



**Systematic governmental corruption and
Lack of accountability**

The Audit Bureau's report of 2017

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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.



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 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.

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 from 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 monetary 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

<http://audit.gov.ly/home/about.php>

The Audit Bureau's official website ()

Ibid ()

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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

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 countries¹.

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 occasion².

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 figure³.

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 Mofteh'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 years¹.

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

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 force⁴

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

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.

