor didn't launch any effective national dialogue that aims to end all scourges of the past -which was full of corruption and tyranny- and establish a safer ground for a democratic state, and he didn't also promote his initiative to be a comprehensive national dialogue that would include all actors especially state institutions and the Truth and Dignity Committee which entrusted according to the constitution with managing the transitional justice system.

But on the contrary, the initiator chose to ignore objective criticism and popular protests against his initiative, channel the debate going around it to the parliament and to resort to the logic of parliamentary majorities in decision making, a policy that is completely compatible with democracy values but does not serve democratic transition purposes especially in countries that have a limited experience in modern democracy, such as Tunisia. And according to that and because of reasons that are purely related to self-interests, the parliamentary majority supported the President's initiative despite being sure that it impedes implementing the constitutional obligation of the state to combat corruption and despite their conviction that this kind of initiatives should be passed by an the Assembly of the Representatives of the People's absolute majority, and not through a voting that was boycotted by a number of significant members with different affiliations.

In addition to that, the Provisional Authority Responsible for Checking The Constitutionality of Law Bills' decision to refer this constitutionally impugned law to the President to take what he sees fit as a consequence for not being passed by an absolute majority of the Authority's members which is considered to be by some scholars a judicial and legislative mess, while others consider it a denial of justice crime, this decision represented a real assessment for the judiciary's independence and its ability to withstand various forms of politicization and political influence in Tunisia.

Accordingly, it had become clear after the President's ratification of the Reconciliation law despite knowing that it was drafted and issued without any real parliamentary and popular common and collective will and

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consent and this incident also illustrated the country's need for an attentive Constitutional Court that acts as a guardian for respecting the law, makes sure it is properly applied and addresses all attempts to misinterpret or circumvent its provisions, it also illustrated that evident that there is no way to fight corruption in our country and address all these kind of legislation and procedures without speeding up establishing real guarantees for respecting the Constitution and fair procedures for electing the Constitutional Court's members.

But while waiting for this bet which is governed by political inducements and disputes over quotas to come true, we should discuss the

Reconciliation in the Administrative Field's results after nearly a year of its entry into force.

Third: the extent of the law on Reconciliation in the Administrative Field's contribution in the fight against corruption: productivity

1. On the Judicial level:

- There are practical difficulties that encounter investigators in financial cases, especially in cases that include public officials or those whoever stands in the same position, and these cases even include some who

don't qualify as such.

- There are clear contradictions in judicial interpretations for chapter 2 of the law on Reconciliation in the Administrative Field which refers to chapter 96 of the Penal code which in turn does not only apply to public officials but also to whoever stands in the same position and anyone who is involved in such crimes regardless of their capacity.

- the backlog of applications to acquire amnesty certificates submitted by non-officials and their likens as accomplices in crimes committed to general prosecutors of Court of Appeal according to Chapter 32, which states that the accomplices are subject to the same punishment of the perpetrator.

- The multiplicity of archived files in investigation offices and public rights courts before even making sure of the violations credibility being tracked, an sometimes even before reaching results through investigations or assessments.

2. On the institutional level:

- The return of various former employees to their previous jobs with all the privileges and promotions which they were deprived from during their trials.

- An increase in the sense of frustration and disappointment among the employees that refrained from committing acts of corruption or being involved in it, despite the various offers they had, temptations they were exposed to and threats that targeted them.

- The prime ministry still holds the first position in the most institutions that are vulnerable to corruption according to Transparency International's Corruption Perceptions Index (CPI) even more than security, media and judiciary.

- The total deficiency of the Arbitration And Conciliation Commission especially at the level of the Truth and Dignity Commission's missions as a result for the reluctance of former regime members who were involved in corruption crimes to deal and communicate with the Commission, and because of the Authority in charge of public disputes' rejection to let the commission get hold of the perpetrators files

3. On the Economic level: Lack of economic feasibility:

- The state's inability to recover the money that is estimated at 22 billion dollars which the former president and his family looted, stole and smuggled is continuing.

- There is a significant decline in the rates and volume of foreign investments in Tunisia.

- There is not any figures or numbers that show the real value and amounts

For the money collected from those who were granted amnesty, even though nearly one year passed since the law entered into force and despite what the Presidential Advisor said in 2016 about expectations of achieving revenues that range between 500 and 700 million.

4. On the Political level:

Internally:

- There is a strong return for the former regime's symbols and men to the political scene to hold high rank posts and responsibilities

- There is an invasion of corrupted political money that invades the political life and even the parliamentary that turned into a very specific target for them through spending in elections.

- The issue of corruption has turned into a political card that the government and some politicians hold and play with in order to serve bargaining logic and political retaliation.

Externally:

- The Tunisian State's rank in combating corruption is continuing to decline according to Transparency International's Corruption Perceptions Index (CPI).

- The foreign investors' influence continue to increase.

- The faith of major international organizations that are interested in transitional justice as well as Venice in the democratic path's credibility continue to get shaken.

Libyan legislative policy to fight corruption

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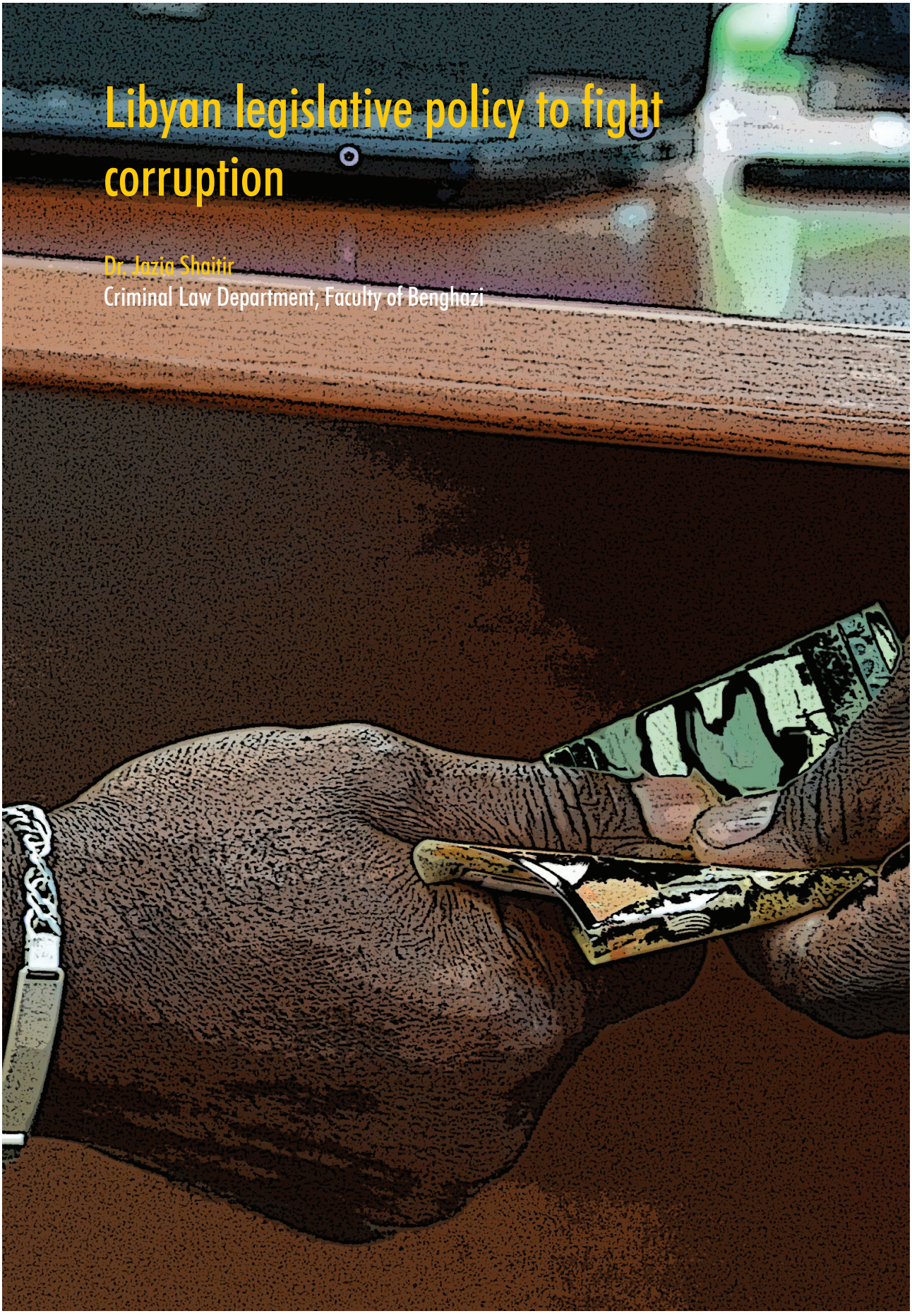


Introduction:

Linguistically, Corruption is the opposite of goodness in language, and it means taking money unjustly/damage/destruction/and famine and drought, God says: "Corruption has appeared in the land and the sea on account of what the hands of men have wrought." This clearly refers to damaging, misdeeds and destruction, as god also illustrates: "And they strive with might and main for corruption"

While corruption in the legal terminology refers to a shameful act carried out by a public officer, and there has been a recent call for a more broad definition that would include shameful acts carried out by private sector officers too, and shameful acts are those acts that are necessarily carried out by officers through exploiting his position's powers to achieve private gains that violate the laws and a fortiori violate ethics.

And perhaps the most accurate and comprehensive definition of corruptions is the one given by Transparency International and United Nations which is "The abuse of entrusted power for private gain at the expense of public good"

And it would be accurate if we said that corruption in Libya has become a phenomenon, we can prove this argument easily by referring to Libya's high rank in the list of the most corrupt countries in the world according to Transparency international's Corruption Perceptions Index (CPI) or Libyan Audit Bureau's reports, and it is sufficient to have a look at the political and economic conditions to notice how far cor

ruption's manifestations are evident.

Corruption can be classified into many categories, if it is classified according to the damage it causes then it may be classified or divided into simple corruption and grave corruption, if it is classified according to the perpetrator's behavior then it would be divided into positive and negative corruption, and if is to be according to the perpetrator himself/herself so it would be divided into legislative, administrative and judicial corruption, and if it would be classified according to fields it would be divided into academic corruption, media-related corruption, investments-related corruption, banking corruption, environmental corruption etc..., and finally, if it would be divided according to spatial scope and location it may be divided into local corruption and international corruption, as many international corporations and other influential economic entities globally are suffering from corruption factors and manifestations, we can also describe some of State's and international organizations behavior towards developing countries through their direct or indirect interferences in their internal affairs and imposing policies upon them to exploit their resources, deepen their subordination and fragmentation as international corruption.

However, the new and serious versions of corruption in Libya are:

Organized Corruption: Gangs that are engaged in organizing illegal migration has increased significantly as it was stated in the United Nations panel of experts' report -that was established on 1973 for the year 2011 in September 2018- which was addressed to the President of the Security Council that armed groups are gaining grea benefits from trafficking in persons and smuggling of migrants and that in return fuel instability and undermine the official economy as these criminal gangs organize migrants convoys and use sexual exploitation to make revenues

Armed corruption: Economic corruption incidents that are done by armed militias has increased significantly, for example the United Nations panel of experts' report -that was established on 1973 for the year 2011 in September 2018- which was addressed to the President of the Security Council stated that the "Libyan Investment Authority", " National Oil Corporation" and "The Central Bank of Libya" are considered a favored targets for threats and attacks carried out by armed groups, the fact that affected the state's oil and financial sectors performance as some armed groups members that operate nominally under the Government of National Accord's Ministry of interior has committed kid-

napping, torture and murder of sovereign institutions officials, and that includes Libyan Investment Authority and National Oil Corporation officials.

Legal Corruption: Which refers to the issuance of laws and decrees for private gains, and it can be said that legal corruption is one of the political corruption forms.

Certainly, political corruption is an important factor that contribute to spreading other forms of corruption and many analysts believe that there is a direct correlation between moderate political that support social justice and low corruption rates where free media and legal accountability are applied in a balanced and fair way for all citizens and where there is not a small wealthy class that in control as a result of abusing power for material gains.

It is a dangerous sign that we can monitor many crimes that are intrinsically linked to corruption and not less dangerous than corruption crimes as money laundering, forgery, burning and destruction of documents, data and documents, but also headquarters.

And certainly we do not need to demonstrate the importance of combating corruption and attempts of eliminating it, as corruption represents a real stumbling block to building states and obstruct justice and reconciliation attempts as it undermines democratic institutions and rule of law, prejudices moral values, and jeopardizes and sustainable development, so, eliminating it is the best way to move forward towards a promising future, rule of law and a state of institutions.

Hence the research raised questions about how to combat corruption, which necessitated evaluating the Libyan legal policy and to address many questions about it:

- What procedural flaws does the financial and administrative system have that facilitate corruption for perpetrators?

- How convenient are the oversight bodies' authorities according to the degree of corruption spread nowadays and to the necessity of eliminating it? And how does non-cooperation of observers affect the oversight bodies' effectiveness?

- Where does prosecution of corruption stand from the judicial authorities' interests and capabilities?

- What is the role of the legislative authority in deterring and com

bating corruption?

These questions are not a luxury academic, but are raised in order to reach a perfect strategy that is based on a clear vision that contributes to the eradication of corruption.

The research plan can be summarized in the following two points:

- First: An assessment of the anti-corruption substantive policy, in which we show the Libyan legislator's incriminating policy for various corruption forms and the criminal proceedings of the perpetrator who commit these forms, after we quickly address the factors that contributed to spreading corruption in Libya

- Second: An assessment of the Procedural anti-corruption policy, in which we show the anti-corruption mechanisms, whether: prevention and deterrence mechanisms or accountability mechanisms

First: Substantive policy for combating corruption

Section I: Confronting corruption factors

What are the factors that are driving and attracting corruption in various sectors in Libya?

- Political factors

Political instability and its poor development into a political division and rivalry between political elites is one of the factors that contributed to the spread of corruption in Libya, and perhaps the political reform and the institutions it shall produce and respect of law that it provides would eventually reduce corruption and curb its scope and extent.

- Economic factors

Depending on oil as the only resource of income for the Libyan State, and depending on the state itself in providing services in all sectors and paying functional salaries for all Libyans as if it was a share for every Libyan citizen in the economic return, and the absence of a local or a foreign private sector which was supposed to compete on quality and effectiveness are all factors that increased the growth of corruption.

- Social factors

The consumption pattern is a pattern that was imposed on Libyan families, and when this pattern is concreted with tough economic factors they usually lead some people to resort to corruption to maintain an adequate economic and social level, especially where there is no stigma for those who are known to be corrupt, but on the contrary, people race to praise them and feel proud about being associated with! It became a community where who does not use nepotism or favoritism for relatives or break laws socially denounced, all this lead citizens to get accustomed to corruption.

- Cultural factors

The rentier and dependency culture and governmental money policies and some religious interpretations that facilitate committing violations against public funds as it is considered a public domain! As well as the culture of shrewdness and looting and many other negative values that causes an in imbalance in the Libyan society's moral system.

It is well known that corruption grows when the cultural factor gets devalued as it prospers in the absence of a proper cultural factor for citizens who need services, officials and even supervisors .in charge

It is well known that corruption grows when the cultural factor gets devalued as it prospers in the absence of a proper cultural factor for citizens who need services, officials and even supervisors in charge.

And perhaps the administrative system that is based on bad values such as red tape, constant procrastination, arrogance and deteriorating ignorance, and Libya does not have an administrative culture that states that the State is committed to provide to its citizens services through its public utilities as it should in a reasonable time for with any charges except for legally imposed taxes or fees

- Legal factors

Repealing previous laws without studying,

developing modern laws that does not having a legislative philosophy or purpose, and having a huge differences in legislative policies and philosophy of successive authorities as if it a violent contradicting waves of a tampering legislation nature and that made a suitable environment for corruption, not to mention the weakness and ineffectiveness of law enforcement and issuing judicial decisions under the authority of armed militias, and also excluding competent figures and thus incompetent persons who don't have a clue about took leadership and eventually law became a very serious tool in incompetent hands.

Perhaps it is important to note the absence of laws that criminalize acts that help corruption spread, for example, there is no effective and accurate ban on working in the private sector for public employees especially if his/her work has a direct relationship with private sectors, and there is no ban also on high rank officials working in private sector positions after leaving office.

Section II: Criminalizing different forms of corruption

There are multiple Libyan laws that are related to corruption:

- General penal code and its supplementary laws, perhaps the most important of which is:
- Economic crimes law No.2 for the year 1979
- Money laundering law No.2 for the year 2005
- Abuse of function law No.22 for the year 1985
- Nepotism and favoritism law no. 5 for the year 1985
- Cleansing law No. 10 for the year 1994
- Law no. 5 for the year 2010 on the ratification of the Convention against Corruption
- Terrorism Law No.3 for the year 2014 Which stated in Article 2 that " Harming the financial or banking systems or national economy is one of the terroristic forms"

As well as banking laws, for example:

- Law No. 1 for the year 2005 on banks

- Law No.46 for the year 2012 amending law No.1 for the year 2005 on banks

Forms of corruption are multiple and we could perhaps be sum them up in every violation against public money directly or indirectly, by any means, and for any purpose, in any territory and whoever the offender is.

We comply with the terms of reference came in the Anti-Corruption Commission as it stated in its jurisdiction:

And also victims of corruption crimes are usually not natural persons but juridical persons, which usually weakens the individualistic motive to pursue justice, as there is no direct harm or damage arising from the crime and this refers the whole burden to observatory and investigation .bodies

1 - Crimes against public administration

2 - Crimes against the public's confidence

3 - Money laundering offenses

4 - Economic crimes including bribery

5 - Abuse of function crimes

6 - Nepotism and favoritism law

7 - Revealing sources of assets and money law

8 - Cleansing law

9 - Violating rules of administrative contracts and tenders and auctions

10 - Administrative and financial violations committed by public officials

And to evaluate this Libyan criminal policy, we should compare this criminalizing forms with he forms provided for in the "The United Nations Convention against Corruption", The Convention, which considered that "Crimes of corruption are: bribery even in the private sector, trading in influence, embezzlement even in the private sector, and

the abuse of public official for their functions or office, illicit enrichment, and money laundering"

It is clear that the Convention has criminalized more forms of corruption, more than the Libyan law, which did not include criminalizing private employee's acts.

We also should note the crime of bribery, provided for in the law of economic crimes, as The United Nations Convention against Transnational Organized Crime " which called upon member states to adopt legislative measures to criminalize different forms of bribery offenses committed by public officials and public service providers and these forms included promise offering or giving a public official directly or indirectly, of an undue advantage, for the official himself or herself or another person of entity, in order that the official act or refrain from acting in the exercise of his or her official duties, it also included every form of participating or demanding bribery. And perhaps what is distinctive about this Convention is its call upon States to criminalize forms of bribery committed by a foreigner or an employee of a public official of an international civilian, which can be considered a very important step in criminalizing international bribery, and what is very distinctive about it too is what was stipulated in Article 3 subsection 2 about transitional international bribery offenses if it is committed in one State but has substantial effects in another state.

Bribery has unlimited forms as it can be given in a financial, moral or material form, it might even be a sexual relationship or a job in return or any personal interest and benefit achieved.

Section III: Legislating sanctions to combat corruption

- Death Penalties: Death penalty for whoever of deliberately sabotaged by any means oil establishments or its supplements "Article 4 of Law on Economic Crimes"

- Penalties involving deprivation of liberty: Life imprisonment and other imprisonment penalties prescribed in many laws related to corruption

- Penalties involving deprivation of money: Normal fines that might amount to fifty thousand in Banks Law and other relative fines for example, one thousand Dinars, that usually do not exceed the damage value and compensate for causing damage to public money or public interest " Article 9 of Law on Economic Crimes".

- Ancillary penalties: deprivation of civil rights, Judgement publication, lack of validity to testify before judiciary

- Supplementary penalties: A fine that might amount to twice as much as he/she smuggled or embezzled or demanded or promised or offered or obtained or forced others to give him/her and confiscation and returning of the sum of money he/she obtained from committing corruption crimes " Article 35 of Law on Economic Crimes"

- Preventive penalties: some conditional confiscation cases, freezing assets and seizure, closing of violating band accounts by Central Bank, withdrawing license, forced closing of organizations for juridical persons.

Second: procedural policies to fight corruption

Section I: Preventive mechanisms

One of the most prominent international efforts outputs in the fight against corruption is that international efforts successfully figured out the roots of irregularities for example: lack of government agencies that can carry out observatory tasks and receive complaints from victims, , lack of internal social mechanisms that should be applies service quality management, the increase of bureaucracy and administrative complications at all levels of governmental performance, abuse of discretion and lack of trusting interpretations and applications regulations and laws in the public sector, lack of internal control systems that ensure transparency, control and accountability in concluding and implementing public policies, weak political participation mechanisms and weak community oversight mechanisms that aim to combat corruption, weak motivation given to public sector employees to combat corruption, lack of opportunities given to public officials to participate in making decisions that high rank administrative officials make, weak media outlets and its negligence in highlighting this serious phenomenon, not providing information related to development projects, its funds sources and bodies responsible for supervising them.

And we are definitely right when we say that most of these manifestations exist in Libya, whether those who are related to the administration or media or what is related to development and reconstruction projects..

Perhaps it is appropriate to mention some of the different mecha

nisms that contribute to preventing corruption:

- Political will that develops a clear vision and strategy on combating corruption.

- Reforming State institutions and the administrative and financial system.

- unification of Libyan state institutions especially sovereign and financial institutions.

- Implementing of quality standards in state institutions.

- Taking good care and attention of the private sector, as it has a great role even if it is an undirect one.

- Restructuring the regulatory authorities to make them more effective through adopting independence assuring measures and through motivation and appointing competent persons.

- Adopting the principle of transparency in work organizations and state institutions.

- Strengthening religious faith and interest in all stages of education and awareness programs

- Establishing a community that rejects corruption through media and religious teachings.

Section II: Accountability mechanisms

The judicial authorities dealing with different forms of corruption fraught with difficulties and this id actually due to various factors, perhaps the most important of which are the characteristics of corruption crimes that relates to their aspects, victims and circumstances, as the perpetrator in corruption offenses is a public official who committee these crimes by abusing his/her function and his/her legal privileges as it provides him with a cover for his/her crimes, and thus, it is one of the secrecy crimes or what is known as black number crimes.

And also victims of corruption crimes are usually not natural persons but juridical persons, which usually weakens the individualistic motive to pursue justice, as there is no direct harm or damage arising from the crime and this refers the whole burden to observatory and investigation bodies.

Therefore, the procedural system for prosecution should be updated and activated especially to issues related to seizure and confiscation of corruption revenues. And in this regard we mention some of the Libyan accountability measures:

First, local cooperation between competent authorities, and these authorities are:

- Financial Information Unit at the Central Bank and sub-units of its subsidiary banks operating in the State which are established under Article 9 of Law No. 2 of 2005, on combating money laundering

- Law 63 for the year 2012, Anti-Corruption Commission, was repealed by the law that followed it.

- Law 11 for the year 2014 where the National Authority for Combating Corruption has been suspended by a decision of the President of this body No. (119) for the year 2017, regarding the arrest of some staff at the National Anti-corruption, as a precautional measure for the interest of the investigation.

- Administrative Control Authority Law 20 for the year 2013.

- re-regulated Audit Bureau by Law No. 19 for the year 2013 which was amended by Law No. 24 of 2013.

Perhaps it is important to mention that this law in its third article, does not grant the Audit Bureau oversight authority over the private sector except when the State a partner to that private entity by at least 25% of the company's capital, or if that company has taken a loan with a contract that had a condition that it is subject to the Audit Bureau

The law does not allow the Audit Bureau oversight over the House of Representatives, according to an official statement issued by AlBayda's Audit Bureau on 17 October 2018, but instead it deprives the bureau from all investigation authority as the law in article 27 obliged the Bureau to refer cases for investigation to The Administrative Control Authority (239) where the total cases referred to the Public Prosecution (42) case and there are (25) case still to be referred to investigation authorities.

As for the law establishing the Anti-Corruption Commission No. 11 for the year 2014, it is important to talk about several points, one of them is that article 26 on imprescriptibility of corruption crimes, and the

other point is related to Article 22 on protection of witnesses, experts and whistleblowers who report crimes, the last point is granting the Commission staff the rank of law enforcement officer and granting them through Article 5 the authority to look up all suspicious documents even if it was classified, access to information and using experts and to call whoever they see necessary to hear as a witness.

And amnesty Law No. 6 6 for the year 2015, in its third article confirmed that "Crimes of corruption in all its forms are not subject to the law of general amnesty".

Second, international cooperation between competent authorities:

That includes international exchange of information, mutual recognition of judgments and judicial orders in accordance with foreign international conventions and adopting of a new concept of jurisdiction beyond the territorial principle

We also affirm that "Transitional Justice Law No. 29 for the year 2013 ", when stipulated on institutional reform as pillar concept, should have also stipulated on combating .corruption

Section III: deterrence mechanisms

Deterrence mechanisms simply means how to implement sanctions, and monitor this implementation by judicial authorities, and perhaps it is useful to emphasize the importance of following up the real effects of confiscation penalties, and it is good to expand the scope of financial sanctions instead of penalties involving deprivation of liberty as they are more deterrent for the perpetrator who intended to achieve illicit enrichment in the first place, and in turn we see that ancillary penalties specially publishing judgments a strong deterrent tool for perpetrators and whoever intends to abuse the State's public funds.

And one of the important deterrence mechanisms is the perpetrator's knowledge is

that his/her crime is imprescriptible and thus we pay tribute to Law no.6 for the year 2013 which was issued by the Parliament as it excluded corruption crimes from amnesty.

We also affirm that "Transitional Justice Law No. 29 for the year 2013 ", when stipulated on institutional reform as pillar concept, should have also stipulated on combating corruption.

We believe that it is very important to state in the Constitution that corruption crimes have no amnesty nor statute of limitations, and in this regard we should refer to a very important text in the draft constitution 2016 in which the Libyan article 207, stipulated that: "The state authorities shall review investment contracts in which proofs and evidence point out the existence of financial or administrative corruption, agreements which was concluded from the period of 1980s till the entry into force of the Constitution ", The text has been deleted in the final draft of the Constitution 2017 !!, although this review was an effective mechanism of transitional justice that we do not imagine a powerful new State of Libya can eliminate corruption without.

Conclusion

This paper provides a number of findings and suggestions

Findings:

- Corruption forms in Libya now are countless and innumerable while criminalized corruption forms are too limited which requires a rapid legislative intervention.

- The reason for criminalizing corruptions is common good and public interest, and the most important manifestations of that is public officials' integrity which reveals that getting rid of corruption would not occur only through activating criminal law provisions but also through a comprehensive vision of the phenomenon of corruption that addresses the imbalances of the Libyan moral system and not only addresses institutional reform.

- Weak anti-corruption strategy in its various phases preventive, regulatory and judicial, which imposes the need for a new vision to strengthen combating corruption strategies.

Suggestions:

- The Libyan legislator should amend the law to give the Libyan Penal code jurisdiction on international bribery crimes committed by foreign public officials or international organizations civil servants in order to harm the interests of Libya or its citizens, the jurisdiction of the law should also be extended so as to prosecute these crimes perpetrators abroad.

- The law show stipulate clearly on criminalizing bribing juridical persons.

- The law should criminalize also private sectors officials bribery.

- Financial reform should be achieved within financial institutions and companies through activating the general assemblies' and board of directors' roles as well as supervisory bodies and offices.

- Reforming administrative policies, modernizing the administrative system and increasing the staffs salaries and income.

- Enabling the civil society organizations from submit complaints and reporting corruption cases after empowering these organizations and training them on means of monitoring and addressing such cases.

- Recognizing the binding force of judgements and judicial orders which are issued by countries that concluded bilateral judicial cooperation agreements or in accordance with rules of reciprocity.

- Legislation whether domestic or international should stipulate on exchanging information on corruption crimes.

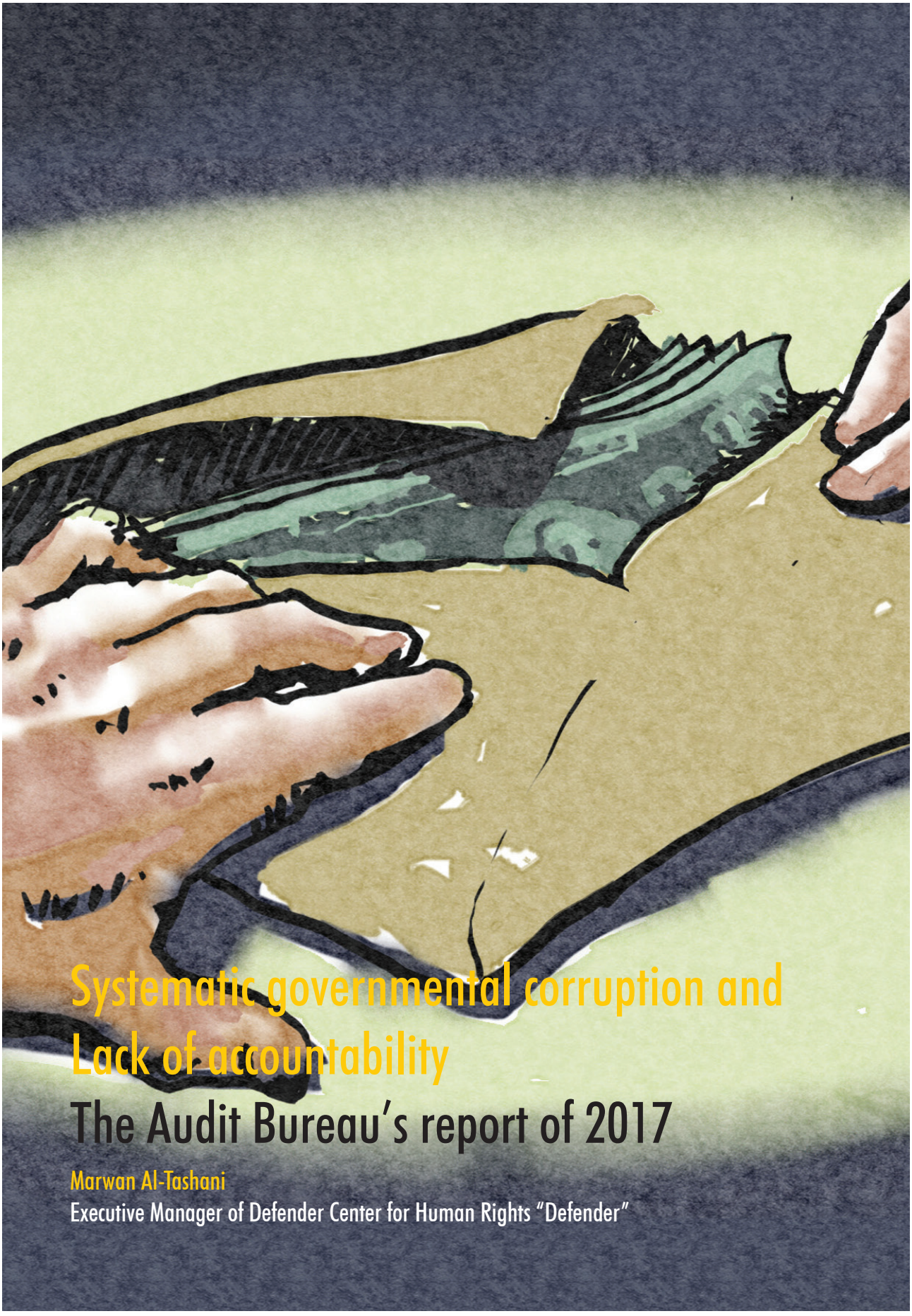
- Creating and developing mechanisms for reporting corruption as witness and whistleblowers protection and impunity programs as well as issuing legislation of rewarding and amnesty for witnesses and perpetrators for reporting such crimes.

- procedural substantive provisions of anti-money laundering laws should be applied.

- Focusing on confiscation and recovery of corruption's revenues which are smuggled through the border and that purpose requires effective international cooperation.

- Developing the concept of regional judicial jurisdiction, especially as modern means of communication are getting more sophisticated and

complicated such as the internet and instant bank transfer mechanisms.



Systematic governmental corruption and Lack of accountability

The Audit Bureau's report of 2017

Marwan Al-Tashani
Executive Manager of Defender Center for Human Rights "Defender"

Introduction:

Transitional stages are usually the ideal environment for spread of corruption within the state's apparatus due to political instability, which usually promotes a state of weakness within most of the state's institutions, especially those which are concerned with supervision and accountability, and those which are affected by the country's political and security situation and fragile state.

In Libya, after the 2011 revolution and after changing the country's political system, Libya suffered a severe political crisis, that led to an institutional split and duplication in government, and that directly led to weakening the state's institutions and their inability to accountability and oversight, especially as some armed groups control most of the state's organs, but we can say that they became formally a part of the state's apparatus in which the state itself has no control over.

Since 2011, Libya witnessed more than one government and more than one legislative authority, and has had later the first consensus legislative Council, which is the National Transitional Council, which supervised the country's first legislative elections, that resulted in the General National Congress elections of July 2012. The GNC later formed the interim government.

After that, in shade of a heated debate that happened after the end of the National General Conference term, the House of Representatives was elected in June 2010, and later two military ope

rations were launched "Libya's Dawn" in the west of the country "Libya's Dignity" in the east of the country which divide4d the authority and power in the country.

There are now two governments, one in the east that is affiliated to the parliament, and another in the West that is affiliated to the General National Congress, but the political scene changed slightly after the political agreement in December 2015 as a new third government emerged and the Presidential Council and Government of National Accord was established, the General National Congress' name was changed to the State Council and the House of Representatives and its interim government continued to practice their powers and the National Rescue Government of the west vanished.

This severe political crisis, which was followed by military conflicts, has resulted in a unique case of duplication of the country's major institutions, such as the Central Bank of Libya, Administrative Control Authority and the National Petroleum Corporation, and these institutions' influence and powers are directly linked and affiliated by their geographic and spatial scope of their government, though the institutions located in the capital are obviously more powerful and influential as they are more prestigious and much older.

The Audit Bureau: Origins, competence and jurisdiction:

The Audit Bureau is the highest financial oversight and accountability authority in the State, an independent and impartial professional body, with a legal personality and independent financial autonomy, it operates directly under the legislative authority , and is a member of international, African and Arab organizations for Supreme Financial and Accountability bodies1.

1 The Audit Bureau's official website -http://audit.gov.ly/home/about.php

The Bureau's establishment and the historical sequence of legislation regulating its work:

After Libya's independence in 1951 and after establishing the state's new institutions, the Libyan Audit Bureau was established for the first time by Law No. 31 of 1955, and through its term it passed various legislative changes resulting from structural changes and changes in the regime's regulations and directions, the most important of which were changes in its objectives, terms of reference and status.

After Libya's independence in 1951 and after establishing the state's new institutions, the Libyan Audit Bureau was established for the first time by Law No. 31 of 1955, and through its term it passed various legislative changes resulting from structural changes and changes in the regime's regulations and direction

The period of the monarchy from 1952 to 1969

- The Libyan Audit Bureau was established by Act No. 31 of 1955.
- The promulgation of Act No. 22 of 1962 amending Act No. 31 of 1955.
- A Royal Decree regulating the Audit Bureau was issued by Act No. 22 of 1966.

The era of the former regime from 1969 to 2011

- The Audit Bureau Act No. 79 of 1975 has been amended.
- The Audit Bureau, the Administrative Control Authority and the Monitoring Authority were merged in one entity under the name of the People's Monitoring Authority under Act No. 16 of 1986.
- The abolition of the People's Monitoring Authority and the establishment of the People's Inspection and Supervision Authority under Act No. 11 of 1996.

- The Law on the People's Inspection and Supervision Authority was amended by Act No. 30 of 2000.

- The abolition of merging of oversight regulatory bodies by Law No. 13 of 2003 through some provisions related to people's supervision, inspection and control which according to which oversight powers were distributed between the Financial and Technical Supervision Authorities and the People's Inspection and Supervision Authority.

- The Financial and Technical Supervision Authorities were canceled and the power of reviewing contracts, payments and investigations were referred to the People's Inspection and Supervision Authority, and the rest of their powers were referred to the Financial Review Authority which was established by the General People's Congress resolution No. 5 of 2006.

- Promulgation of Law No. 2 of 2007 on the reorganization of the People's Inspection and Supervision Authority to exercise the role of the former People's Control Authority, including the competences of financial performance control, pre-contract control and investigation authorities.

- Promulgation of the Financial Review Act No. 3 of 2007 to exercise the role of the Financial Audit Authority.

The period after the revolution February 2011

- On 14/8/2011 the Interim National Transitional Council issued resolution No. 119 of 2011, which stipulated establishing the Libyan Audit Bureau for the second time through merging the oversight authorities which are the People's Inspection and Supervision Authority and the Financial Review Authority in one entity, this resolution also restored the law No. 11 of 1996 and repealed laws of the Control Authorities, No. 2 and 3 of 2007.

- On 1 August 2013, the General National Congress promulgated Act No. 19 of 2013, which reorganized the Audit Bureau; as it deprived it form the Administrative Authority Control's competences, grievances and investigation, for which a new body was established by Act No. 20 of 2013.

- On 4 October 2013, the Act No. 24 of 2013 amending Act No. 19 of 2013 was issued, by which stipulates the prior review of extracts resulting from contracts were cancelled.

Competences

Under Act No. 19 of 2013, the Audit Bureau was reorganized and was deprived from the Administrative Authority Control's competences, grievances and investigation for which a new body was established by Act No. 20 of 2013.

And in an attempt to regulate labor and unify competences, financial and legality oversight competences was assigned to the Bureau through auditing and reviewing accounts, financial lists and other technical operations to sectors that are subject to its oversight jurisdiction, also competences of laws and regulations enforcement, especially those which are related to the entity which are subject to reviewing and monitoring, in addition to some other preemptive competences to protect public funds, including: (Applying control measures that ensure that public revenues are collected and that any deficiencies or shortfalls in collection are detected or measures which prevent any irregularities in cash exchange, freeze accounts of parties under its control until the reasons for such decision disappear, compensating damages and other monitory missions)

And also in accordance with the law, the Libyan Audit Bureau has adopted the competence of the Financial Performance Control which was recommended by international standards, as well as regulatory control and compliance control. This competence is based on diagnosing the existing status of the institution and comparing the results with goals and capabilities in order to achieve the proper evaluation of efficiency, effectiveness in managing the institution and the use of public funds1.

The law also stated that the Bureau's observations and recommendations should be taken into account in order to correct the irregularities and shortcomings in managing public finances, and if an investigation detected mismanagement or negligence that resulted in waste of public money, financial irregularities or criminal offenses, files should be prepared and forwarded to the authorities to complete the investigation. 2

The Bureau's report of 2017:

Although the Audit Bureau was affected -like others- by political division, the interim government established a second Audit Bureau in the east of the country in 2015. But the main Audit Bureau is the one located in the west as it is the main, oldest, most experienced and efficient one, in addition to the fact that the old archive and all its files is there which made

1 The Audit Bureau's official website () http://audit.gov.ly/home/about.php

2 Ibid ()

it more effective, strong and efficient even if it is unable to extend its influence and power in several regions.

The Audit Bureau has been issuing annual reports every year since 2012, assessing the financial functioning of state institutions and departments, making observations on irregularities and demanding their settlement in accordance with the provisions of Act 19 of 2013, on the reorganization of the Audit Bureau.

The last report of the year 2017, which was issued in the past days, was very impressive and was signed and issued in 1000 pages, and documented financial violations, fraud and waste of public money.

the report addressed several important issues and clarified some important points that reflected the level of corruption and looting in the State, such as bank credits, which had several irregularities and lacked standards of justice and equal opportunity for granting approvals

This report had a strong effect and echo in media as political programs in TV channels have given it wide spaces for discussion and analysis, and activists also exchanged views about it on social media, especially as it handled some high expenses spent by some officials, such as hotel accommodation costs, rental of private planes, changing offices furniture, buying cars, phones and other big expenses, and the people were provoked by it, it caused a huge reaction among them where most were ironic as sarcastic drawings on the officials mentioned in the report were widely spread.

Indeed, the report addressed several important issues and clarified some important points that reflected the level of corruption and looting in the State, such as bank credits, which had several irregularities and lacked standards of justice and equal opportunity for granting approvals, as names of certain companies was repeated more than one which clearly reflected corruption and nepotism. The most prominent example is the involvement of the Banking and Cash Control Department Director at the Central Bank of Libya (CBB) as he abused his function and committed actions that could be classified as mediatory, patronage, nepotism and violating legislation and financial and banking systems, exceeding his powers and authorities

to the extent of conflicting with the nature of his observatory functions and lead to losing independence towards some banks that are entitled according to some official letters to fund specific companies which was a clear violation, especially after it was found that the transport bills attached to their files were forged, indicating that the funds were used in smuggling money abroad.

The report covered most of the country's agencies and institutions in where it spoke of several important points, including exaggeration in the number of diplomatic missions, double salaries, deviations of support to the educational process, corruption of financial follow-ups to some diplomatic missions abroad and others.

As an example of corruption in institutions is what was stated about the Libyan Investment Corporation (LIA), it did a number of serious abuses that violate laws including their failure to prepare aggregate budgets during the previous fiscal years till 2016. In addition, they did not make any certifications for debit and credit balances to verify the apparent balances at the end of this year, which means that the figures received are only an expression of institution's point of view without supervision. It also revealed the inability to monitor and check the Corporation's accounts for 2017 because of the financial deficiency of the Corporation as they didn't registered their daily expenditure relating to the financial year of 2017 into their system as well as into bank settlement notes.

As for Libyan funds that are froze, the Audit Bureau revealed that these funds reached 33 billion dollars between deposits, shares, bonds, portfolios and investment funds, while this freezing losses reached more than 43 million dollars annually as a result of paying negative interests to banks that are depositing Libyan enterprise funds. The report also stated that employees' salaries and other benefits such as health insurance, study expenses, telephone, transportation and housing are approved by the head of the corporation's board without the existence of regulations that regulate the company's activity, as well as some persons were paid their salaries without being in the headquarters in Malta1.

The report dealt with various public sectors that are accused of concluding undeserved compensation agreements for contractors, inflicting losses of large sums of money for the State, waiving management for foreign partners, circumventing and manipulating medical insurance contracts and expanding direct employment assignments, without examining the feasibility of such contracts. Among the sectors in which the report elaborated, the Ministry of Foreign Affairs and International Communication and

Al-Marsad Newspaper, weekly edition, Africa's portal news, Habib Al-Aswad's report ()

the report mentioned in detail some embassies and consulates in countries which was involved in corruption violations and operations in the report .

The report of the Audit Bureau recorded several observations on financial performance in the foreign sector, it focused mainly on the Ministry's internal control system weakness, and highlighted several points, which were as follows:

- Contracting directly with some companies, which have carried out construction work without making any open bids or tenders for other companies.

- Delivering some instruments to non-beneficiaries, in violation of provisions of laws governing such proceedings.

- Some registered inconsistency cases in transactions for travel allowances and accompanying staff, the failure to define the purpose of certain functions for which they are assigned.

The report also included irregularities in procedures and application of regulations in embassies, consulates and diplomatic missions, and noted, among other observations, that:

- Failure to end the period of dispatch of a number of employees whose period of employment has ended abroad according to the legally defined periods, in addition to the Ministry's failure to take the necessary measures in employees who have reached retirement age.

- The Ministry of Foreign Affairs was inadequate in following up bank accounts managed by diplomatic missions abroad, registered balances and expenditure reports.

The report also stated the exaggeration in appointing employees abroad, which resulted in huge expenses and big financial allocations, especially in light of the increase in salaries and wages.

The report of the Audit Bureau devoted a space for mentioning and recording notes on the financial performance of a number of embassies and consulates and proved a number of violations committed by them, most of which were violations of regulations and wasting large sums of money for the benefit of several persons, some of whom are officials in those embassies while others have no direct connection to it, and the report's estimations of those sums reached hundreds of millions of dollars, at the top of the embassies mentioned in the list , came the embassies and consulates

in Libya in Tunisia, Egypt and a number of other countries[1].

Apart from the many violations mentioned in the report and that deserve to be considered, publishing the report at this time, and focusing on the media aspect in publishing its details without taking legal steps, opened the door for many questions, especially after the report was exposed to a media campaign and was exploited by several political parties and employed by them politically for their benefit.

Reading the Bureau's report with a critical eye:

The report also noted that the value of the sum of money wasted amounted to 277 billion dinars in five years without details, as the report summed up several governments performance from 2012 to 2017 in one .figure

Reading the report objectively, we can easily find some professional notes its drafting and style, most notably, the main observation on this report that it used some politicized terms such as the central government's term in Tripoli, although the law obliges the Bureau to write its report in a neutral and objective professional language. On page 15, the term "Tripoli's and Al Bayda's governments" was used, terms that were not included in any legislation on which the Bureau is based, including the political agreement that it referred to on more than one occasion[2].

The report also noted that the value of the sum of money wasted amounted to 277 billion dinars in five years without details, as the report summed up several governments performance from 2012 to 2017 in one figure[3].

The report's author mentioned in details the interim government expenses in Al-Bayda', which he confirmed in the report's preamble that they are outside of his scope and jurisdiction, as he said that the interim government

1 The Audit's Bureau reveals in figures the seriousness of corruption in () Foreign affairs sector, Hussein Moftah's report

2 https://libyanpressagency.net Libyan Press Agency ()

3 Ibid ()

spent 21.148 billion dinars in three years, including 13.420 billion dinars for salaries, 1.539 billion dinars for subsidies, and about 6 billion dinars were distributed in other entitlements over three years[1].

Legal questions:

The most prominent legal question is about Mr. Khaled Shakshak, head of the Audit Bureau's official capacity, Mr. Khaled who was eliminated by the Assembly of the Representatives of the People in 2010 and a judicial ruling was issued against him, but despite that his mandate was extended by the General National Congress in 2010 while the legislative authority was suffering from duplication.

If we get past the issue of the Audit Bureau's head mandate and moved on to other more serious legal issues, there are issues related to the Bureau's competence and jurisdiction, the most important of which is that they violated them by refraining from submitting a report to the legislative authority namely "the Assembly of the Representatives of the People" as stated in the law that regulates the Bureau's work, which is Law No. 19 of 2013 as stated in Article 62 "The Bureau shall submit a report to the Legislative Authority and the Prime Ministry within three months of the fiscal year of the end of the fiscal year" i.e., by March 30, every year, why did the Bureau postponed submitting its report 60 days?

The second question is why the Bureau was impotent toward financial and accounting irregularities and has not taken the measures stipulated in the law, for the example Article 19 identified in its provisions the procedures needed for referring to the competent body as the Bureau is obligated in case of finding irregularities or violations to recommend the termination of officials' mandate and to consider the compensations needed and the amount of wasted money.

Articles 50, 51 and 56 also gave the Bureau the right to "To suspend anyone found guilty of corruption from his/her job, freeze the accounts of any party found to guilty of wasting public money, and order the administrative seizure of his/her funds to those wasted public money."

Finally, the Audit Bureau, in accordance with provisions of Act No. 19 of 2013, shall refer files to the Administrative Control Authority when it finds during its investigation that facts represent an administrative offense and has the right to refer the files to the Public Prosecution or the Military's prosecution if it finds that the facts before it represent a criminal offense each according to their scope of jurisdiction, we should also note that the Bureau

Ibid () 1

has the legal right to do its investigations in all cases (even when files are referred) and carry out temporary arrests only.

These questions are repeated every year and with issuance of each report, because no accountability, punishment or measures has been taken so far for these abuses and irregularities.

The Audit Bureau is not the only body responsible for combating and revealing governmental corruption cases, even report of the Security Council's Committee of Experts has monitored many Government's actions that can be classified as corruption in its last report.

Even the press has a prominent role in monitoring these financial irregularities and abuses that represent a serious indicator of spread of corruption, an example of that is the Investigative reports "Inkyfada" website published where it revealed cases of tampering documents related to documentary credits and the process of transferring money funds between Libya and Tunisia for the purpose of smuggling, as the Tunisian financial arena became full of financial flows and money transfers coming from Libya through forged documentary credits to cover complication operations that aims to smuggle and launder money.[2]

Official responses:

Official reactions rolled on to this report, most notable of which are the Supreme Judicial Council's intervention and its urgent issuance of instructions to the Public Prosecutor to carefully and accurately investigate the Audit Bureau's report and refer all those who are proven to be involved in any financial irregularities to the judiciary, as the Council requested the immediate and direct contact of the Audit Bureau to request attaching investigation transcripts which the Bureau carried out along with all supporting documents and evidence for those accusations and incidents.[3]

On the other hand, media adviser to the Assembly of the Representatives of the People's Presidency, "Fathi Al-Merimy" confirmed that the Head of the Assembly, Counselor "Aguila Saleh" has assigned " Ashraf Al-Dirssi" the legal adviser to the Assembly of the Representatives of the People's to file a report to the Public Prosecutor in order to open the needed legal investigations on irregularities and financial excesses included in the report so as to hold accountable every perpetrator or violator or public money thief in accordance with laws and regulations in force[4]

2 Inkyfada website, Tunisia becoming a «laundry» for Libyan money, Walid Mejri's report https://goo.gl/YjRcWG

3 https://ar.libyaobserver.ly Libya Observer's website

4 Al-wasat portal, "National Accord's Financial" forms a technical committee to investigate the Audit Bureau's report, 27 May 2018, http://alwasat.ly/news/libya/207202

Even the executive branch, represented by the Ministry of Finance and the Government of National Accord formed a technical committee that included a State-secretary and concerned departments' directors to study the Audit Bureau's report for the fiscal year 2017, in order to conclude technical results and verify the information included in the report.

The ministry, in a statement, stated that "We shall follow up all notes, we shall work towards correcting them and we shall take the necessary action towards the recommendations", and they welcomed at the same time other regulatory bodies to join forces and do their observatory work in "Following-up, correction, revealing errors, remedying them, and ensuring that they do not recur"

The ministry called for "Punishing violators if found guilty", and asked the Audit Bureau to notify the relevant government sections with their observations and results and to seek receiving responses from those authorities, pointing out that in case they found irregularities that represent misdemeanors or felonies, the Bureau should refer the perpetrators to investigation and judiciary.1

On the other hand, several parties denounced the Bureau's report, and issued accusations and justifications. As the interim government in the words of its official spokesman "Hatem Oraibi", accused Head of Audit Bureau "Khaled Shakshak" of impersonating the status of Head of Bureau and imposing upon other practicing the position's powers especially as the Parliament eliminated him in an official full quorum session

"Oraibi" confirmed in a statement that all figures stated in the report as spent money has no relation to the interim government, and he pointed out that the interim government since gaining the Representatives Assembly confidence in 2014 is carrying out its work and obtaining its financial needs through borrowing legally from Al-Bayda's Central Bank.2

A positive view:

Finally, if we are going to see the glass as half full, we should be optimistic about this report, which reflects an important positive aspect, which is that a Libyan institution is carrying out its regulatory and functional duty even if its work has some shortcomings

As the continuation of state institutions in carrying out their oversight duties in this circumstances of government's political division and dupli-

1 .Ibid
2 Alwasat news portal

cation of security and lawlessness represents a complicated barrier to observatory or executive bodies and impeding them from carrying out their functional duties, but the regular issuance of the Audit Bureau's report annually, even if not actually leads to applying punitive measures against violators remains an important notarial factor for financial irregularities and abuses and the Libyan judiciary will be able one day to hold offenders accountable based on these reports after reviewing and confirming the included information.

DEMOCRATIC TRANSITION AND HUMAIN RIGHTS SUPPORT CENTER «DAAM»

A Sun-regional independent non-governmental organization founded in 2015 that aims to create favorable climate to the progress of the democratic structure based on the principles of the humain rights in its interogations and comprehensiveness.

DAAM seek to support and promote paths and sustainbles development ground via capacity development and supporting efforts designed to reform policies and legislation.

This would helpfitting the principles of democracy based on humain ritghs and contributing of knowledge production about the reality and the paths of democratic transition in the related countries. DAAM works in cooperation with relvant stakeholders from the civil society organisations and bodies locally, regionally, and internationally, including gouvernmental bodies, political forces and civil society activists.

مركز دعم التحول الديمقراطية وحقوق الانسان «دعم»

مؤسسة شبه اقليمية غير حكومية مستقلة تأسست عام 2015, تهدف إلى خلق مناخ ملائم للتقدم بالبناء الديمقراطي المستند إلى مبادئ حقوق الانسان في تكاملها وشموليتها, وتسعى إلى دعم وتعزيز مسارات مؤسسات ديمقراطية وتشاركية على أسس المدنية والمساواة والتنمية المستديمة, وذلك من خلال تنمية القدرات ودعم الجهود الرامية إلى إصلاح السياسيات والتشريعات بما يلائم ميادئ الديمقراطية المرتكزة على حقوق الانسان والاسهام في انتاج معرفة حول واقع ومسارات التحول الديمقراطي في البلدان المعنية,

وتعمل المؤسسة بالتعاون مع الأطراف المعنية من مظمات وهيئات المجتمع المدني المحلية والاقليمية والدولية, والجهات الحكومية والقوى السياسية وناشطين المجتمع المدني.

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هذا العمل بدعم من الصندوق الاوروبي للديمقراطية والآراء الواردة
في هذا المحتوى لا تعبر بالضرورة عن الجهة الداعمة

Democratic Transition and Human RightsSupport Center's publications

- Flood of Dignity or Flood of Indignity? A Brief on the latest developments and updates of Libya's situation
- Preventative detention in Egypt, A procedure or a punishment?
- Integrating the culture of Human Rights and gender in the political field
- The development of Policies and Legislation on Human Rights and Democratic Transition in Egypt, Tunisia and Libya
- Integrating the principles of human rights and gender equality into the programs and policies of political parties in Tunisia and Libya
- Constitution and Human Rights in the Countries of the Arab Revolutions: Tunisia, Egypt and Libya as a Model
- The independence of the judiciary in Egypt.. An endless history of clash with the executive authority
- Recommendations of Democratic Transition Forum
- Eastern Libya: Civilian State Caught in the Crossfire of Militarization and Extremism

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