

**A Paper**

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On International Cooperation in Criminal Matters**

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**1) Briefing on the legal bases used for mutual legal assistance, including, where feasible, on the use of the United Nations Convention against Transnational Organized Crime, and the status of bilateral and other multilateral treaties or agreements:**

The importance, vital role and necessity of the international cooperation in criminal matters have been ascertained in the recent decades, which was a direct consequence of the rapid increase in the rate of transnational criminal behaviours, as well as the evolving new trends of crimes, especially those related to terrorism, human trafficking, migrant smuggling, drug trafficking, trafficking in cultural properties and financial crimes.

The Egyptian mandated authorities have long realized such importance and factors, and have been utilizing the tools of international cooperation in its pursuit of justice and rule of law. The international mutual legal assistance in criminal matters in the Egyptian legal system finds its basis in the following:

**A) International Treaties:**

Egypt has been a party to numerous bilateral and multilateral treaties that deal with international cooperation in criminal matters. These treaties are considered the main legal basis for sending and executing the extradition and MLA requests in criminal matters. Such importance emanates and directly relates to the legal status of the international treaties within the Egyptian legal system.

The first paragraph of article 151 of the constitution provides that "The President of the Republic shall represent the State in its foreign relations and conclude treaties and ratify them after the approval of the House of Representatives. Such treaties shall acquire the force of law following their publication in accordance with the provisions of the Constitution".

According to this article, the treaty enters into force immediately upon the ratification and publishing in the official gazette. In addition, it will have the same

level and legal power of a legislative Act. Hence, the Egyptian mandated authorities rely on the ratified international treaties upon considering sending extradition or MLA requests or executing the requests received from foreign jurisdiction. In these processes, the rules and procedures stated in the relevant treaties are binding.

One of the most vital treaties to which Egypt is a party is the UNTOC, which Egypt has ratified. In addition Egypt also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

The importance of these international instruments, with regards to the practical solutions it provides, shines specially when there is no bilateral treaty between both the relevant countries, or if the bilateral treaty doesn't cover some aspects of the assistance sought.

Egypt sends and receives considerable numbers of MLA requests each year; the majority relies on the bilateral treaties in place between both countries (Examples of MLA requests can be provided during interventions).

#### **b) Principles of reciprocity and comity:**

In case there is no treaty between Egypt and the concerned state, the Egyptian public prosecution relies on the principles of reciprocity and comity to send and execute extradition and MLA requests in criminal matters. The internal guidelines for the public prosecution express that even in case there is no treaty in place, the MLA requests can be executed based on the mentioned principles (Examples of MLA requests can be provided during interventions).

**2) Briefing on international cooperation for purposes of confiscation and disposal of confiscated proceeds of crime or property (as defined in the aforementioned Convention and on the basis of applicable bilateral treaties or agreements:**

Usually, the confiscation of the proceeds of crimes is preceded by the seizure of the assets. The Egyptian legislature has prescribed certain steps that needed to be followed in order to seize any asset then confiscate it, whether based on domestic procedures or in the process of enforcing MLA request.

According to article 208bis (A) of the Criminal Procedures Act, the Criminal Courts and the Prosecutor General are the ones mandated to seize the assets of the suspect, his/her spouse and his/her minor children. The said articles require three conditions for this procedure:

- a) The crime must be one of the following crimes: crime against public funds, money laundry, terrorism and financing terrorism, and any other crime provided that the law requires the court, upon conviction, to order the restitution of the stolen monies, or the return of an equivalent value of the stolen assets, or the paying a compensation to the victim entity.
- b) The investigations resulted in enough and serious suspicions.
- c) In case the order is issued by the Prosecutor General, there must be a necessity that justifies rendering the decision by the PG not the court. Afterwards, that decision of the PG must be referred to court with seven days, and the court shall review the PG's decision.

The Egyptian prosecution have numerously relied on the bilateral and multilateral agreements with regards to the MLA requests related to seizing and freezing of stolen assets.

The confiscation in the Egyptian legal system can't be enforced without a judgment rendered by the court. There are numerous articles in the Egyptian criminal Laws which proscribe for the confiscation of the proceeds of the crimes or the assets or materials used in committing the crime.

The Egyptian law to combat money laundry has addressed the issue of enforcing foreign requests, including the confiscation requests. According to articles 18, 19 and 20, the Egyptian judicial authorities have to provide cooperation to the foreign judicial authorities based on the international treaties between them or based on reciprocity, which includes the requests to trace, freeze the related assets. Enforcing the foreign confiscation orders is conditioned by the following: 1) A separate decision of enforcement by the Egyptian judicial authorities must be rendered; 2) The foreign decision has to be final; 3) The foreign authority must have jurisdiction to issue such a decision; 4) the existence on an international treaty in place between the concerned countries, whether bilateral or multilateral.

There are similar articles in the Combating Human trafficking Act and the Combating migrant smuggling Act.

### **3) Briefing on the establishment and functions of central and other competent authorities dealing with international cooperation requests:**

Usually, the central authority isn't the one mandated to execute the extradition or the MLA request. However, there have been two approaches with regards to the role of the central authorities and its relations with the mandated authorities:

#### **The First approach:**

In this approach, the central authority (CA) plays an active role in the process of sending and receiving extradition and MLA requests. With regards to the requests received **from** foreign jurisdictions, the Central authority will review the request and will either decide on to refer the request to the competent domestic authority, refuse it or even sometimes execute the request itself. With regards to the requests sent **to** foreign jurisdictions, that role ranges from drafting the request itself to merely review the request drafted by another mandated domestic authority. This review will be on the legal and/or factual grounds.

The benefit of this approach can be beneficial as it unifies the form, structure and basis of the requests, as well as the legal position and approach of the State towards certain legal issues.

On the other hand, the downside of this approach can be that the central authority might lack enough information about the criminal case which might affect the quality of the requests or prolong the drafting process if the CA has to constantly go back to the mandated domestic authority asking for information and guidance on the fact of the case, especially if the requested state asked the CA for more information in case there is no direct communication between the executing authority in the requested state with its counterpart in the requesting state . In addition, this approach can be time consuming from another aspect, since the central authority has to learn the case itself from the beginning before sending the MLA to the requested state which takes time in itself.

The CA also has to review any MLA request received from foreign jurisdiction to decide on its execution which can take long time especially if the CA is understaffed and if its decision is challengeable and the CA always tends to ensure that its decisions won't be revoked by the courts.

Moreover, the standards adopted by the CA for accepting the enforcement of the MLA requests in the requested state might differ from the legal standards of the executing domestic authority in the same State, so the requesting state has to familiarize itself with both standards in order to have an acceptable request, which is a more difficult issue for the requesting state.

#### The second approach:

The Central authority plays a passive role. It merely acts as a contact point, receiving and sending the requests to the different authorities mandated with the enforcement of the request each according to its jurisdiction. The pros of this approach are that the requests will include all the relevant information; it will also save time that might be wasted during the CA's review process. However, the main downside for this approach is that if there is more than one executing authority in the state, their position might differ towards the standards of accepting the execution of MLA, which creates uncertainty and a bad political image.

The central authority in Egypt is the Ministry of Justice. The extradition and MLA requests are solely drafted and executed by the International Cooperation office in the Prosecutor General's office. The MLA requests are sent to the Ministry of Justice which merely check the attachment of the required documents without reviewing the requests.

#### **4) Briefing on the handling of mutual legal assistance and extradition requests – practical aspects and main challenges encountered:**

As mentioned above, the international cooperation office in the prosecutor general's office of Egypt is the authority mandated with drafting and executing of the extradition and MLA requests. The main challenges related to the acceptance and enforcement of extradition and MLA requests (especially those with the purpose of confiscation the proceeds of crimes) are as follows:

- a) The unknown location of the proceed of crimes, and the unacceptable "fishing expedition" requests, even of the suspect had constants visits to the requested state and committed crimes in the requesting state;
- b) Certain difficulties regarding linking the asset to the crime, especially if the requesting or requested state adopts strict principle regarding the linkage; i.e. the asset emanates directly from the crime;
- c) Some countries have adopted rules against the early disclosure of the information of the assets that can help in an ongoing money laundry investigations, unless certain requirements are met which might be difficult in the early stages of investigations, e.g. information on how the stolen money had ended up in the requested state;
- d) The time consuming procedures until the acceptance then enforcement of the request;

- e) The difference in the spelling of names, especially if it is translated from different language;
- f) Some jurisdictions requires certain file arrangements of the document, which results in sending back the request through the diplomatic channels, merely to rearrange the file;
- g) The challenges attributed to translating the requests;
- h) The Non-response approach by some jurisdictions.
- i) Some challenges are attributed to the legal and procedural requirements in the requested state, that the requesting state has to take into consideration during drafting and sending the extradition and MLA requests in order for it to be accepted and enforced. This problem is magnified if the language of the requested state is different than that of the requesting state, and if its legislations are not publicly accessible. The informal communication between both parties before sending the request comes in handy in such situations.
- j) The tendencies of some jurisdiction to review the reasoning of the decisions of foreign judicial decision and its viability, even if there is a treaty of enforcement in place.