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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

The State of Libya

1. Introduction: Overview of the legal and institutional framework of the State of Libya in the context of implementation of the United Nations Convention against Corruption

The State of Libya signed the United Nations Convention against Corruption on 23 December 2003, ratified it through Act No. 10 of 2005 and deposited its instrument of ratification with the Secretary-General of the United Nations on 7 June 2005.

According to the Constitutional Declaration of 3 August 2011, the National Transitional Council, composed of representatives of local councils, exercises the role of the Government as the highest authority in the State during the transitional period. The task of policy implementation is assigned to the Executive Office of the National Transitional Council, which issues executive regulations relating to promulgated laws.

With regard to the status of international conventions, Libya, through Constitutional Appeal No. 57/1 S of 23 December 2013, has established that international conventions take precedence over domestic legislation. Legal principles adopted by the Supreme Court are binding on all courts and all other judicial entities in Libya, in accordance with Law No. 6 of 1982, as amended by Law No. 33 of 2012. The same principle has also been established in article 13 of the draft constitution of Libya, which stipulates that ratified treaties and conventions have a higher status than laws but a lower status than the Constitution.

The national anti-corruption framework comprises provisions from several legislative instruments, notably, the Criminal Code; the Code of Criminal Procedure; the Law on the Establishment of the National Anti-Corruption Commission; the Law on Economic Crimes; and the Law on Countering Money-Laundering and the Financing of Terrorism.

Libya has several anti-corruption agencies and bodies, including, most notably, the National Anti-Corruption Commission, the Office of the Attorney General, the Administrative Control Authority, the Accountancy Bureau and the Financial Information Unit.

The summary contained herein corresponds to the country review conducted in the fourth year of the first review cycle.

2. Chapter III: Criminalization and law enforcement

Libya has a legal and institutional framework in place to fight corruption at the national level. Owing to a lack of relevant data, however, it is difficult to make a detailed assessment of Libyan practice regarding criminalization and law enforcement in corruption cases.

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Libya has adopted a broad definition of “public official” that covers all officials of the legislative, executive and judicial authorities (art. 16 (4) of the Criminal Code and art. 2 of the Law on Economic Crimes).

Article 226 of the Criminal Code and article 21 of the Law on Economic Crimes establish as an offence the solicitation or acceptance by an official of bribes in order to act or refrain from acting in the exercise of his or her duties or to breach his or her duties. Article 226 also establishes as an offence the acceptance by an official of a gift in order to act in the exercise of his or her duties.

Article 229 of the Criminal Code and article 22 of the Law on Economic Crimes establish as an offence the active bribery of an official, even if the bribe is refused. In case of acceptance, the briber is criminally liable under article 226 of the Criminal Code and article 21 of the Law on Economic Crimes, which establish that the punishment applies to both the briber and the intermediary, thereby covering cases of indirect bribery.

Libyan legislation does not establish as an offence the active or passive bribery of foreign public officials or officials of public international organizations.

Article 227 of the Criminal Code establishes as an offence the solicitation or acceptance by an official of a bribe for using his or her real or supposed influence to obtain or attempt to obtain an advantage of any kind from any public authority or any entity under the supervision of a public authority. The briber and the intermediary have committed a criminal offence if the bribe is accepted, according to the provisions of article 226 read in conjunction with article 227 of the Criminal Code. Article 31 of the Law on Economic Crimes also establishes as an offence passive trading in influence by any person.

Libyan legislation covers neither active bribery of public officials in order that they abuse their influence where the bribe is refused nor active bribery of persons other than public officials in order that they abuse their influence.

Under article 229 bis (b) of the Criminal Code, it is an offence to request or accept a bribe in the private sector, but not to promise, offer or give a bribe.

Money-laundering, concealment (arts. 23 and 24)

Libya has established as an offence the laundering of proceeds of crime pursuant to article 38 of the Law on Countering Money-Laundering and the Financing of Terrorism. Under articles 38 and 40 of that Law, it has also established as offences the various elements of criminal participation and attempt.

Libya has adopted a comprehensive approach to the offences of money-laundering and concealment. Under article 1 of the Law on Countering Money-Laundering and the Financing of Terrorism, predicate offences include any act committed in Libya that constitutes an offence and any act committed abroad that is a criminal offence in both the State where that offence was committed and in Libya. “Self-laundering” is also a criminal offence.

Libyan legislation establishes as a separate offence the concealment of the proceeds of a crime or felony, with or without prior agreement, pursuant to article 465 bis (a) of the Criminal Code, article 20 of the Asset Disclosure Law and article 5 of the Asset Declaration Law.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Article 230 of the Criminal Code establishes as an offence embezzlement by a public official of money or other movable property entrusted to him or her by virtue of his or her position, but excludes other types of property, especially immovable property. However, the Law on Economic Crimes, particularly in its articles 14, 15 and 27, compensates for that exemption by covering all types of property.

In the Criminal Code (arts. 231 and 233 to 236), the Law on Economic Crimes (arts. 30, 33 and 34) and the Law on Abuse of Position or Occupation (art. 1), Libya establishes as an offence the abuse by a public official of his or her position or functions to obtain a benefit for himself or herself or for others.

Libya establishes illicit enrichment as an offence under article 6 of the Asset Disclosure Law and article 1 of the Law on Illicit Enrichment.

Article 465 of the Criminal Code establishes as an offence the embezzlement of money or movable property in the private sector, but excludes other types of property, especially immovable property.

Obstruction of justice (art. 25)

Article 269 of the Criminal Code establishes as an offence the giving or promise of a monetary gift or any other benefit to a witness, expert or interpreter to induce him or her to provide false testimony, a false opinion or a false interpretation, even if the offer, other benefit or promise is not accepted. The same penalty applies if the gift, benefit or promise is accepted, even if the gift or promise is accepted without lying or perjury having been committed.

Articles 75, 429 and 430 of the Code establish as an offence the use of coercion, violence or threats to force others to commit a crime, including the offence of perjury mentioned in article 226.

Libya does not establish as an offence the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony if the promise, offer or gift is accepted and lying or false testimony is involved. Similarly, Libya does not establish as an offence the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to interfere in the production of evidence in a proceeding in relation to the commission of offences established in accordance with the Convention.

Libya establishes as an offence the use of physical force, threats or intimidation against a public official under articles 245 to 248 of the Criminal Code and article 3 of the Law on Illicit Enrichment, which penalizes the exploitation by a person of his or her job, profession, position or influence to intimidate, influence or coerce others or to induce law enforcement officials to act contrary to the law or make others believe that he or she is not subject to the law.

Liability of legal persons (art. 26)

Libyan legislation does not establish the criminal liability of legal persons with respect to offences under the Convention, except for the offence of money-laundering (art. 48 of the Law on Countering Money-Laundering and the Financing of Terrorism). Articles 53, 166 and 177 of the Civil Code can be used as a basis for establishing the civil liability of a legal person if the prejudicial act was committed by a person with a connection to the legal person during or in relation to the exercise of his or her functions.

Several Libyan laws establish the administrative liability of legal persons. However, that liability appears to be restricted to the violation of relevant laws and does not extend to corruption offences.

The liability of a legal person, when established, does not prejudice the criminal liability of the natural person who committed the offence (art. 49 (4) of the Law on Countering Money-Laundering and the Financing of Terrorism).

Except for the criminal sanctions established for the offence of money-laundering, Libyan legislation does not impose on legal persons effective, proportionate and dissuasive sanctions in case of participation in acts established as offences in accordance with the Convention.

Participation and attempt (art. 27)

Criminal participation is dealt with in articles 100 to 103 bis (b) of the Criminal Code. Articles 59, 60 and 61 of that Code also establish as an offence attempts to commit any felony or misdemeanour, including acts established as offences in accordance with the Convention.

Preparation for an offence is not an offence under Libyan law.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

For offences established in accordance with the Convention, Libya has adopted custodial penalties ranging from 24 hours' imprisonment to life imprisonment, applied on the basis of the gravity of the offence, excluding the offences of illicit enrichment (art. 6 of the Asset Disclosure Law), passive bribery in the private sector (art. 229 bis (b) of the Criminal Code) and embezzlement in the private sector (art. 465 of the Criminal Code). In addition, fines, removal from office and confiscation are applicable to a number of those offences.

Immunities do not appear to constitute an impediment to the effective prosecution of such offences.

Libya applies the principle of legality with regard to prosecution (art. 1 of the Code of Criminal Procedure).

Pretrial detention is possible in relation to corruption offences. Release pending trial may be granted subject to the presentation of financial or other guarantees. Persons sentenced to deprivation of liberty may be conditionally released after serving three quarters of their prison sentence and paying all their financial obligations, unless they can prove their inability to pay (art. 450 of the Code of Criminal Procedure).

Public officials may be suspended if doing so is in the public interest or the interest of an investigation (arts. 31 and 32 of the Law establishing the Administrative Control Authority). A public official in pretrial detention or serving a criminal sentence may be suspended by law while detained or imprisoned (art. 158 of the Law on the Organization of Labour Relations).

The Criminal Code provides for disqualification from holding public office, without explicitly covering disqualification from employment in State-owned enterprises.

In addition to criminal sanctions, disciplinary penalties may be imposed in corruption cases under article 155 of the Law on the Organization of Labour Relations.

Libya has no dedicated programme to monitor the reintegration into society of convicted persons after their release (aftercare). However, those persons may attend several educational, training and rehabilitation programmes during their imprisonment. The Code of Criminal Procedure provides that a convicted person may be rehabilitated for a certain period after the end of his or her sentence (art. 491).

Libya has not adopted any measures to grant cooperating offenders immunity from prosecution, and the benefits offered to persons involved in corruption offences who are encouraged to report such offences are limited to exemption from penalties in cases of bribery, money-laundering and concealment, or mitigation of the penalty in cases of money-laundering. Persons who cooperate with the justice system may be exempted from punishment if they report the offence before it is committed (art. 24 of the Law on Economic Crimes in relation to the briber and the intermediary in bribery offences), or be exempted from punishment or have their punishment mitigated if they report the offence before the authorities become aware of it (art. 52 of the Law on Countering Money-Laundering and the Financing of Terrorism). In money-laundering cases, if the offence is reported after the authorities become aware of it and, as a result, the instrumentalities and proceeds of the crime have been seized or other perpetrators have been arrested, the court may decide to suspend the sentence (art. 52 of the Law on Countering Money-Laundering and the Financing of Terrorism).

Libya has not adopted any measures to provide effective protection to offenders who cooperate with the justice system.

Libya may enter into ad hoc agreements to exempt from punishment persons who cooperate with the justice system and who are located abroad, in accordance with applicable legal controls.

Protection of witnesses and reporting persons (arts. 32 and 33)

Libya has not adopted any measures to provide effective protection to witnesses or experts who give testimony in relation to offences established in accordance with the Convention.

Libya does not permit testimony to be given through the use of communications technology.

Libyan legislation does not provide for the views and concerns of victims to be presented or considered at appropriate stages of criminal proceedings against offenders.

Libyan legislation does not provide for the legal protection of reporting persons.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Articles 163 and 164 of the Criminal Code and article 59 of the Law on Countering Money-Laundering and the Financing of Terrorism provide for confiscation of the proceeds of crime and instrumentalities used in or destined for use in the commission of offences. Confiscation may be non-conviction-based.

The Code of Criminal Procedure (arts. 11 to 84), the Law on Countering Money-Laundering and the Financing of Terrorism (arts. 53 to 57) and the Law on the Establishment of the National Anti-Corruption Commission (arts. 4 and 5) establish a wide range of investigative measures for the identification, tracing and freezing of the proceeds and instrumentalities of crime with a view to their confiscation, in line with the Convention.

Libya has established a number of procedures and legislative provisions relating to the administration of seized items. Article 92 of the Code of Criminal Procedure provides that a seized item may be sold if it is perishable or if the cost of its maintenance exceeds its value. Article 58 of the Law on Countering Money-Laundering and the Financing of Terrorism provides for the establishment, by decision of the Attorney General, of an office for the management of seized and confiscated funds, which would report directly to the Attorney General and which would be tasked with managing seized and confiscated funds, collecting and maintaining all information related to those funds and making decisions regarding those funds. However, such an office has not yet been established.

Libya allows value-based confiscation and the seizure, freezing and confiscation of transformed, converted or intermingled property. Libyan legislation, particularly the Law on Countering Money-Laundering and the Financing of Terrorism, provides for the possibility to seize, freeze and confiscate income and other benefits derived from criminal proceeds.

Under the general provisions of the Code of Criminal Procedure (arts. 43 and 84), article 53 of the Law on Countering Money-Laundering and the Financing of Terrorism and article 5 of the Law on the Establishment of the National Anti-Corruption Commission, bank, financial and commercial records must be made available where necessary, and may be seized.

Article 6 of the Law on the Establishment of the National Anti-Corruption Commission enables the Commission to require any person suspected of acquiring illicit funds to indicate the legitimate source of his or her assets.

The Criminal Code (arts. 163 and 164) and the Law on the Establishment of the National Anti-Corruption Commission (arts. 56, 59 and 60) provide for protection of the rights of bona fide third parties.

Bank secrecy is not an obstacle to effective criminal investigations (arts. 61 and 94 of the Law on Banks).

Statute of limitations; criminal record (arts. 29 and 41)

Article 26 of the Law on the Establishment of the National Anti-Corruption Commission establishes that corruption offences are not subject to a statute of limitations period.

Libyan legislation does not allow an alleged offender's previous conviction in another State to be taken into account in criminal proceedings in Libya.

Jurisdiction (art. 42)

Libya has established its jurisdiction over the cases referred to in article 42, except for corruption offences committed against Libyan citizens.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Corruption is a factor in annulling a contract under article 136 of the Civil Code. Any contract, agreement or disposition found to be intended to prevent the confiscation of funds may also be rescinded (art. 60 of Law on Countering Money-Laundering and the Financing of Terrorism).

The Code of Criminal Procedure provides for the right of a party affected by the commission of an offence to bring a civil suit to claim compensation from the accused person (arts. 17, 193 and 224).

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Libya has established a specialized independent commission to prevent and combat corruption pursuant to Law No. 11 of 2014 on the Establishment of the National Anti-Corruption Commission. In addition, several government agencies are responsible for various aspects of the fight against corruption, each in its respective area of competence. Those agencies include the Office of the Attorney General, the Administrative Control Authority, the Accountancy Bureau and the Financial Intelligence Unit. The independence of those agencies is ensured by law. Libya is also considering the establishment of a specialized court and prosecutor's office to fight corruption.

Libya has not provided information sufficient to verify that the various law enforcement and criminal justice institutions are functioning effectively and that those institutions are provided with adequate training and resources and are given the necessary independence in line with the Convention.

With regard to cooperation between national authorities, article 258 of the Criminal Code and article 16 of the Code of Criminal Procedure require every public official and any other person tasked with the performance of a public service who becomes aware of an offence during or in relation to the exercise of his or her functions to report the offence. Article 24 of the Law on the Establishment of the National Anti-Corruption Commission stipulates that anyone who has significant information or documents that relate to a corruption offence shall report such information or submit such documents to the Commission, but does not establish a penalty for persons who fail to do so. That article is a general provision that also applies to public officials. Article 5 of the same law gives the National Anti-Corruption Commission the power to obtain information from public and non-public entities. Article 51 of the Law establishing the Administrative Control Authority stipulates that entities subject to control by the Authority shall inform it of violations committed within them upon discovery of such violations. Article 52 of the same law obliges those entities to consider the observations and inquiries addressed to them and respond within the specified deadlines. Article 12 of the Law on Countering Money-Laundering and the Financing of Terrorism requires oversight authorities to immediately notify the Financial Intelligence Unit of any information related to suspicious transactions or money-laundering.

Although different laws in Libya provide for close cooperation and coordination between the various national competent authorities, it was clear to the reviewers that such cooperation was hindered by several factors, primarily the current situation in the country.

The Law on Countering Money-Laundering and the Financing of Terrorism obliges a number of private-sector entities, including banks, currency exchange companies, insurance companies, lawyers and accountants to report to the Financial Intelligence Unit any suspicious transaction, in addition to providing any information, data or documents request by the Unit or the Attorney General.

Article 15 of the Code of Criminal Procedure establishes the moral obligation of persons who become aware of an offence to report it, but does not establish a penalty for persons who fail to do so. Article 24 of the Law on the Establishment of the National Anti-Corruption Commission establishes a similar moral obligation for reporting corruption offences. Neither of those articles are limited to public officials, as they apply to the general public.

2.2. Successes and good practices

- Criminalization of the acceptance by a public official of a gift for acting in the exercise of his or her duties (art. 15 (b))
- Criminalization of the exploitation by a person of his or her functions, profession, position or influence to intimidate or influence others or to induce law enforcement officials to act contrary to the law or to make others believe that he or she is not subject to the law (art. 25 (b)).

2.3. Challenges in implementation

It is recommended that Libya:

- Adapt its information system so that it can collect data and provide more detailed statistics on criminalization and law enforcement
- Establish as an offence active bribery of a foreign public official or an official of a public international organization (art. 16 (1)); and consider establishing as an offence the passive bribery of such persons (art. 16 (2))
- Consider establishing as an offence the active bribery of persons other than public officials in order that those persons abuse their influence, and consider establishing as an offence the active bribery of public officials in order that those officials abuse their influence, even if the bribe is refused (art. 18 (a))
- Consider establishing as an offence the promise, offering or giving of a bribe in the private sector (art. 21 (a))
- Consider amending its legislation on the embezzlement of property in the private sector to cover embezzlement of all types of property, including immovable assets (art. 22)
- Establish as an offence the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony if the undue advantage is accepted and lying or perjury is committed; and establish as an offence the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage in order to interfere in the production of evidence in a proceeding in relation to the commission of offences established in accordance with the Convention (art. 25 (a))
- Consider establishing the criminal and administrative liability of legal persons for participation in offences established in accordance with the Convention (art. 26 (1) and (2))

- Ensure that legal persons are subject to effective, proportionate and dissuasive sanctions for participation in offences established in accordance with the Convention (beyond money-laundering offences) (art. 26 (4))
- Consider amending its legislation to establish more dissuasive penalties for the offences of illicit enrichment, passive bribery in the private sector and embezzlement in the private sector (art. 30 (1))
- Consider establishing explicit procedures for the disqualification of persons convicted of offences established in accordance with the Convention from holding office in an enterprise owned in whole or in part by the State (art. 30 (7) (b))
- Adopt additional measures to strengthen the reintegration into society of persons convicted of corruption offences (art. 30 (10))
- Adopt additional measures to improve regulation of the administration of frozen, seized and confiscated property (art. 31 (3))
- Adopt measures to provide effective protection for witnesses and experts who give testimony concerning offences established in accordance with the Convention, as well as for their relatives and all other persons close to them. Such measures should cover victims if they are witnesses; and review its legislation to permit testimony to be given through the use of communications technology (art. 32 (1), (2) and (4))
- Consider entering into agreements for the relocation of persons (art. 32 (3))
- Enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders (art. 32 (5))
- Consider adopting the necessary measures to provide protection against any unjustified treatment for any person reporting a case of corruption (art. (33))
- Ensure that the various anti-corruption institutions are provided with adequate training and resources and ensure their independence in line with the Convention (art. 36)
- Adopt appropriate measures to encourage cooperation by persons who participate or who have participated in the commission of offences established in accordance with the Convention, beyond bribery, money-laundering and concealment, in accordance with article 37 (1), and consider providing for the possibility of mitigating the punishment of such persons, beyond money-laundering (art. 37 (2)), and the possibility of granting such persons immunity from prosecution (art. 37 (3))
- Adopt measures to provide effective protection to offenders who cooperate with the justice system, as well as to their relatives and all other persons close to them (art. 37 (4))
- Take the necessary measures to enhance cooperation and coordination between the different competent national authorities (art. 38)
- Adopt measures to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector, beyond the requirements for combating money-laundering (art. 39 (1))
- Adopt further measures to encourage its nationals and other persons with a habitual residence in its territory to report cases of corruption (art. 39 (2))
- Consider establishing its jurisdiction over corruption offences committed against Libyan citizens (art. 42 (2) (a)).

2.4 Technical assistance needs identified to improve implementation of the Convention

- The development and implementation of dedicated programmes to monitor convicted persons after their release, with a view to their reintegration into society (art. 30)
- Capacity-building and the creation of mechanisms to improve the administration of frozen, seized and confiscated assets (art. 31)
- Model legislation on the protection of witnesses and reporting persons (arts. 32 and 33)
- Good practices in the establishment of a specialized court and a specialized prosecutor's office to combat corruption (art. 36)
- Specialized training for members of the National Anti-Corruption Commission (art. 36).

3. Chapter IV: International cooperation

Libya has a framework in place to fight corruption through international cooperation. Owing to a lack of relevant data, however, it is difficult to make a detailed assessment of Libyan practice regarding international cooperation in corruption cases.

3.1. Observations on the implementation of the articles under review

Extradition, transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Libya has no separate law on extradition, but the matter is regulated by the provisions of the Code of Criminal Procedure (arts. 493 to 510) and the Law on Countering Money-Laundering and the Financing of Terrorism (arts. 77 to 80), in addition to applicable bilateral and multilateral treaties, the principle of reciprocity and international practice. Libya has concluded a number of regional and bilateral extradition treaties and considers the Convention a legal basis for extradition.

Extradition procedures include both judicial and administrative procedures.

Extradition requests must be submitted through diplomatic channels for transmission to the Ministry of Justice. The Minister of Justice may propose or authorize the extradition of a person accused or convicted abroad. On that basis, the Cabinet has the right to decide the priority of extradition in the event of more than one extradition request. Persons cannot be extradited without a decision by the Criminal Court. Nevertheless, extradition may be granted without the matter being brought before the Court if extradition concerns only one country and is requested or is not opposed by the person to be extradited.

Extradition may be carried out irrespective of the existence of an extradition treaty, provided that the requirements of the Code of Criminal Procedure are met.

In general, Libya requires dual criminality for an offence to be extraditable, but does not require a minimum penalty (art. 493 bis (a) of the Code of Criminal Procedure). However, some of the international agreements to which Libya is a party do not require dual criminality as a condition for extradition in a number of cases (such as the Riyadh Arab Agreement on Judicial Cooperation and an agreement with Jordan). On the basis of dual criminality, some offences in the Convention are not subject to extradition because they have not been established as criminal offences in Libya.

The fact that the offence involves financial matters is not a ground for refusal.

Libya does not consider any act of corruption a political offence.

Libya has not taken adequate measures to expedite extradition procedures or simplify relevant evidentiary requirements.

Libya does not extradite its nationals (art. 493 bis (a) of the Code of Criminal Procedure). Libyan legislation does not include exceptions to that principle. However, there is an express provision in Libyan legislation that establishes the principle of trial in case of non-extradition of a Libyan national (art. 80 of the Law on Countering Money-Laundering and the Financing of Terrorism).

Libya may detain a person sought for extradition, on the basis of article 497 of the Code of Criminal Procedure.

The interim Constitutional Declaration of 2011 guarantees the right to litigation for all people regardless of their nationality. The Code of Criminal Procedure establishes procedures that allow a person sought for extradition to defend himself or herself.

Libyan legislation does not provide for the enforcement of foreign criminal judgments (except for confiscation, under art. 65 of the Law on Countering Money-Laundering and the Financing of Terrorism).

Authorities have indicated that in practice, consultations take place with the requesting State before an extradition request is denied.

Libya is party to a number of agreements and arrangements on the transfer of sentenced persons, including the Judicial Cooperation Agreement of the Arab Maghreb Union and the Riyadh Arab Agreement on Judicial Cooperation.

Libya has no legislation, agreements or arrangements governing the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

Libya has no separate law on mutual legal assistance, but the matter is regulated by the provisions of the Law on Countering Money-Laundering and the Financing of Terrorism (arts. 62 to 76), in addition to applicable bilateral and multilateral treaties and the principle of reciprocity. Libya has concluded a number of regional and bilateral treaties on mutual legal assistance. The Convention can also be applied directly to comply with a number of relevant obligations.

The Attorney General is the central authority responsible for dealing with requests for mutual legal assistance. Libya accepts requests submitted in Arabic. The Secretary-General of the United Nations has not been notified of either of those facts.

Requests for mutual legal assistance are submitted to the Attorney General who, if he or she decides to accept them, transmits them to the competent authorities for execution.

Libyan legislation does not establish clear procedures on how to send, receive or execute requests for mutual legal assistance. The authorities have indicated that such requests should be sent through diplomatic channels. It does not appear that, in urgent circumstances, requests may be made through direct contact between the competent judicial authorities before the request is received through diplomatic channels.

The Law on Countering Money-Laundering and the Financing of Terrorism establishes dual criminality as a requirement for mutual legal assistance only when such assistance involves coercive measures. The same range of measures and procedures that are available in domestic criminal proceedings are also available in the context of mutual legal assistance. In addition, the same provisions that apply to requests for mutual legal assistance in relation to natural persons also apply to requests for mutual legal assistance in relation to legal persons.

The Law on Countering Money-Laundering and the Financing of Terrorism and international agreements to which Libya is a party cover many forms of assistance, including mutual legal assistance in the conduct of investigations, such as the interrogation of accused persons and the hearing of witnesses, experts and victims, in addition to procedures related to the inspection and seizure of items. Nothing in Libyan legislation prevents Libya from conducting hearings of witnesses or experts through videoconference.

Bank secrecy and the fact that an offence also involves financial matters are not grounds on which mutual legal assistance may be refused under the Law on Countering Money-Laundering and the Financing of Terrorism. Requests for mutual legal assistance must comply with Libyan law and be based on multilateral or bilateral agreements or the principle of reciprocity.

Libya may postpone the provision of assistance in view of the existence of an ongoing investigation or case. Consultations are held before assistance is refused or postponed, in accordance with the Law on Countering Money-Laundering and the Financing of Terrorism and the international agreements to which Libya is a party. Furthermore, Libyan authorities may exchange information without prior request.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Libyan law enforcement authorities may cooperate at the international level through a number of mechanisms and networks, including the International Criminal Police Organization (INTERPOL). The Financial Intelligence Unit may also cooperate with its foreign counterparts, but has not yet joined the Egmont Group of Financial Intelligence Units. The National Anti-Corruption Commission cooperates directly with a number of foreign counterparts despite the absence of provisions governing the matter in the law establishing the Commission.

Libya has a range of tools for communication and analysis at the international level. Standard communication channels are used, in addition to confidential, secure channels such as the INTERPOL I-24/7 system.

Libya considers the Convention a legal basis for mutual cooperation in the area of law enforcement. Libya has also signed a number of security cooperation agreements (such as a security cooperation agreement between member States of the Community of Sahelo-Saharan States and a cooperation agreement with France in the area of security and the fight against organized crime). The Financial Intelligence Unit has also signed a number of memorandums of understanding with its counterparts.

Libya has a draft law on electronic crimes and acts of piracy. Some of the bilateral agreements to which Libya is a party provide for cooperation in combating such crimes (such as the aforementioned cooperation agreement with France in the area of security and the fight against organized crime).

Libya has not been involved in exchanges of personnel.

Article 76 of the Law on Countering Money-Laundering and the Financing of Terrorism expressly provides that the competent entities may conclude bilateral or multilateral agreements or arrangements to form joint investigative teams or conduct joint investigations. In the absence of such agreements or arrangements, joint investigations may be conducted on a case-by-case basis.

For offences established in accordance with the Convention, measures established in the Code of Criminal Procedure and the Law on Countering Money-Laundering and the Financing of Terrorism, including the monitoring of communications and the recording of conversations, may be used in the context of the application of special investigative techniques. Furthermore, Libyan legislation does not prevent the conclusion of appropriate bilateral or multilateral agreements or arrangements for the use of special investigative techniques, including the use of controlled deliveries and covert operations, in the context of international cooperation.

3.2. Successes and good practices

- Libya appears to have adopted a flexible approach to extradition through its use of the Convention as a legal basis and by not making extradition conditional on the existence of a treaty (art. 44 (5) to (7)).

3.3. Challenges in implementation

It is recommended that Libya:

- Adapt its information system to allow the country to collect data and provide more detailed statistics on international cooperation
- Ensure that offences not yet criminalized (see section 2.3, “Challenges in implementation”) are considered extraditable (art. 44 (4))
- In order to further improve extradition procedures, endeavour to expedite such procedures and simplify the relevant evidentiary requirements (art. 44 (9))
- Notify the Secretary-General of the United Nations of the central authority and the acceptable languages with regard to requests for mutual legal assistance (art. 46 (13), (14) and (17))
- Establish clear and effective procedures for the timely execution of requests for mutual legal assistance and for communication with foreign authorities; and consider adopting a manual and procedures or guidelines on mutual legal assistance that would set out in greater detail the steps to be followed by authorities in executing and making requests for mutual legal assistance, as well as any requirements and time frames to be followed, with a view to providing greater clarity to Libyan authorities and to requesting States (art. 46 (13) and (14))
- Ensure that requests for mutual legal assistance are executed in a timely manner, taking into account any deadlines (art. 46 (24))
- Consider establishing a procedural framework to regulate the transfer of proceedings for the prosecution of an offence established in accordance with the Convention in cases where such transfer is considered to be in the interests of the proper administration of justice (art. 47)
- Adopt a clearer legal provision allowing the National Anti-Corruption Commission to cooperate at the international level; and strengthen its cooperation in the area of law enforcement, including through the exchange of personnel (art. 48 (1)).

3.4 Technical assistance needs identified to improve implementation of the Convention

- A model law on mutual legal assistance and the implementation of related procedures (art. 46).
