

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 it 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 great 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

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

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.

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 bank 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 is 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 commits 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

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

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

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 should 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.

