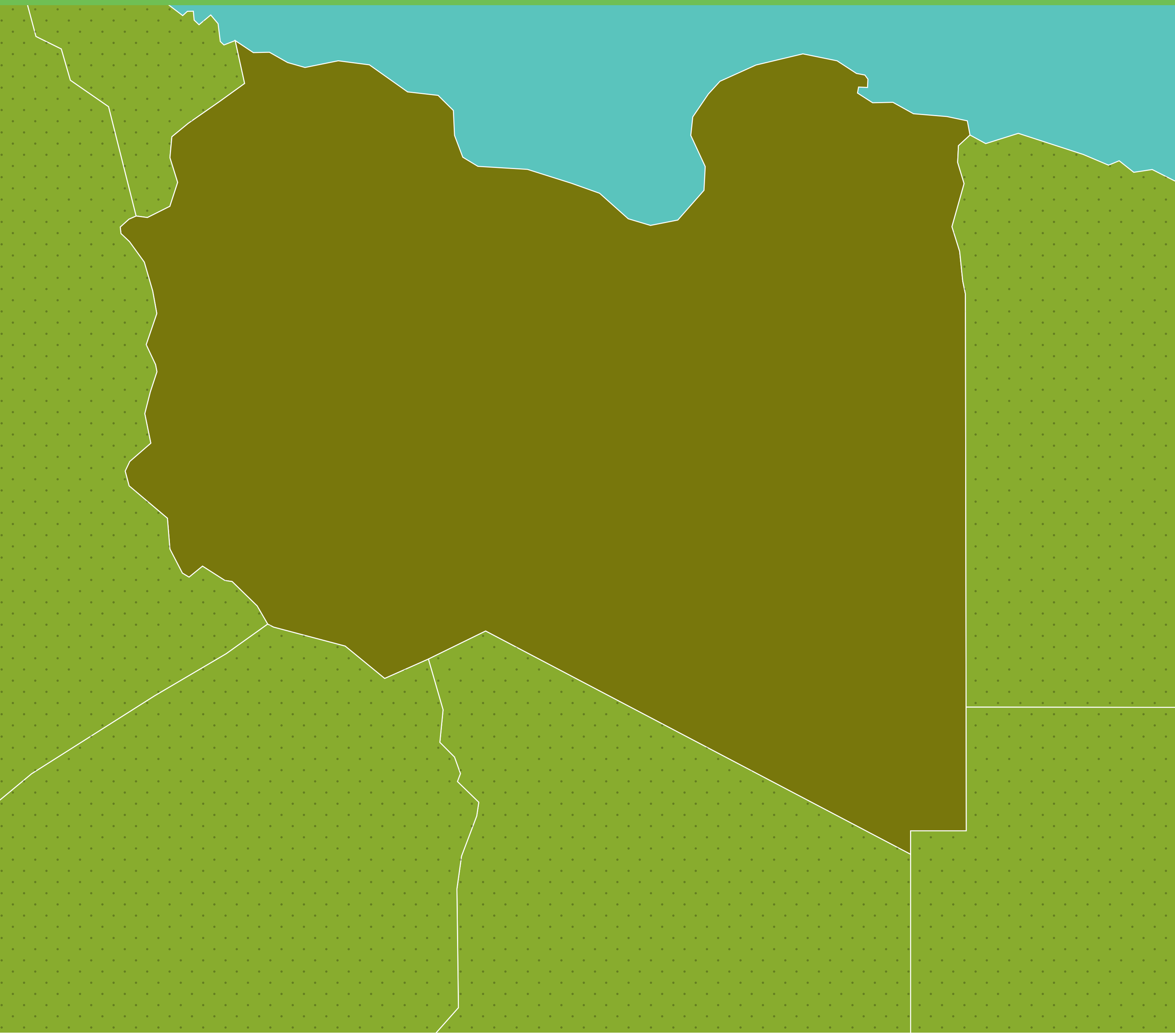
ILLICIT FINANCIAL FLOWS AND ASSET RECOVERY

In The State of Libya

RESEARCH PAPER 2021



United Nations Interregional Crime and Justice Research Institute

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Important Note: While much research for this report was done prior to the end of 2020, and while a number of political changes have taken place in early 2021, including the creation of the Government of National Unity (GNU) and the appointment of ministers, the recommendations flowing from this report can nevertheless be useful for the GNU as well as other officials and international stakeholders.

Foreword

Illicit Financial Flows (IFFs) impact a country's economic and social development in a myriad of ways. Undocumented flights of wealth to and from - as well as within - a country have severe repercussions on government revenues, wealth that could otherwise be invested in public spending and other forms of economic and social reforms. Illicit financial flows, particularly those related to organised crime, also withdraw funds from the legitimate economy and may force the State to divert more resources to prevent and respond to criminal activity or to treat or compensate victims. The drain on resources and tax revenues caused by IFFs blocks the expansion of basic social services and infrastructure programs that are targeted at improving the wellbeing and capacities of all citizens, in particular, the very poor.

IFFs in many developing countries mean fewer hospitals, schools, police, roads and job opportunities, as well as lower pensions . It is for these reasons that States must place significantly higher priority on seizing and confiscating illicitly-obtained assets, and to channel such recovered assets to high-priority development needs.

New paradigms and policies to counter IFFs must be established to produce an unbroken chain of work from tracing, freezing, seizure, confiscation and recovery of illicitly-obtained assets, through transparent management and liquidation of such assets, to distribution of the proceeds to high-priority development needs. It is this mechanism and paradigm that will enable countries to capture billions in assets and to directly channel them into, for example, more schools, hospitals, community clinics and infrastructure, as well as the much-needed payment of salaries for teachers, nurses and doctors. Such policies also can enable States to significantly reduce youth unemployment. All of these are key factors to a country's development.

In light of the above, the European Union and the United Nations Interregional Crime and Justice Research Institute (UNICRI) are proud to launch a series of studies on Illicit Financial Flows and Asset Recovery. These studies shed light on the significant damage being caused to States as a result of unchecked IFFs, and on the significant value of prioritising the capture of illicitly-obtained assets linked to such IFFs. The EU and UNICRI are committed to providing key support and expertise needed by States to more effectively respond to IFFs. In creating and implementing more effective responses, many of which are identified in the recommendations of these reports, States will be able to weaken the influence of organised crime, as well as inject significantly greater funding into high-priority development needs.

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Executive Summary:

Organised crime produces significant amounts of illicit revenue and proceeds globally and has a deteriorating effect on the world's economy, in particular on developing countries such as Libya. The very fragile and fragmented political situation in the country, makes it especially vulnerable to Illicit Financial Flows, corruption and organised crime. Based on available information, human trafficking, migrant smuggling, arms trafficking, drug trafficking, oil, gasoline and diesel smuggling and terrorism financing have been identified as significant in the region in terms of prevalence, potential harm and cross-border connectivity.

Libya's national policies and laws on organised crime, and the judicial system and detention framework are believed to be poorly developed and enforced, as the country has not met most of the standards put forth by UNCAC. Transparency in corporate structures and reinvesting recovered assets into high-priority development needs are essential for overall socio-economic development. Some efforts were made by Libya to put in place essential reforms, such as by establishing the National Anti-Corruption Commission (NACC) and Libya's Asset Recovery and Management Office (LARMO). Nonetheless, further steps towards creating a stronger institutional framework to address IFFs, organised crime and corruption are needed.

Key Findings:

- In a scenario in which Libya were to prioritise the recovery of only 10% of the assets lost through IFFs, it would be possible to cover nearly 400% of the funding requirement of the United Nations Humanitarian Response Plan's budgetary request for the Libyan health sector. This would benefit an estimated 203,000 individuals in need of life-saving and life-sustaining humanitarian health assistance.

- Alternatively, such recovered assets could fully cover the minimum cost of pensions for 100,000 people, subsidise minimum wage costs for 100,000 individuals, or cover the funding requirement of the UN Humanitarian Response Plan's budgetary request for the education sector, ensuring access to safe, inclusive and quality education for 83,500 young students and supporting over 1,800 teachers.

- In light of rampant corruption within the country, Libya should adopt a general policy that all Libyan assets frozen, seized and confiscated abroad, should remain abroad; returning such assets in the current political and conflict-related climate might be interpreted as favouring the interests of one side (governmental or geographical) over another. Exceptions to this general policy should exist, however, when there is a reliable and transparent facilitator (e.g. the Red Cross, WHO, etc.) that can facilitate immediate humanitarian needs.

- Libya should consider empowering the Libyan Asset Recovery and Management Office (LARMO) as the sole entity for tracing and managing seized and confiscated assets. This should include the power to conduct public auctions of seized assets subject to significant depreciation, and to conduct public auctions of all confiscated assets.

- Libya should consider mechanisms for sustained cross-border cooperation, particularly through face-to-face dialogue with counterparts in other countries regarding the tracing, freezing, seizure, confiscation and recovery of assets linked to criminal activity.

- Libya should also consider establishing sustainable and measurably impactful capacity building for public officials on inter-institutional cooperation, particularly on the issue of tracing, freezing, seizure and confiscation of assets linked to acts of corruption.

- Consideration should also be given to establishing mechanisms for non-penal confiscation of assets linked to acts of corruption, including civil confiscation (while maintaining the initial burden of proof on the State), Unexplained Wealth Orders, plea bargaining or reconciliation to more quickly return illicitly-obtained assets and to also reduce caseloads on prosecutors and the courts.

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Acronyms and Abbreviations

ACA	Administrative Control Authority
AML/CFT	Anti-Money Laundering/Countering Financing of Terrorism
AQIM	Al-Qaeda in the Islamic Maghreb
ARO	Asset Recovery Office
CARIN	Camden Asset Recovery Inter-agency Network
CBL	Central Bank of Libya
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GDP	Gross Domestic Product
GNA	Government of National Accord
GNC	General National Congress
GNU	Government of National Unity
IFFs	Illicit Financial Flows
ISIL	Islamic State of Iraq and the Levant
LAB	Libya Audit Bureau
LARMO	Libya's Asset Recovery and Management Office
LNA	Libyan National Army
LPDF	Libyan Political Dialogue Forum
LYD	Libya's Dinar
MENA-FAFT	Middle East and North Africa Financial Action Task Force
NACC	National Anti-Corruption Commission
OECD	Organisation of Economic Cooperation and Development
PGO	Prosecutor General's Office (Attorney General)
SDG	Sustainable Development Goal
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNODC	United Nations Office on Drugs and Crime
UNSMIL	United Nations Support Mission in Libya
UNTOC	United Nations Convention against Transnational Organised Crime
USD	United States Dollar
WFP	World Food Programme
WHO	World Health Organisation

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1. Overview of Illicit Financial Flows and the Recovery of Illicitly-Obtained Assets

1.1 Introduction

This study examines illicit financial flows (IFFs) generated from organised criminal activity in Libya. It provides an overview of organised crime and assets linked to organised crime in the country, and outlines the legislative and operational frameworks in place to combat IFFs and to recover illicitly-obtained assets. Effective asset recovery policy is a fundamental component of combating IFFs and mitigating the harm produced by IFFs.

This study's main objective is to provide targeted recommendations to national authorities, as well as other key stakeholders, in order to create and strengthen mechanisms for the effective and efficient seizure and confiscation of assets linked to organised crime (and, where appropriate, high-level corruption). The study also provides recommendations to strengthen the effective and transparent management of any recovered assets, including recommendations with respect to directing such assets to high-priority development needs. High-priority needs in Libya include the employment, health, and infrastructure sectors.

The data collection for this study was undertaken from May 2020 through January 2021. Data collection was undertaken through open source desk research and interviews with, and feedback from, key stakeholders.

Definition of Illicit Financial Flows

There is no consensus regarding the definition of IFFs, as it covers a diverse set of activities and behaviours, reflecting the complex and multifaceted nature of illicit international trade and finance.[1] The absence of a comprehensible and universally adopted definition explains the difficulty in analysing it and, therefore, producing targeted responses. The United Nations Economic Commission for Africa (UNECA) stated that this lack of terminological clarity limits the emergence of effective policy measures.[2] Another reason for this struggle concerns the statistical feasibility of quantifying IFFs, which is extremely challenging. This is because IFFs, and related crimes, are purposefully hidden or disguised by criminals who are seeking to protect themselves from the interventions of law enforcement agencies. Consequently, attempting to gather reliable information to model criminal actions and the requisite data through which to produce accurate responses is also challenging.[3]

Notwithstanding these limitations, for purposes of this study and assisting States in developing holistic and useful responses to the threat, IFFs are defined broadly as the revenue, proceeds and any other assets generated by the following activities:

- Corruption, including the proceeds of theft, bribery, graft and embezzlement of national wealth by government officials;
- Illicit Commerce, including the proceeds of tax evasion, misrepresentation, misreporting and mis-invoicing related to trade activities, and money laundering through commercial transactions; and
- Other Serious Crime, including the proceeds of criminal activities, including human and drug trafficking, smuggling, counterfeiting, racketeering (also known as criminal protection or extortion) and terrorist financing.[4]

This classification, which is a slight alteration from that used by UNECA in 2013, highlights not only the diverse and evolving nature of illicit financial flows, but also the need for multifaceted (holistic) responses that tackle the threat from various angles – e.g., not just a criminal justice response.[5] The classification also disregards the characterisation that IFFs should only be international in nature – significant losses and harms can occur to national economies, healthcare and education systems, and to employment opportunities, even if IFFs occur within a specific country. The dynamic of the forms of IFFs differs from country to country, depending on the illicit flows transiting into, through and out of the country. Still, higher-value illicit flows, such as the trade of narcotics, tend to correlate with higher levels of other criminality, such as corruption.[6]

This study concentrates on the revenue, proceeds and other assets generated from criminal activities in Libya. Due to the interdependent nature of IFFs, this study also examines assets generated from corruption and commerce to provide a useful framework on IFFs in Libya. Money laundering is a crucial tool used by organised criminal groups to move illicitly-obtained revenue and to fund criminal activity. There is also a strong link between corruption and organised crime as both are propelled by the same limitations of governance and the law.

Recovery of Illicitly-Obtained Assets

The recovery of illicitly-obtained assets is essential to combating organised crime and IFFs as it deprives criminals of their financial gains and can act as a deterrence against future crimes (by removing the financial motivation of crimes). The recovery of illicitly-obtained assets can also help mitigate the harmful impact of IFFs through the liquidation and reinvestment of those assets into public welfare and high-priority development needs. For the purposes of this study, the asset recovery process includes the tracing, freezing, seizure, confiscation, and management of illicitly-obtained assets.

Worldwide progress in the recovery of illicitly-obtained assets has been, at best, modest. In 2012, the OECD launched a survey measuring assets frozen and returned between 2010 and June 2012. In this time period, a total of approximately USD 1.4 billion of corruption-related assets had been frozen. In terms of returned assets, a total of USD 147 million were returned to a foreign jurisdiction in the 2010-June 2012 period. These figures pale in comparison to the widely quoted estimate that the aggregate size of money laundering in the world could be somewhere between two and five percent of the world's GDP. In 2009 alone, criminal proceeds were estimated to be at 3.6% of global GDP, with 2.7% (or USD 1.6 trillion) being laundered.[7]

European Union (EU) progress in the recovery of illicitly-obtained assets has also been modest. Europol estimates organised criminal groups have a profit of EUR 110 billion annually in the EU.[8] Corruption is estimated to cost the EU economy some EUR 120 billion per year.[9] Europol estimates that about EUR 1.2 billion is confiscated each year in the EU, which represents 0.009% of EU GDP. For a country with a GDP of EUR 200 billion (e.g. Finland in 2014), this amounts to about EUR 17.7 million; for a country with a GDP of EUR one trillion (e.g. Spain in 2014), the figure is about EUR 88.7 million; for a country with a GDP of about EUR 2.2 trillion (e.g. France in 2014), it is about EUR 195.2 million.

For bribery alone, the most widely accepted estimate of global bribery puts the total at around USD 1.5 to 2 trillion each year.[10]

Corruption, bribery, theft and tax evasion, and other illicit financial flows cost developing countries USD 1.26 trillion per year. That is roughly the combined size of the economies of Switzerland, South Africa and Belgium, and enough money to lift the 1.4 billion people who get by on less than USD 1.25 a day above the poverty threshold and keep them there for at least six years.[11]

A USD one million bribe can quickly amount to a USD 100 million loss to a poor country through derailed projects and inappropriate investment decisions which undermine development.[12]

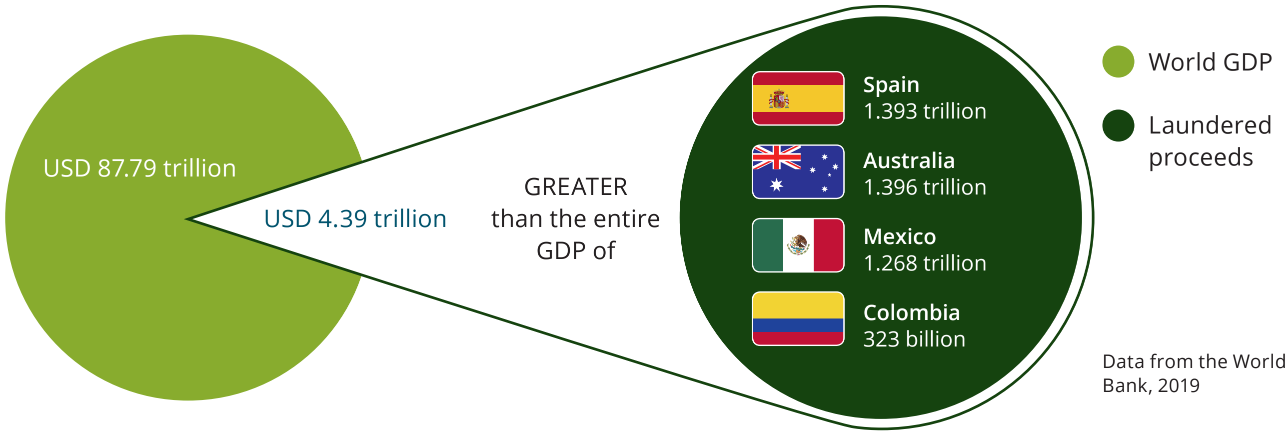
Notwithstanding the above, such estimates should be treated with caution. They are intended to give an idea of the magnitude of money laundering, which represent only a portion of IFFs. Due to the illegal nature of the transactions, precise statistics are not, nor likely ever will be, available and it is therefore impossible to produce a definitive estimate of the amount of money that is globally laundered every year. The Financial Action Task Force (FATF) therefore does not publish any figures in this regard. Still, there is near universal consensus that money laundering and IFFs worldwide undermine most economies as well as development.

Just as IFFs weaken development, the recovery of assets linked to IFFs can enhance development. The recovery of only a small portion of illicitly-obtained assets linked to serious criminal activity – both from abroad and from within a country – can provide developing countries with much-needed additional resources. In this context, prioritising the tracing, seizure, confiscation and recovery of illicitly-obtained assets can, aside from providing a useful deterrent to criminality, fund high-priority development needs, such as those in the health, education or infrastructure sectors.

Many obstacles, particularly in cross-border cooperation to recover assets, have allowed criminal organisations and corrupt officials to take advantage of such weaknesses. Proving that assets are linked to criminal conduct can be a complex and lengthy process, ultimately producing a lack of public confidence in state institutions. Nevertheless, countries that have had the most success in the tracing, freezing, seizure and confiscation of illicitly-obtained assets (whether located abroad or within that particular country) are those that have adopted mechanisms that can accelerate criminal justice processes for confiscation,[13] as well as mechanisms for non-conviction-based forfeiture of assets.[14]

An increasing number of jurisdictions have adopted mechanisms for initiating proceedings for unexplained wealth, or illicit enrichment.[15] Many countries now recognise the value of establishing dedicated Asset Recovery Offices (AROs), essentially offices that house officials with access to multiple databases (e.g., vehicle registry, business registry, tax information, customs database, criminal records). Such AROs, once in place, can take a cross-institutional view of one's assets, as well as the assets held by family members or associates of those

Estimated annual amount of global laundered proceeds is greater than the entire GDP (2019) of the following countries combined



suspected of being involved in serious criminal activity – more often than not, when one launders illicitly-obtained assets, he or she does not place them in his or her own name.

Additionally, the establishment and training of specialised forensic financial analysts, who support the role of prosecutors in proving financial crimes, have proven to be beneficial in both criminal proceedings as well as in civil confiscation proceedings. States that have developed strong inter-institutional cooperation mechanisms also have shown greater success in the recovery of illicitly-obtained assets.[16]

1.2 International Regulations and Recommendations

A broad set of international conventions, standards, and bodies have been developed in order to combat IFFs. These include UN conventions which establish standards that all countries are expected to meet in order to avoid providing a safe haven for various kinds of IFFs. They also include treaties or organisations with narrower membership, but which set out more detailed measures; a number of these treaties allow for critical and useful peer reviews to ensure compliance.

Mechanisms for Accelerated Conviction and Non-Conviction-Based Forfeiture

- Plea bargaining, reconciliation or other expedited settlement of criminal proceedings requiring the defendant to return illicitly-obtained assets in exchange for a reduced sentence (or information regarding assets illicitly-obtained by others);
- Mechanisms that allow courts to impose orders for extended confiscation
  Example: *issuing an order stating that all assets acquired, say, over the past five years by a defendant convicted of a serious crime, are presumed to have been illicitly-acquired, unless the defendant can rebut this presumption;*
- Orders for the confiscation of legally-acquired assets of the defendant, where the State demonstrates that it has taken every reasonable measure to locate the illicitly-acquired assets, but has been unable to do so.

Additional valuable mechanisms may include a separate civil confiscation proceeding against assets that are considered to be illegally-acquired – such proceedings still place the initial burden on the State to prove that certain assets are the product of illicit activities, albeit at a lower burden of proof; civil confiscation proceedings, while they do not adjudicate the criminal culpability of any particular individual, or allow the judge to deprive anyone of their liberty, have the advantage of being able to be adjudicated over a span of months, and to recover assets more quickly, in stark contrast to, say, a criminal money laundering case, which typically takes several years. The initiation and adjudication of a civil confiscation case (against illicitly-acquired assets) does not necessarily preclude the initiation and adjudication of a parallel criminal case (against an individual).

Key International Parameters Regarding Illicit Financial Flows

- 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- 1999 UN International Convention for the Suppression of the Financing of Terrorism
- 2000 UN Convention against Transnational Organised Crime
- 2003 UN Convention against Corruption
- FATF 40 Recommendations

In 2015, the General Assembly of the UN adopted the Addis Ababa Action Agenda which invites "appropriate international institutions and regional organisations to publish estimates of the volume and composition of illicit financial flows".[17] Similarly, the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDG) call on countries to:

- significantly reduce illicit financial and arms flows by 2030;
- substantially reduce corruption and bribery in all their forms;
- develop effective, accountable and transparent institutions;
- strengthen domestic resource mobilisation, also by supporting developing countries;
- enhance global macroeconomic stability;
- strengthen the recovery and return of stolen assets and combat organised crime.[18]

The UN also highlights the need for a methodology to estimate IFFs in order to comply with the data requirements stemming from the global SDG indicator framework.[19]

The EU and the OECD also play key roles in defining priorities that countries need to consider to better address the threats of money laundering and IFFs, as well as the need to strengthen mechanisms for the seizure and confiscation of assets, and the need to tackle tax evasion.[20] Additional mechanisms such the Camden Asset Recovery Inter-Agency Network (and similar networks) provide much-valued support and cross-border dialogue for police and prosecutors to better capture assets linked to organised crime and high-level corruption.[21]

2. Illicit Financial Flows, Corruption and Organised Crime in Libya

2.1 Overview of Libya

- Capital: Tripoli
- Population of 6.7 million people, of which over three million live in Tripoli[22]
- 97% of the population is ethnic Arab-Berber with Islam as their official religion. 96.6% of the population is Sunni Muslim.
- Official language: Arabic
- Official currency: Libyan Dinar (LYD)[23]
- Member of: UN and MENA-FATF. Libya has close relations with the EU by benefitting from different bilateral cooperation programmes (e.g. the European Neighbourhood Instrument and the EU Emergency Trust Fund).[24]

Geographical and Regional Context

Libya, officially the State of Libya, is located in the Maghreb region in North Africa, bordered by the Mediterranean Sea to the north, Egypt to the East, Sudan to the southeast, Chad to the south, Niger to the southwest, Algeria to the west, and Tunisia to the northwest. Libya is the fourth largest country in Africa with a total of 1,759,541 km^2.

Socio-Economic Context

Libya's economy, almost entirely dependent on oil and gas exports, has struggled since 2014 given security and political instability, disruptions in oil productions, and decline in global oil prices.[25] Its recent economic recovery was stalled in early 2019 by the most serious political crisis since 2011. The outbreak of the war around Tripoli in April 2019 prevented Libya from continuing its economic expansion. After its deep recession between 2013 and 2016, driven by limited oil production, the Libyan economy was able to substantially increase oil production in 2017-2019.[26] As a result, GDP growth reached an average of 21% during 2017-2018, but slowed sharply to 2.5% in 2019.[27]

The conflict in Libya and the subsequent failure of political rivals to reach a sustained peace deal have taken a heavy toll on the country's economy and people, further aggravated by the Covid-19 pandemic. In this context, the production and export of oil had come to a near complete stop in January 2020, due to the closure of oil ports and terminals. As a result, GDP growth was projected to be negative in 2020 (minus 19.4%), but was expected to recover by 22.2% in 2021, stabilising at about 1.4% over 2021–22.[28]

Continued inflation and low oil production exacerbated poverty in a country already ravaged by civil war and repeated terrorist attacks. The Tripoli government (the GNA) implemented an active policy of job creation, especially in the public sector, but according to the Ministry of Labour, the unemployment rate reached 18%, and about half of all young people and a quarter of women remain without employment.[29]

Peace and stability seem difficult in the near future given the conflicting agendas of all parties involved. The disruption of oil production and export may continue for a longer period with disastrous economic and social consequences. Moreover, the ongoing Covid-19 pandemic in Europe is disrupting both demand and supply of commodities in Libya, negatively impacting basic services delivery as well as the poverty rate.[30]

Libya has a labour force of 2.5 million people. Agriculture's share in Libya's economy is negligible, accounting for 1.3% of GDP in 2017,[31] and employing 7.7% of the workforce.[32] Main products include wheat, barley, olives, dates, citrus, vegetables, peanuts, soybeans, and cattle. The arid climate conditions and the poor quality of the soil severely limit agricultural production.[33]

Industry is the backbone of the Libyan economy due to the strong petrochemical industry. It accounts for 52.3% of GDP, employing 26.5% of the active population.[34] Production includes petroleum, petrochemicals, aluminium, iron, steel, food processing, textiles, handicrafts, and cement.[35] Services account for 46.4% of GDP and its share in total employment has risen to 65.6%.[36]

Libya's potential

Notwithstanding these setbacks, given Libya's vast natural resources, a relatively small population and its strategic location, the country has the means to achieve rapid growth as long as internal political stability is restored and institutional mechanisms, particularly those related to endemic corruption, are put in place to ensure that the country's resources are properly managed.[37]

Political and Governance Context

Libya became independent in 1951 and suffered a military coup in 1969 led by Muammar Gaddafi, who ruled the country until he was overthrown and killed in the 2011 Libyan Civil War. Two authorities initially claimed to govern: the House of Representatives in Tobruk and the 2014 General National Congress (GNC) in Tripoli. After UN-led peace talks between the Tobruk and Tripoli governments, a unified interim UN-backed Government of National Accord (GNA) was established in 2015, and the GNC disbanded to support it. Since then, a second civil war broke out, with parts of Libya split between the Tobruk and Tripoli-based governments, as well as various tribal and Islamist militias. In March 2021, a new UN-supported interim Government of National Unity (GNU) was established as a result of subsequent discussions under the Libyan Political Dialogue Forum (LPDF).

More than nine years after the fall of Muammar Gaddafi, Libya continues to struggle to end its violent conflict and build state institutions. At the subnational level, many local conflicts reflect long-standing feuds between various factions, tribes, and ethnic groups. In the shadow of the ongoing conflict around Tripoli, the prospects for a political solution were dimmed by the country's deep political and tribal divides.[38]

Unlike its immediate neighbours Tunisia and Egypt, Libya faces the challenge of governance over elements of oil-based national revenues, complex tribal and religious politics, and a strong autonomy at the subnational level. This is aggravated by the fact that state and provincial administration and institutions lack effective capacity and structure – a product of the Gaddafi regime's authoritarian governance structure.[39]

The Islamic State active network in the country took advantage of the conflict to seize control of several coastal cities including Sirte, which it held until mid-2017.[40] Political resolution is needed to implement the reforms required for private sector- driven growth and the creation of new jobs.[41]

2.2 Illicit Financial Flows and Organised Crime in Libya

The Libyan Revolution of 2011 was a pivotal point for the development of both corruption and organised crime in the country and its southern neighbourhood. High-level criminal activity has been changing ever since the overthrow of Muammar Gaddafi, as the revolution opened up opportunities that created new criminal industries, such as kidnapping for ransom, which was virtually unheard of in the country before 2011.[42] The lack of control by the Libyan government over the country's territory and institutions has created increased opportunities for criminals to operate in Libya.[43] It also created the conditions for the expansion of established criminal markets, such as drug trafficking and migrant smuggling, both of which grew beyond levels Libya had ever experienced before.[44]

Libya has one of the highest criminality scores in Africa, ranking 7th overall, with the highest score in North Africa.[45] The two types of criminal actors that have most influence in Libya are mafia-style groups and state-embedded actors.[46] Various mafia-style militia groups control many areas across the country, and they are heavily involved in many criminal markets, including drug trafficking, migrant smuggling, human trafficking and illicit oil smuggling.[47]

Libya has had essentially two competing governments, both with close links to militia groups and criminal actors.[48] In some cases, they have been dependent on each other. These groups are well-armed and dominate different markets, including migrant smuggling, protection payments, drugs, fuel, arms, and human trafficking.[49] In some areas, they have more control than national authorities.[50]

State-embedded actors are highly influential. Libya's state structure is weak and fragmented, and in some areas militias control the government. The proximity of militia groups and criminal actors to the political class explains developments in corruption and organised crime in Libya. In some cases, they are interdependent, making the political process indirectly dependent, and heavily influenced, on the proceeds of organised crime.[51]

Criminal networks in Libya are generally characterised by separate families that use quasi-corporate structures to import and export a wide range of commodities.[52] These actors often have political affiliations, and also operate in migrant smuggling.[53] On the other hand, foreign actors are far less involved in organised crime in Libya than in most other nations across Africa. Given the country's history of extensive control over states structure, few foreign actors have been able to gain control of criminal markets.[54] Rather, such control has often been in the hands of corrupt state actors and, more recently, militias.[55] Notwithstanding this, one of the key criminal markets that foreign criminal actors play a role in is arms trafficking, supplying the militias.[56]

Libya has an extremely high criminal markets score, ranking 6th in Africa in the Organised Crime Index.[57] Five of the ten criminal markets captured in the Index[58] have a high score, with significant influence on society and state structures. By far the most pervasive criminal market in the country is human trafficking.[59] This is the highest score in Africa not only for human trafficking, but for any of the ten criminal markets. Kidnapping for ransom involving migrant workers has become extremely common in Libya. The incidence of labour exploitation and forced prostitution is also very high.[60] While there is little documentation and no real data on the subject, monitoring in the country strongly suggests that these activities have been on the rise in the last years (2017-2019), particularly kidnapping for ransom.[61] The ruthless exploitation of migrants is notable and builds on an entrenched culture where labour exploitation of sub-Saharan migrants is widespread.[62]

This report specifically covers the following illicit markets in Libya: human trafficking, migrant smuggling, arms trafficking, drug trafficking, oil, gasoline and diesel smuggling and terrorism financing. It should be noted that corruption and money laundering are cross-cutting issues that are interconnected with many, if not all, of the above-mentioned forms of criminal activity. Based on available information, these criminal markets have been identified as significant in the region in terms of prevalence, potential harm, as well as cross border and international connectivity.[63]

Human Trafficking and Migrant Smuggling

Although often referenced interchangeably, human trafficking and migrant smuggling are distinct crimes.[64] Both often involve the recruitment, movement and delivery of migrants from a host to a destination state; the difference lies in whether the migrants have a consensual relationship with smugglers, and whether they are free (instead of, for example, being subject to exploitation) at the end of the journey.[65] Migration in itself is not a crime, but many migrants pay the services of migrant smugglers who arrange their passage to a destination state. Under the United Nations Convention against Transnational Organised Crime (UNTOC),[66] human trafficking and migrant smuggling are illegal and they are both internationally recognised forms of organised crime.

Human trafficking and migrant smuggling are currently, economically speaking, the fourth largest global crime sector – estimated at an annual market value of at least USD 157 billion.[67] Globalisation and increasing access to transport have made it possible for criminal networks to organise the movement of refugees and migrants at unprecedented levels, even for mass movements. Europol and Interpol have estimated the value of migrant traffic from outside Europe to Europe in 2015 to be in the order of USD five to six billion each year.[68]

Human trafficking is estimated to victimise 3.7 million people in the African continent, but the lack of comprehensive data and investigative research on the topic makes it difficult to measure the specific numbers in Libya.[69] The lack of border controls also makes it difficult to know when an individual is moving voluntarily or suspected of being trafficked across the border.[70] Human trafficking has a severe negative influence on nearly all parts of Libya's sectors. The country has the highest score in Africa's Organised Crime Index and the situation is considered to be deteriorating.[71]

Migrant smuggling proliferated in Libya post-2011; since July 2017, however, there has been a substantial decline in this activity.[72] Nevertheless, the practice exists at much higher levels than in neighbouring countries. Libya hosts the largest number of migrants in the region.[73]

Migrant smuggling is closely linked to militia groups that are preventing a peaceful political transition and state consolidation.[74] Profits from the trade fund territorial control and purchases of weapons, which affects governance and security in many parts of the country.[75] However, smaller and less organised smuggling groups also operate. Inter-group competition directly related to control over the smuggling economy is triggering local violence and conflict, resulting in displacement and deaths among local populations.[76] The smuggling trade is also associated with high levels of violence against migrants, high rates of migrant deaths and associated forms of human trafficking, including kidnapping for ransom, extortion, forced labour and sexual exploitation.[77] The influx of funds from this illicit activity also impacts the corruption of local public officials.[78]

When using the less sophisticated smuggling routes prior to the 2013-14 surge, migrants would typically pay their journey in cash, slowly progressing northward and often stopping to work to pay for the next.[79] Payments would be made to the facilitator of the journey and the transport provider, and typically a portion of the fee would be paid as a bribe to municipal authorities, the police or the town's dominant security force.[80] Overland routes have become a significant source of income for many borderland regions, where local populations have begun to provide services to both the smugglers and the smuggled. The abrupt loss of this collateral industry would impact on the sustainability of those towns.[81]

Incomes Generated from Migrant Smuggling

It is difficult to determine the exact profits generated by the migrant smuggling industry, or who is profiting. The smuggling and facilitation of migrants along the trans-Saharan routes have evolved into a highly lucrative industry for armed groups, with an estimated annual revenue of USD 450 to 765 million (of which USD 89 to 236 million is accounted for within Libya alone).[82] Based on numbers of migrants arriving in Italy in 2016, combined with detailed price levels for the different legs of the journey, it is possible to calculate revenues and profits to armed groups on the various legs. The average prices charged within Libya to the north-west coast is, as of the drafting of this report, USD 300 to USD 500, with an additional USD 250 for the departure by boat. The traffickers and smugglers may gain a profit of 15% to 30% of the income.[83] With an estimated 186,000 to 343,000 people passing through Libya in 2016, the annual revenue to all armed groups combined is USD 93 million to USD 244 million, with a net annual profit of USD 13 million to USD 71 million.[84]

Some reports state that migrants are forced to pay a percentage before the journey begins and, in some cases, the costs of the journey are repaid with labour at the destination.[85] This exposes migrants and their families to extortion.[86]

There is a limited systematic study concerning the linkages between human trafficking, migrant smuggling, and IFFs.[87] Until now, the economy around migrant smuggling has been largely cash-based, and the capacity to track resulting IFFs has been limited. As more international networks are formed to measure and track IFFs, this should increase international capacities to identify and seize the assets related to migrant smuggling.[88]

Arms Trafficking

The trafficking of arms involves the import, export, acquisition, sale, delivery, movement or transfer of arms, their parts and components and ammunition across national borders, as well intentional diversion of firearms from legal to illegal commerce, without involving the movement of items across physical borders.[89]

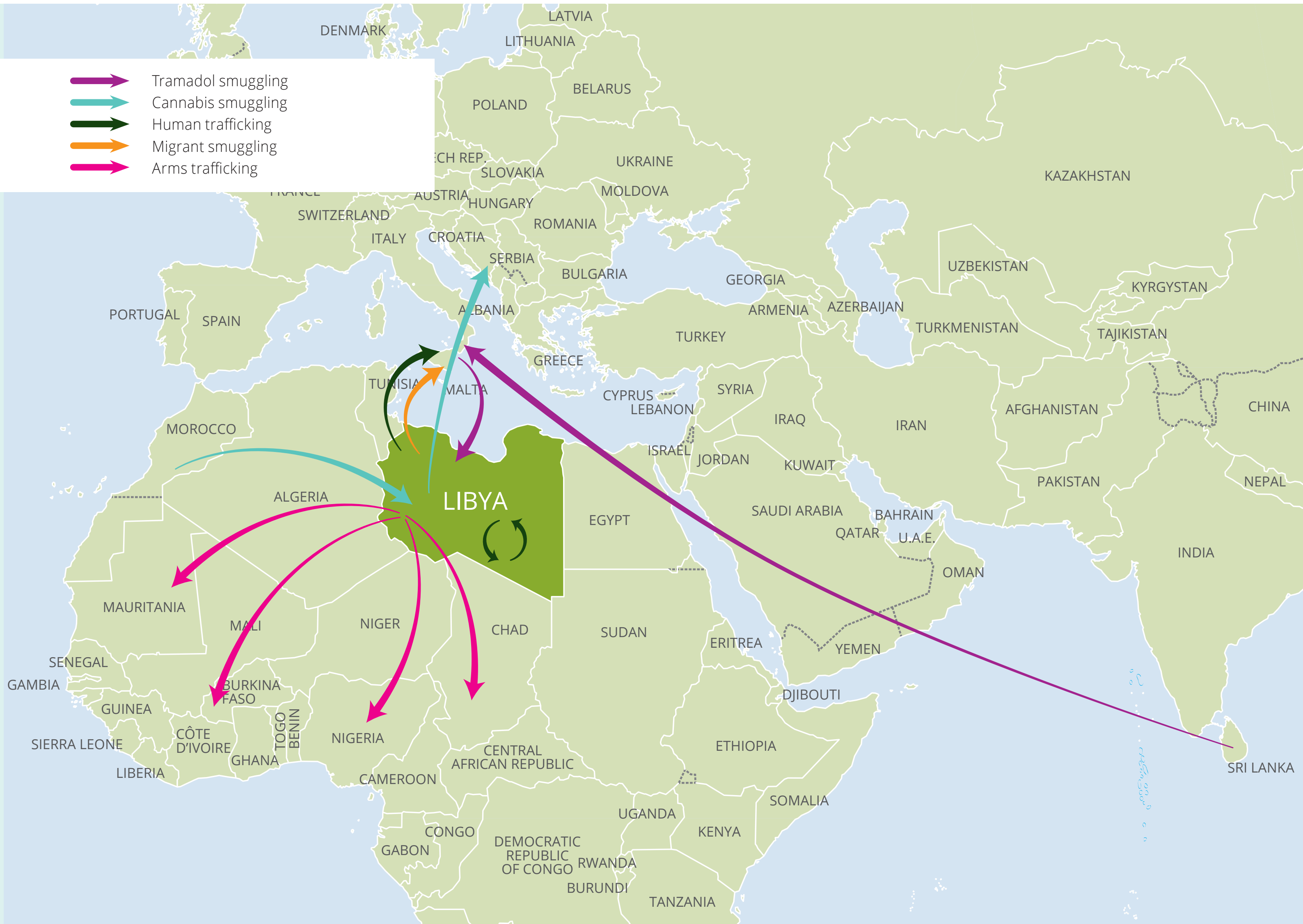
Arms trafficking is prevalent in Libya, scoring very high in the 2019 Organised Crime Index.[90] Often the trafficking of arms facilitates the commission of other organised crime activities. The correlation between human trafficking and arms trafficking appears to be very strong, indicating a significant link between these two criminal markets.[91] Libya is both a market and transit point for weaponry and the illegal arms trade. Libyan armed groups engage in arms trafficking both within the country and across its borders, and Libya remains an important hub for illicit arms flows to neighbouring countries.[92] While outflows have continued to be moderate, consisting mainly of small arms and light weapons[93], materiel entering Libya has been of an increasingly sophisticated nature.[94]

The overthrow of Gaddafi's regime led to the proliferation of illicit arms and munitions in Libya.[95] The sharp rise in arms flows after the revolution has been reflected in both the quantity of arms being regularly traded, and the diversification of locations and platforms used to facilitate sales.[96] The resurgence of illicit arms flows led black-market sellers to emerge and consolidate in densely populated areas across Libya, including Tripoli and Misrata, where firearms are now traded openly or semi-openly in marketplaces.[97]

The Government's limited capacity to effectively control Libya's vast desert territory is generating a haven for arms trafficking. This lack of control over brigades and their stockpiles by a national command structure contributed to the risk of illicit proliferation both within and outside Libya.[98] The great and unsecured arms supplies (accumulated since the Libya's eight-month civil war) remain quite vulnerable to militants with the financial power to secure them for their fighters. Small arms, antiaircraft missiles and rocket propelled grenades in some of the world's largest weapons warehouses are readily available for militant groups.[99]

The West African region is oversupplied with illicit weapons from different sources, with Libya being a major external source.[100] The conflict situation in Libya and some countries bordering the region has increased the availability, circulation and trafficking of weapons in North Africa and the West African region.[101] External actors have exacerbated Libya's problems by funnelling money and weapons to proxies that have put personal interests above those of the Libyan people. Libya's borders remain porous, facilitating an increase in trafficking and smuggling of weapons.[102]

Between 2012 and 2015, arms trafficking developed into a significant top-tier criminal market in the country. Since then, arms trafficking in Libya has changed considerably.[103] The country is now facing a shortage of ammunition, small arms and heavy weapons in the face of ongoing demand from continuing fighting across Libya.[104] The shortage has started to impact battlefield dynamics.[105] In recent years, these changes in supply and demand have led to a reorganisation of this industry, which saw a change in the profile of the arms traffickers involved and their *modus operandi*.[106] Trade in heavy weapons still exists but it is more limited and irregular.[107] In the present climate of scarcity, there is a reluctance to let go of heavy weapons, especially as it could



end up in the hands of hostile forces.[108] The majority of what is now Libya's weapons-trafficking business is made of the supply of small arms and ammunition – in particular pistols and rifles – to Libyan and regional markets,[109] but also to the northern areas of Chad and Niger.[110]

Virtual markets

The availability of small arms and ammunition, not just their presence in the illicit sphere, is an important determinant of the types of warfare non-state armed groups may prosecute. Availability is not just the total number of arms circulating illegally, but is rather a factor of accessibility, which in turn is determined by groups' resources, organisation, goals and external support.[111] The presence of these organised arms trading groups operating via social media and virtual markets increases the general availability of arms and ammunitions in Libya.[112] Most of the items posted online receive offers from interested buyers that can range from USD 95 for a blank-firing weapon or USD 150 for a shotgun, to USD 3,000 for a handgun, USD 5,900 for a heavy machine gun,[113] USD 6,500-30,000 for a rocket launcher, or USD 9,000 for an anti-tank system with missiles.[114] The material offered can include heavier and more sophisticated systems.[115]

The value of the Libyan arms trade in the post-Gaddafi era is estimated at USD 15-30 million annually,[116] although the true value could be double that as a result of the uncertainty regarding how many weapons are trafficked.[117] The economic value of weaponry combined with the lack of capacity and/or political will of the central government, and the absence of proper border security, are key challenges that could encourage further proliferation both in and outside Libya.[118]

Drug Trafficking

Since the late 1990s, Libya has been a transit zone and small market for drugs.[119] After 2011, trafficking and smuggling became more decentralised, producing a significant increase in the flow of illicit drugs and a proliferation of local drug markets.[120] The hierarchy of profit and geographically strategic importance of Libya's illicit markets – not just in drugs but in weapons, migrants, and commodities such as fuel – has important implications for the country's conflict dynamics. Drug trafficking overlaps and intertwines with almost all other flows in Libya's complex illicit economy.[121] Ultimately, drug trafficking fuels and feeds off violence.[122]

The trafficking and consumption of illicit drugs both within and through Libya are often overlooked as factors in the country's fragile situation. But the dynamics of illicit drug trading and use in Libya are just one manifestation of the rising drug challenge faced by the country.[123] Production, trafficking, and consumption are increasing and transforming across the region, posing a rising challenge to stability, security, and public health in Libya.[124]

The illicit cannabis trade is highly prevalent in Libya, given its role as a transit country for cannabis being trafficked from Morocco to the Balkans. The trade funds a number of criminal networks that move the product. Heroin seizures in Libya dropped after 2011.[125] It is likely that heroin trafficking in or through Libya, whether for domestic consumption or in transit to Europe, is still ongoing, but has become an underreported phenomenon.[126]

Tramadol and Synthetic Drugs Trade

Similarly, the synthetic drugs trade in Libya is very high due to the increasing prevalence of Tramadol and other prescription drugs, which are smuggled from abroad through the country's ports, as well as over its southern borders.[127] Southern Libya receives deliveries both from the country's own coastal region as well as from neighbouring countries on the southern border.[128] Libya appears to be the main gateway of Tramadol to the region, whether for local consumption or for transit and/or trafficking towards other countries.[129] Italy is an important transit point for Tramadol trafficked to Libya, which suggests possible links with Italian crime syndicates but also groups from India and Sri Lanka.[130] In 2017, two seizures leading to the confiscation of 61 million Tramadol pills originating from India and destined to Libya were carried out by Italian law enforcement.[131]

Oil, Petrol and Diesel Smuggling

The smuggling of non-renewable resources plays a pivotal role in the country's instability.[132] Libya scores very high for non-renewable resource crimes, one of the highest scores on the continent.[133] Oil products such as petrol and diesel are at the centre of the smuggling industry, but much of the fuel smuggled out of the country is actually imported rather than produced in the country.[134] When fuel enters the country, it is put on the market at a heavily subsidised rate, which provides significant profit margins to smugglers.[135] Since 2017, there has been a substantial decline in large-scale maritime fuel smuggling, with a mafia-type profile of activity associated with this industry.[136] At the same time, however, overland fuel smuggling across Libyan borders and within the country is very common.[137] In 2014, the UN

Security Council (UNSC) adopted Resolution 2146/2014[138] banning illicit crude oil exports from Libya and authorising inspection of suspect ships on high seas.

Oil, Petrol and Diesel Smuggling as a Source of Income

Illegally-procured oil, petrol and diesel sales account for an estimated 20% of the income of non-state armed groups in conflict, and this segment was the predominant source of income for Islamic State in 2014 and 2015.[139] Oil also features as a source of income for rebel groups and organised crime, this income is reported to be derived from petrol and diesel smuggling in parts of Libya.[140] About USD 750 million to USD one billion worth of Libyan oil is reported to be smuggled to Malta each year.[141]

Many militia groups export diesel out of Libya. In 2017, Italian police disrupted a group smuggling diesel through an Italian mafia network who were engaged in a Libyan fuel-smuggling ring in which at least EUR 30 million of diesel was sold in gas stations in Europe.[142]

Money Laundering

Money laundering is linked to illicit activities such as corruption, drug trafficking, arms trafficking, real estate, currency exchange and securities market industry, and many more. The large, informal and cash-based nature of many African economies facilitates the movement of funds anonymously across countries, without a trail and out of the continent.[143] The most widely known cases of money laundering in the region are corruption-related, especially involving politically exposed persons who abuse their access to significant public funds and knowledge and ability to control budgets, public companies and contracts.[144]

Most money laundering in North African countries occurs primarily through the countries' informal economies, which are cash-based.[145] The impact of money laundering can accelerate the "breakdown of the rule of law, corruption of public officials, and destabilisation of economies, as well as threaten political stability, democracy, and free markets".[146]

Libya has remained on the US Department of State's list of countries that do not pose an immediate concern but are important in terms of monitoring their money laundering situation.[147] Libya is a member of the MENA-FATF; however it is the only North African country that has not yet been the subject of a mutual evaluation.[148] Additionally, exact figures, reliable estimations or risk assessments for money laundering in Libya could not be found during this research.

Since the fall of the Gaddafi regime in 2011, there has been limited information or reliable data on the scope of Libya's anti-money laundering and countering financing of terrorism (AML/CFT) regime, including investigations, asset forfeiture, prosecutions, and convictions.[149] The Central Bank of Libya (CBL) announced in 2018 the adoption of a national strategy to tackle money laundering and terrorist financing in Libya. However, in general Libya lacks the capacity and resources to conduct effective and impactful AML and anti-corruption awareness training.[150] The Ministry of Interior recently launched a multi-institutional anti-money laundering task force; however, as of the end of 2020, there was no significant evidence of any tangible results (e.g., more seizures or confiscations, money laundering convictions, dismantling of organised criminal networks) achieved by the task force.

Libya's markets remain primarily cash-based, and informal value transfer networks are present. A shortage of foreign currency led to a growth in the black market for currency trading; the currency control regime and lack of access to foreign currency have likely increased money laundering in Libya.[151] The influx of counterfeit, Russian-printed Libyan currency in recent years has exacerbated Libya's economic challenges.[152] For instance, Malta seized USD 1.1 billion of counterfeit Libyan currency printed by a Russian state-owned company and ordered by an illegitimate parallel entity.[153]

It is illegal to transfer funds outside of Libya without the approval of the CBL, and it is estimated that up to ten percent of foreign transfers are made through illegal means (i.e., not through the Central Bank).[154] There are reports of money laundering through fraudulently-invoiced foreign trade transactions.[155] Funds transfers by migrant workers (mainly from sub-Saharan Africa and Asia) remain difficult for the Libyan government to monitor.[156] Given the poor quality and limited monitoring capacity of Libya's banking system, many Libyans and foreigners rely on informal mechanisms for cash payments and transactions.[157] The CBL is still evaluating ways in which it can encourage the informal economy to formalise business practices and use commercial financial institutions.[158] In 2015, the Central Bank created a banking compliance unit to work with the AML Department.[159]

Informal Value Transfer Networks in Libya

"The growing difficulty of obtaining hard currency through official channels sparked a run on the banks. Such a reaction is to be expected in an environment where access to dollars is vital. In Libya, virtually all goods are purchased overseas using hard currency. When the CBL restricted convertibility, shopkeepers and small-business owners—soon imitated by households—responded by taking their money out of the banking system altogether. Given that dollars are no longer made available through official channels, merchants and households now see no reason to take their dinars to the banks anymore. Instead, they keep a substantial amount of their money in the parallel market. Black-market traders hold dinars on informal deposit for them. Using a hawala-type network, they also perform transfers and other services. They even buy bank checks from end-users at a fraction of their face value."

Source: Harchaoui, Jalel. *Libya's Monetary Crisis - Lawfare*. 2018, https://www.lawfareblog.com/libyas-monetary-crisis.

In 2015, the CBL referred 30 companies to the Public Prosecutor's Office for suspected money laundering using false documents for a total of approximately USD 2.2 billion.[160] In 2012, US authorities investigated allegations that HSBC laundered money originating from Office of Foreign Assets Control-sanctioned countries, including Libya. In 2010, the Royal Bank of Scotland paid a USD 500 million penalty for illegally-processed transactions from clients in Libya.[161] In 2009, Credit Suisse paid a USD 538 million penalty for hiding transactions made by clients from Libya. In the same year, Lloyds Banking Group avoided prosecution for its dealings with clients in Libya by paying USD 350 million.[162]

Financing of Terrorism

In 2017, it was reported that the Islamic State was the most serious threat to the North Africa region, and particularly to Libya, due to the organisation's international reach and suspected financial reserves.[163] The group was reported to have received up to USD ten million a month in revenues.[164] In mid-2018, its funding in Iraq and Syria was a tenth of that – a total of USD six million to USD 24 million a year.[165] Further reports indicated that over USD 100 million had been funnelled out of Iraq and Syria, and some of this had been laundered in investments in Libya.[166]

The group's estimated strength was reported to be around 15,600 individuals, including 5,600 returned foreign fighters.[167] Between 1,350 and 3,400 foreign fighters were believed to have travelled to Libya since 2011.[168] The return of these fighters or migration to another country represented a threat to countries in the region, as well as Europe.[169]

Libya's fragmented security scene has made it an attractive operating environment for violent extremist organisations (VEOs) that have ambitions to increase their influence in Libya as well as using it as a base to strike abroad.[170] Most terrorist attacks in Libya during the last few years (2016-2019) were conducted by ISIS.[171] Nevertheless, VEOs are likely more embedded into Libyan society and architecture than ISIL.[172]

In 2014, then-ISIS leader Abu Bakr al-Baghdadi dispatched a group of ISIS operatives from Syria to Libya to establish a branch of the terrorist group. Since becoming established, ISIS-Libya has carried out multiple attacks throughout Libya and has threatened to expand ISIS's presence into other countries in Africa. ISIL-Libya is estimated to have fewer than 500 fighters and its funding comes from a variety of sources, including criminal activity, such as in-country smuggling and extortion, as well as external sources.[173] The Islamic State of Iraq and the Levant-Libya (ISIL-Libya) was designated as a funding terrorist organisation (FTO) in 2016. The group also receives financial support from ISIS.[174]

Listed transnational terrorist groups such as Al-Qaeda in the Islamic Maghreb (AQIM) and the ISIL continued to operate in Libya, while a range of Libyan Salafi-Jihadi groups like the Benghazi Defence Brigades were also present. The absence of a functioning central government and the fractured nature of the security environment provided favourable conditions for their operations. However, the financial reserves of VEOs have decreased in recent years.[175] Since 2016, ISIS has lacked a concentrated, physical presence in Libya and instead started spreading into smaller groups with a presence in both urban environments and in some desert districts.[176]

Since 2018, while ISIS has lost territorial control in Syria and Iraq, it has never vanished in Libya, even though it does not exercise governing duties in a demarcated territory.[177] VEOs are also using their comparatively safe space in Libya as a launching pad to support terrorist activities abroad. Before 2014, Libya was seen as a key hub for training and transit of jihadists travelling to Syria and Iraq.[178]

In addition to the smuggling and extortion mentioned above, terrorists groups finance their activities by illegal taxation of the population, illicit commercial activity, or through extortion from exerted over vulnerable migrants.[179] A variety of sources of funding are available to armed groups, specifically fuel smuggling, trafficking in persons, interference with institutions, and arms trafficking.[180] If they do not apply territorial control, their incomes often involves mobility modalities, such as kidnapping for ransom, or smuggling of high-value goods, such as drugs and oil.[181]

The conflict involving the Government of National Accord (GNA) and Libyan National Army (LNA)-aligned forces, as well as other non-state actors, had prevented Libyan authorities from dedicating sufficient resources to the fight against terrorist groups. However, the Berlin international conference of January 2020, and succeeding discussions, including those through the Libyan Political Dialogue Forum (LPDF) have initiated more unified efforts in counter-terrorism cooperation.[182]

Libya is a member of the Global Coalition to Defeat ISIS which, in coordination with the authorities in Tripoli, has cooperated in investigations of suspected terrorists.[183]

While Libya promulgated a law on terrorism (Law No. 3) following the conclusions of the House of Representatives in its 21st ordinary session held on 9 September 2014, the law needs improvement. As of the drafting of this report, no judicial decisions were identified which make reference to enforcing this law. The Libyan Criminal Code criminalises offenses that threaten national security, including terrorism, the promotion of terrorist acts, and the handling of money in support of such acts.[184] Libya has ratified the African Union's Convention on the Prevention and Combating of Terrorism, which requires states to criminalise terrorist acts under their national laws.[185]

In many parts of Libya, armed groups, rather than state institutions, provide security and law enforcement functions, including detention of terrorist elements.[186] National police and security forces are fragmented, are inadequately trained and equipped, and lack clear reporting chains and coordination mechanisms. Libya's military forces are similarly weak and fragmented.[187] Non-state armed groups often overshadow formal security structures.[188] With respect to countering terrorism, Libyan law enforcement personnel also lack clear mandates and the capacity to detect, investigate and deter terrorist incidents.[189] The GNA developed, with international technical support, a National Counter-Terrorism Strategy, and this reportedly was endorsed in November 2020. Former Prime Minister Serraj also created a counter-terrorism centre to coordinate and implement the Strategy. It is yet unknown as to whether the GNU has adopted this Strategy or whether any activities under the Strategy have been implemented.

Corruption

Articles 15 through 25 of the United Nations Convention against Corruption (2003)[190] list a series of acts associated with corruption as follows: the active or passive bribery of domestic or foreign public officials, including staff of international organisations; the embezzlement and misappropriation or other diversion of property by a public official; the obstruction of justice; the active and passive trading in influence; and the abuse of functions and illicit enrichment.

Corruption is one of the main sources for IFFs in Africa. These IFFs include transferred money to foreign public officials as bribery and extortion, illegal commissions, gifts and entertainment.[191] Bribery in the developing world is reported to reach an amount equivalent to 15-30% of official development assistance flows.[192] Corruption can do more damage to the economy than just its monetary cost. A bribe of USD one million for a USD 100 million contract to provide public services can lead to large investment inefficiencies, embezzlement of public funds and undermine fiscal legitimacy.[193]

The socio-economic costs of corruption and IFFs are massive and continue to stunt the development of all affected countries.[194] Besides draining foreign exchange reserves, reducing domestic resource mobilisation, preventing the flow of foreign direct investment, exacerbating insecurity and worsening poverty and economic inequality, IFFs also undermine the rule of law, stifle trade and worsen macro-economic conditions in the affected countries. Corruption and IFFs have been at the centre of discussions on development in Africa, due to their negative impact on development financing in Africa. It is now so widespread that Africa loses USD 50 billion annually.[195] However, this figure is well below reality due to the difficulty in obtaining reliable statistics, and the secretive nature of such funds.[196]

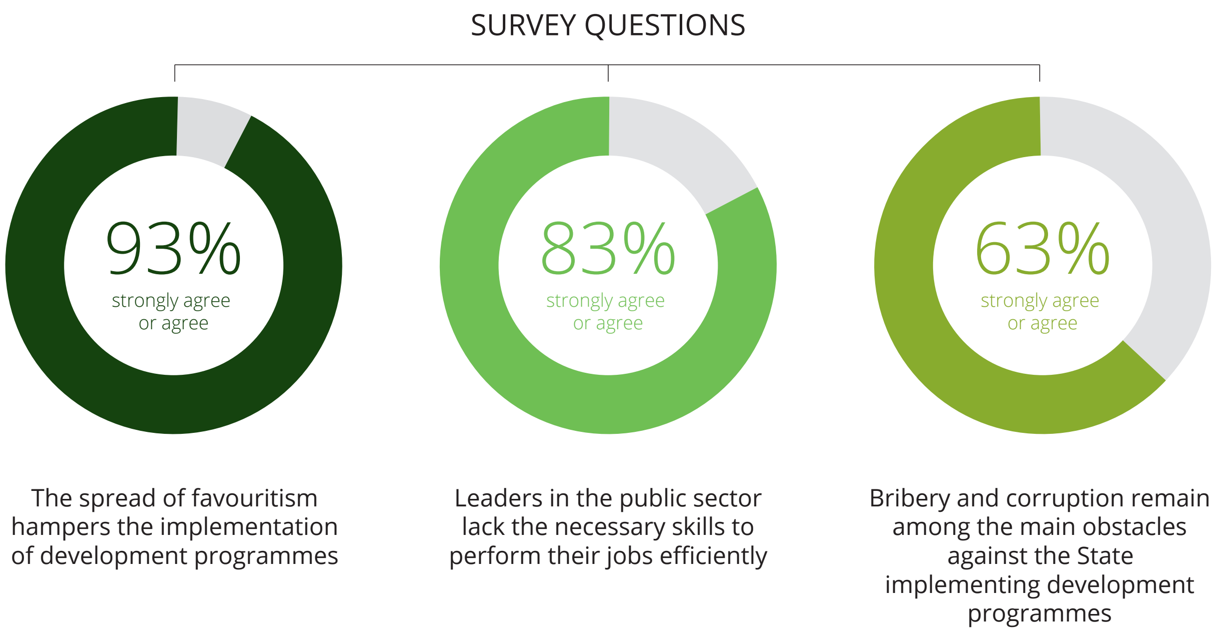
Nearly all of the forms of corruption described in the United Nations Convention are present in Libya.[197] Libya is reported to be one of the most corrupt countries in the world, ranking 168th out of 198 countries in the 2019 Transparency International Corruption Perception Index 2019.[198] The current security situation in Libya is frustrating efforts and preventing authorities from addressing the main causes of corruption.[199] One of the main weaknesses in the Libyan integrity system is the large public administration, which has been described as performing poorly on the issues of governance, transparency, management and proper implementation across a wide range of sectors.[200] The public sector has an overall negative image, and according to the Global Corruption Barometer, 48% of Libyans perceive public officials and civil servants to be either corrupt or extremely corrupt.[201] Moreover, nearly half of the survey's respondents indicated that corruption increased from 2011 to 2013, with some 67% indicating little or no improvement after the revolution.[202]

Nepotism and favouritism are two of the major issues in the public sector.[203] Employees are often not hired based on merit; a common practice in Libyan society is to include powerful relatives or members within the same social group providing assistance or favourable treatment to others within the same group.[204] The public sector employs the vast majority of Libyans (between 70 and 85% of the formal workforce) and subsidises basic commodities such as food and fuel.[205] Upper and mid-level management uses this patronage system to enlarge the circle of people dependent on them for jobs and their livelihood and thus heighten their own influence.[206]

A survey from 2012 with higher-level employees from ministries, the government, and the private sector confirms this impression.[207] Some 63% of the respondents strongly agreed that bribery and corruption remain among the main obstacles against the State implementing development programmes, with 93% of the respondents strongly agreeing that the spread of favouritism hampers their implementation.[208] This is also the case on the managerial level where 83% strongly agree or agree that leaders in the public sector lack the necessary skills to perform their jobs efficiently.[209]

Corruption in the Construction Sector

The construction sector in Libya is a field at high risk for corruption and acceptance of kickbacks; the awarding of contracts to family companies in order to maximise profit are widespread.[210] Besides leading to an inefficient use of resources, this creates a risk of potentially dangerous buildings directly caused by corrupt and negligent practices.[211] Since the revolution, Libya has witnessed several cases of buildings collapsing due to poor maintenance and construction.[212]



Corruption in Public Procurement

Public procurement is another field with a high risk of corruption in Libya and Transparency International estimates that on average around 10 to 25% of all contract values are lost due to corruption.[213] The Libyan legal framework requires contracts above LYD 500,000 (USD 408,323) to be put out in open bidding and publicly announced when contracts have been awarded, but this is rarely done in practice.[214]

In the oil sector, the lack of transparency, as well as the poor performance of public institutions and revenue governance in Libya, increase the risk of corrupt practices.[215] In Libya, oil revenues finance a moderate safety net for the population with mostly free education and health services,[216] but they also finance a large inefficient public sector with a reputation for being the most corrupt sector in the country.[217]

One example of such corruption could be seen in 2014 when a Scandinavian company was fined USD 48 million for paying or agreeing to pay more than USD 12 million in bribes between 2004 and 2009 to senior government officials in Libya, including an oil minister.[218] Another case, involving the Canadian company, SNC-Lavalin, was fined CAN 280 million in relation to the payment of CAN 112 million in bribes, from 2001 to 2011, to shell companies, out of which money was paid to public officials in the Gaddafi regime to secure construction projects.[219]

The over reliance on oil revenue also has negative side effects for the governance system in Libya and increases the risk of corruption. Volatile oil prices make it difficult for the central government to conduct proper financial management and planning. In 2018, foreign exports of oil in Libya brought in revenues totalling USD 24.5 billion.[220] The Central Bank in Tripoli controls these funds and is responsible for disbursing them throughout the country, but there are insufficient legal and regulatory mechanisms that require sufficient transparency of the Bank to disclose how such state funds are used.[221] Furthermore, the oil wealth was used by the former regime as a means to employ people in the public sector and thus provide them with a livelihood source to avoid discontent.[222] This led to a culture where salaries in the public sector are seen more as a right rather than something that is earned and may be one of the root causes of reported poor work ethics across the public sector.[223]

The Libyan justice system also remains heavily burdened by the former regime which was in complete control of the judiciary.[224] There is a general distrust in the justice sector[225] and 35% of the Libyan population strongly agree or agree that the judiciary is corrupt, while 20% of people who have been in contact with the judiciary have reported paying a bribe.[226] One of the main issues of the legal system in Libya is the uncertainty in relation to which laws and legal codes are applied, as judges reference laws and codes from the Gaddafi regime, the monarchy era and the Ottoman era.[227] This application of different legal standards is a potential venue for corruption in the judiciary.[228]

Gaddafi, as other former North African rulers, built his illicit wealth largely from the appropriation of public assets, through opaque privatisation processes, erection of private monopolies in key sectors of the economy, and embezzlement of government funds, possibly including externally borrowed loans and overseas development assistance.[229] As his regime collapsed, large amounts of assets held abroad by Gaddafi and his family members were brought to light. Gaddafi's wealth reportedly includes assets in the United States (estimated at USD 37 billion), United Kingdom (USD 15 billion), The Netherlands (USD 2.1 billion), Austria (USD 1.8 billion), Sweden (USD 1.6 billion), and Switzerland (USD 416 million), among many other countries.[230]

In 2012, the Libyan government reclaimed a London mansion worth USD 16 million from one of Gaddafi's sons, after a British court ruled it had been bought using stolen Libyan state funds.[231] Also, the Libyan treasury transferred about EUR 1.5 million (USD 1.97 million) to its embassy in Brussels, which was then mostly withdrawn in cash.[232] The Belgian Financial Intelligence Processing Unit reported that the money may have originated from Libyan organisations controlled by Gaddafi's family.[233]

From this cursory overview, it is clear the legacy from the Gaddafi's regime has and still is affecting Libya and its population. The lack of transparency, high-level corruption cases in the oil sector, strong levels of perception of the public sector and the justice system as corrupt, and significant ongoing inequalities have contributed to increased mistrust in public institutions and the state, fuelling conflict.[234] More than an estimated USD 160 billion in public money has been reported as stolen by regime officials in Libya and neighbouring countries.[235] There is a pressing need for action to end impunity and to promote government accountability,[236] as well as to prioritise the seizure and confiscation of assets linked to acts of corruption.

Combating corruption is a key element in improving governance in Libya, reducing capital flight, and achieving structural transformation goals, since corruption leaves the door wide open for IFFs.[237] It is estimated that five percent of the world's IFFs stem from acts of active corruption and abuse of power.[238] However, this figure may not specifically reflect the situation on the African continent, much less the Libyan reality, where the phenomenon is becoming increasingly worrisome.[239]

Libya signed the United Nations Convention against Corruption (UNCAC) in 2003 and ratified it in 2005.[240] As such, an anti-corruption agenda was already present under Gaddafi's regime. Article 6 of the UNCAC requires that signatories establish one or more bodies responsible for preventing corruption by means of implementing various policies as well as increasing the general knowledge of corruption prevention. Therefore, agencies to support financial transparency and limit corruption such as the Board of the General People's Control were established by the regime. However, their impact on the fight against corruption was limited.[241]

Libya's 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.[242] Libya has a legal and institutional framework in place to fight corruption at the national level. However, due to the absence of relevant data it is difficult to assess in detail Libya's practice regarding criminalisation and law enforcement in corruption cases. Available legislation establishes as corruption-related offences the following: bribery (of a public official),[243] money laundering of proceeds of crime and concealment,[244] embezzlement,[245] abuse of functions,[246] illicit enrichment,[247] obstruction of justice[248] and bank secrecy,[249] among many others. However, Libya has few examples of successful prosecution of these offences.[250] For corruption offences, special investigative techniques under the Criminal Procedure Code and the AML/CFT Law may be used.[251]

EU and UN Collaboration with Libya

The EU, in collaboration with the United Nations Interregional Crime and Justice Research Institute (UNICRI), as well as the United Nations Office on Drugs and Crime (UNODC), are reinforcing efforts with Libyan partners to strengthen transparency and accountability in the country. In September 2020, a new anti-corruption project entitled "Building Libya's National Capacity to Prevent and Combat Corruption and Money Laundering" was launched to assist the Government of Libya in developing more effective anti-corruption mechanisms, as well all those pertaining to the seizure and confiscation of illicitly-obtained assets.[252]

Investing in anti-corruption policies has positive effects. The experience of OECD donors shows that for each US dollar spent on investigating the proceeds of corruption originating from the developing world and transferred to OECD countries, up to USD 20 has been tracked and frozen.[253] Tackling corruption can lead to credible leaders voted into office, improved enforcement of laws passed by the legislature, and improved prosecution of public officials for corruption-related offences. Illicit financial flows in Libya can be better managed and restricted if the fight against corruption is given the highest priority.[254]

3. Combating IFFs and Organised Crime and Corruption in Libya

Combating IFFs involves multiple policy areas, within and outside the criminal justice system. From crime control to regulations in the financial sector, its implications require cross-sectoral and cross-border responses. It requires a wide range of actors to design and implement different, though mutually reinforcing, policies and actions at different levels of government.

Law enforcement and customs authorities need to increase awareness and operational actions, and the financial sector needs to implement essential preventive measures. Transparency in corporate structures is also essential and steps must be taken to promote public sector integrity and support widespread focus on the seizure, confiscation and recovery of illicitly-obtained assets. Furthermore, reinvesting recovered assets into high-priority development needs is essential for overall socio-economic development.

The 2030 Agenda for Sustainable Development

The need to reduce IFFs is at the forefront of the international agenda of development policy. The 2030 Agenda for Sustainable Development, which plans to end poverty and ensure lives of dignity for all, recognises in its Goal 16 the need to fight corruption in all its aspects (Goal 16.5: "Substantially reduce corruption and bribery in all their forms") and calls for significant reductions in IFFs, as well as for the recovery of illicitly-obtained assets (Goal 16.4: "By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organised crime").[255]

3.1 Libya's Legal and Institutional Framework

Libya's legislation establishes the actions of freezing, seizure and confiscation of assets derived from criminal proceeds.[256] It also establishes that bank, financial and commercial records must be made available where necessary, and that any person suspected of acquiring illicit funds must indicate the legitimate source of their assets.[257]

Libya's national policies and laws on organised crime, and the judicial system and detention framework are believed to be poorly developed and enforced.[258] The judicial system lacks the capacity required to counter organised crime in the country.[259] While the Libyan government and financial institutions generally lack the ability to identify and interdict IFFs, the CBL and the FIU have made critical strides to build their AML/CFT capacity.[260] In October 2017, Libya promulgated an updated AML/CFT law, creating the "National Committee for Combating Money Laundering and Terrorism Financing" under the chairmanship of the CBL Governor and made up of CBL staff and representatives from concerned ministries. The law follows UN guidelines on definitions and proscriptions including stipulating coordination with relevant global entities.[261] The law calls for an empowered FIU to be able to collect relevant information and share with the authorities as deemed necessary. The law also lays out broad preventative measures that financial institutions must take as well as some specific provisions, such as forbidding relations with shell banks or maintaining accounts with fictitious names.[262] According to the CBL, although the law is viewed as robust, its implementation lags significantly given the political situation in Libya as well as the lack of capacity and tools at the CBL and in the banks themselves.[263]

The following institutions are the main bodies and authorities involved in combating organised crime, corruption, money laundering and financing of terrorism in the country:

- **National Anti-Corruption Commission (NACC)** – the NACC's main competencies are to investigate and detect crimes of corruption; to coordinate with the Central Bank of Libya and the relevant entities to reclaim funds resulting from corruption inside and outside the country; to receive, examine, and keep financial disclosures, and request any data or clarification related to or from concerned persons or competent entities; and to prepare proposals regarding the amendment of anti-corruption legislation.[264]

- **Administrative Control Authority (ACA)** – ACA's main competencies are to conduct the necessary investigations on executive bodies in the state to ensure that the performance of tasks assigned to them are in accordance with legislation and that their employees are performing their jobs without favouritism or abuse of authority; to combat administrative lawlessness, and to conduct necessary investigations to detect any administrative unfair practice contrary to laws and regulations against public officials.[265]

- **Libyan Audit Bureau (LAB)** – The LAB is the highest financial regulatory authority in the country. Its main duty is to prevent corruption by assessing the policies adopted in the management of public funds. It plays an important role with regard to financial oversight of the executive and legislative branches of government.[266]

- **Central Bank of Libya (CBL)** – The CBL is the monetary authority in Libya charged with maintaining monetary stability in the country, and promoting sustained growth of the economy in accordance with the general economic policy of the State.[267] Its main functions include issuing and regulating banknotes and coins in Libya; acting as a banker to commercial banks, to the State and public entities; and supervising foreign exchange.[268]

- **Financial Intelligence Unit (FIU)** – Libya's FIU is a central, national unit that is responsible for receiving and analysing information from private entities on financial transactions which are suspected to be linked to serious criminal activity. However, Libya's FIU is considered to be ineffective and not in conformance with international standards.[269]

- **Ministry of Finance (MOF)** – The MoF collaborates with the International Monetary Fund and the World Bank on public procurement legislation and policy, and in developing national economic statistics.[270]

- **Ministry of Justice (MOJ)** – The MoJ promotes the rule of law and justice in Libya, and aims to produce an effective judiciary and prison system. The Ministry is responsible for drafting laws relevant to the justice sector.

- **Ministry of the Interior (MoI)** – the MoI oversees policing functions and, in 2020, formed a new task force to combat financial crimes, money laundering and the financing of terrorism. The task force was set up to exchange information among relevant authorities and to take all necessary measures to detect the perpetrators of financial crimes in coordination with local, regional and international bodies.

- **Department of the Prosecutor-General / Prosecutor General's Office (PGO)** – The PGO is responsible for initiating and prosecution of cases involving acts of corruption, as well as multiple other income-generating crimes.

- **Libyan Asset Recovery and Management Office (LARMO)** – The LARMO was established, with technical support from UNICRI, in line with international standards, and is tasked with facilitating the tracing of illicitly-obtained assets, as well as the transparent management of recovered assets. It is unclear whether other entities (such as the CBL, PGO and NACC, that have previously had such a mandate have fully relinquished such to the LARMO.

At present, the relations between these key stakeholders are unclear, as their mandates appear to overlap. The investigation of financial crimes remains split among the CBL, the FIU and the Ministry of Interior. The LARMO also plays a key role in the tracing of assets. The PGO also plays a key role, but clear coordination mechanisms or joint committees between the key stakeholders remain to be established and effectively implemented.[271]

3.2 Libya's Compliance with International Measures and Recommendations

So far, Libya has not met most of the standards put forth by UNCAC.[272] Declaration requirements have fallen significantly short and there remains a large gap between the legal framework and operational practices.[273] Furthermore, Libya has been identified as having deficiencies in its AML and CTF frameworks as defined under the Fourth and Fifth Anti-Money Laundering Directives by the European Commission (2019). The country is also on the FATF list of countries with AML deficient measures. Libya has not yet undertaken a Mutual Evaluation Report relating to the implementation of its AML/CTF laws and measures.[274]

3.3 Libya's Progress

Libya's institutional capacity and structures were undermined under the previous regime in order to limit potential challenges to authority. As a result, Libyan public institutions suffer from very weak capacity, the absence of a strategic framework and planning, and a shortage of technical expertise.[275] Weak leadership capacity at the top managerial levels of public institutions undermines the success of institutional coordination and governance.[276]

The government of Libya has, however, taken some steps toward limited but essential reforms in the country; for instance, the establishment of NACC and LARMO, and an assessment of the two parallel central banks by the United Nations Support Mission in Libya (UNSMIL).[277] Nonetheless, further steps are needed to build a robust legal and institutional framework to address IFFs, corruption and safeguard national assets at all levels – some of these key steps are mentioned in the recommendations below. The implementation of more robust reform processes, necessary to strengthen the overall governance in Libya, will continue to be limited in the absence of a unified government.[278]

Establishment of new Asset Recovery Office - LARMO

As a result of a previous EU-UNICRI joint project, Libya has now established an Asset Recovery and Management Office (LARMO). Through this initiative, the LARMO, with technical assistance from UNICRI, has traced and identified some USD 54 billion in assets located outside of the country; many of these assets remain abroad, unliquidated, as several key Libyan officials have indicated that it could be problematic to return such assets to the country where rampant corruption still exists. Many assets still have yet to be frozen, and are subject to movement or other form of loss at the hands of former Libyan officials and/or their family members and business associates.

3.4 Libya's capacity to freeze, seize, confiscate and recover assets linked to organised criminal activity, corruption and the financing of terrorism

Libya has seen moderate freezing, seizure and confiscation of assets linked to organised crime and major acts of corruption.[279] Furthermore, Libya lacks a coherent asset recovery policy.[280] Instead of developing a long-term strategy and authorising a single institution or consortium of institutions to implement it, the changing governments have disregarded previous efforts, leading to a lack of a clear delineation of responsibilities and authority, ultimately leading to the likely loss of assets valued in the millions, if not hundreds of millions of USD.[281] This lack of clear roles and mandates, along with the lack of qualitative capacity, reduces cooperation with (and confidence by) foreign jurisdictions, which are reluctant to engage with institutions without a clear mandate. Furthermore, the persistence of violence, rampant corruption and the lack of political stability within the country have implications for foreign jurisdictions' confidence with respect to their willingness to freeze, seize or return assets that may belong to Libya.[282]

On a more specific level, the country faces many constraints; Libya lacks an adequate number of professionals with expertise in investigating corruption cases, and even fewer with knowledge of asset tracing, freezing, seizure, confiscation and recovery.[283] The multitude of bodies responsible for the investigation and prosecution of corruption poses significant coordination challenges to the effective investigation and prosecution of corruption (as well as the prevention of corruption). Overcoming the lack of inter-institutional cooperation in cases involving corruption, as well as any and all cases in which assets should be traced and seized, would likely produce significant improvement.

Additionally, assets returned are far less than the value of assets frozen abroad.[284] This is closely related to the difficult process of gathering information and converting it into actionable evidence, at both the Libyan justice-sector level, and for courts in foreign jurisdictions.[285] Furthermore, Libya's lack of transparency and inter-institutional coordination makes it difficult to determine what approach the authorities have taken to the freezing of assets abroad.[286]

Additionally, the poor management of these assets, including Libyan sovereign wealth funds, may be producing an average annual loss of some USD one billion.[287]

Return and Distribution of Assets

Returning illicitly-obtained assets to a country lacking a stable government, such as in the Libyan case, highlights the question of how to ensure that returned assets are used for high-priority development needs and poverty reduction.[288] Still, the UN and the EU have expressed concern that frozen Libyan State assets abroad might be subject to abuse by financial institutions; this has raised the question of whether some financial institutions in foreign jurisdictions may be profiting off of the interest (or other "banking fees") accumulating in these accounts[289].

Given the prevalence of corruption within most State institutions, returning such assets means risking they could be corruptly misused again.[290]

There is a general consensus among key officials that recovered funds should be kept outside of the corrupt cycle. Specifically, they should be appropriately used in the creation of conditions for complying with human rights obligations and for avoiding new corruption-based diversions. For the OHCHR, "repatriated funds of illicit origin should be allocated to the realisation of economic, social and cultural rights in compliance with the maximum-available resources principle, through decision-making processes and implementation procedures that incorporate the principles of transparency, participation and accountability".[291]

Additionally, the international community, in dialogue with the Government of Libya, cannot ignore immediate humanitarian needs until the current conflict, and related political process, ends – the return and distribution of at least some assets, through a transparent mechanism, needs to be considered – cancer patients need treatment now; children need schoolbooks now.

4. Impact and Cost of IFFs and Organised Crime in Libya

IFFs strip resources that could be used to finance much-needed public services, from security and justice to basic social services such as health and education. IFFs weaken financial systems and economic development, slowing down sustainable economic growth.[292] While such practices occur in most countries, the societal and economic impact on developing countries is likely more severe given their smaller resource base and markets, as well as corruption that produces mismanagement of such resources. IFFs in Libya undermine the transition from war to peace, heighten weak governance and fuel corruption. They also negatively impact lives as they reduce financial resources available for investment in health, education, housing, infrastructure and other critical sectors that would improve the well-being of citizens.

IFFs can have a direct impact on a country's ability to raise, retain and mobilise its own resources to finance sustainable development.[293] In addition to discussing the volume of IFFs, it is equally imperative to understand and address the extensive and multidimensional nature of the harms[294] caused by them. When impacts beyond revenue losses are taken into account, it is evident that IFFs have wide-reaching and multifaceted negative impacts on development aims[295] and, more specifically, could directly and significantly impair the ability to achieve the SDGs by 2030.[296]

IFFs and organised crime affect trust in public officials, government institutions, and the rule of law. Low levels of trust, civic engagement, and social capital can impede development and further bolster organised criminal groups.[297] This creates a harmful cycle that increases political instability and weakens governance. The cost of corruption to developing countries is also enormous, with the World Economic Forum estimating an annual USD 1.26 trillion in cost to developing countries.[298]

What Could be Done with USD 1.26 trillion?

To illustrate the significant cost of corruption, USD 1.26 trillion is enough money to lift the 1.4 billion people living on less than USD 1.25 a day above the poverty threshold and keep them there for at least six years. Additionally, UNCTAD proposed in March 2020 a USD 1 trillion liquidity injection through the IMF to help countries with the COVID-19 crisis, providing money for crucial emergency health services and social relief programs. .

Corruption not only directly generates IFFs (e.g. banking fraud, embezzlement) but also creates an environment in which organised criminal activity can flourish; the two are mutually reinforcing.[299] Organised criminal groups exploit the fragility of public authorities caused by corruption, often gaining benefits and access to political power.[300] This creates an environment where organised criminals benefit from corruption, compounding and reinforcing both crime and corruption. Corruption can also weaken the threat of judicial and legal consequences for criminal activity, mitigating any real deterrence effect of the legal system.

4.1 Harm Assessment of Illicit Financial Flows in Libya

Although most analyses focus on the economic harm of IFFs, a number of income-generating illicit activities have a greater and more damaging impact on development within a country. IFFs may be producing the following impacts in Libya and its society:

Economic Harm

- In the direct form, IFFs withdraw funds from the legitimate economy, and they may force the State to divert resources in order to prevent and respond to criminal activity. Indirectly, IFFs damage the economic climate, competitiveness, investment and entrepreneurship.[301]

- IFFs can increase a country's budget deficit and create more dependence on external sources of funding for development. They also weaken financial systems and allow individuals to hide stolen assets, evade taxes, and avoid the adverse impacts of currency devaluation. Instead of benefiting the people and local economies, the money can end up in offshore tax havens. In some cases, this produces a minority that has political power and influence over most of the population, and which has less incentive to develop the domestic economy and social services.

- Additionally, the drain on resources and tax revenues caused by IFFs have significant effects on the budget and increase the deficit. The loss of financial resources blocks the expansion of basic social services and infrastructure programs that are targeted to improving the wellbeing and capacities of all citizens, including in particular the very poor.[302]

- While the root causes of IFFs (ranging from weak financial management systems, to political and macroeconomic instability, lack of financial liberalisation, and search for higher returns on investment) have been widely researched, their impact on economic development in Africa cannot be underestimated. The direct and indirect consequences of those IFFs (i.e. reduced investment and revenues for health, education, employment, income, etc.) are major constraints for Libya's development. The high corruption coupled with the risk and uncertainty of the domestic economy weakens the economic and social measures put in place, henceforth limiting the prospect for more inclusive growth.[303]

Societal and Development Harm

- Societal and development harm creates or exacerbates societal tensions, as well as economic or social marginalisation.[304] IFFs may impact on societies by facilitating organised criminal activity. For this reason, addressing IFFs can be instrumental to improving societal and developmental needs.[305]

- Libya's society is fractured, and many groups are excluded from public, social, and economic life. These include large shares of women and youth, as well as migrants, refugees, and asylum seekers. The lack of inclusion in social and political life increases the socioeconomic marginalisation and remains a fundamental obstacle to a unified Libya.[306] Poverty and social inequalities are also associated with increases in organised crime – mainly human trafficking and smuggling of counterfeit goods – and corruption. In Libya, the combination of trafficking and smuggling groups, as well as those involved in money laundering and corruption produces significant impact on human development.[307] The UN Human Development Report warns that IFFs constitute a roadblock to human development by "weakening governance and reducing consumption, investment and social spending, hurting the long-term construction of collective capabilities and the expansion of human development".[308]

- Furthermore, access to public services has deteriorated in Libya. Line ministries are unable to meet the service demand as they often suffer from lack of capacity, expertise and coordination mechanisms.[309] Inadequate and high costs of infrastructure (energy and water) further impede social development.[310]

Physical Harm

- IFFs can also cause harm to the physical and psychological integrity of individuals.[311] IFFs and organised crime affect, for instance, the achievement of Goal 3 of the SDGs ("Ensure healthy lives and promote well-being for all at all ages)[312] in Libya in a number of ways. Due to the ongoing political and security turmoil that started in 2011, the country is considered under a complex emergency situation.[313]

- In the past few years, the country has gone through extensive conflict that has left many dead, injured and displaced.[314] Although the situation in the country has not allowed for a robust assessment of the actual situation on the ground, it can be understood that the number of physical injuries and psychological trauma continues to rise.[315] War-related traumas have emerged as one of the main health problems in the country. The impacts of the current conflict on health care delivery and medical supplies are significant. The increased number of illegal immigrants, mainly from sub-Saharan Africa, entering the country has also deteriorated health and security problems during and after the conflict.[316]

- Conflict has also exacerbated supply interruptions in the country, which have led to the severe shortage of medicines, medical supplies, and vaccines. This left an estimated 1.1 million people without access to life-saving healthcare.[317] There is also an increasing trend of substance use, especially among young people. Various forms of malnutrition conditions in children under five years is also prevalent in the country.[318]

Structural and Governance Harm

- Harm to government reputation occurs whenever a law is broken and the government appears to be ineffective in responding to such criminality.[319] Structural and governance harm concerns the damage done to the quality of governance and the legitimacy of the social contract, the rule of law, and the development process, as a result of corruption, organised crime, IFFs, and impunity.[320]

- This type of harm prevents, for instance, the achievement of Goal 16 of the SDGs, of promoting peaceful and inclusive societies for sustainable development, and providing access to justice for all, as well as building effective, accountable and inclusive institutions at all levels.[321] For instance, the combination of high IFFs and high levels of corruption can result in weakened service delivery and the diversion of funds away from Libya's government programmes. The impact of money laundering can include contributing to the breakdown of the rule of law, corruption of public officials, and destabilisation of a country's economic structure; it also threatens political stability, democracy, and free markets.[322] Similarly, the need to increase expenditure on security priorities to control organised crime can divert limited government resources away from investments in social services, such as health and education.[323] IFFs can also exacerbate conflict and vice-versa, with institutional state weakness as both cause and effect.[324]

- Local governance remains a key priority for Libyan politicians and citizens. In the absence of a strong central state that can guarantee equal distribution of wealth and deliver services, people are looking to intermediate levels of government to respond to their needs and demands.

4.2 Direct costs of IFFs and organised crime to the State and Society in Libya

IFFs are by nature intended to be hidden. Therefore, measurements of illicit flows can only be made indirectly using related data, which makes such measurement imprecise. Additionally, there are many forms of illicit flows that cannot be detected using available economic data and methods (e.g. cash transactions).[325] For these reasons, the estimates presented here are likely to be conservative. However, they still provide one measure of the largely unobservable IFFs problem. Moreover, even a conservative estimate of this dynamic indicates a significant degree of impact on Libya's society.

Estimates about IFFs in developing countries vary significantly, and while work has been done by the United Nations to estimate the proceeds of various transnational criminal activities, there remain considerable knowledge gaps, including on the extent to which these proceeds flow through the international financial system.[326] However, any indication of the collective significance of IFFs is helpful to policymakers, citizens, and other stakeholders in Libya.

For over 30 years (1980-2009), close to USD 1.4 trillion were drained out of Africa.[327] From 2010-2015, the total IFFs from Africa amounted to USD 836 billion. Every year, an estimated USD 88.6 billion, equivalent to 3.7% of Africa's GDP, leaves the continent as IFFs.[328] This means that these outflows are nearly as much as the combined total annual inflows of official development assistance (USD 48 billion) and yearly foreign direct investment (USD 54 billion) received by African countries – the average for 2013 to 2015.[329]

Most of these capital flights were illegal in nature and were due to corruption, tax evasion, criminal activities, smuggling of contraband goods, and other illicit business activities across borders.[330] The geographical distribution of the IFFs was uneven, with West and Central Africa surpassing the other regions at USD 494 billion (37%), followed by North Africa (USD 415.6 billion or 31%) and Southern Africa (USD 370 billion or 27%). The Middle East and North Africa (MENA) region continues to have the highest trend rate of growth of IFFs in the world, with an average increase of 31.5% every year throughout the decade ending in 2011.[331] The top five countries with the highest illicit financial outflows during 2000-2009 were Nigeria, South Africa, Egypt, Algeria, and Libya.[332] From 2004 to 2013, Libya had an annual average of USD 1.2 billion of IFFs and a cumulative of USD 11.8 billion.[333]

The analysis of IFF estimates as a percentage of the country's GDP provides a different perspective on IFFs than volume alone, as it indicates the potential impact of this dynamic on the economy.[334] For Libya, IFFs as a percentage of GDP has remained extremely low since 2008 (2% of the GDP). The most plausible reason for this very conservative estimate is, as explained previously, the lack of data to measure IFFs in the country.

Still, IFFs in developing African countries, such as Libya, mean fewer hospitals, schools, roads, and pensions, as well as fewer job opportunities. The UN has indicated that there is clear "collateral damage" of outflows produced by embezzlement, the diversion of public property, and the plundering of the public treasury.[335] Increased focus on the seizure and confiscation of only a portion of assets linked to IFFs would have a significant impact on accelerating development within Libya, assuming that recovered assets are liquidated and effectively distributed to high-priority development needs.

The following section presents the development challenges for key sectors, as well as the development opportunities in Libya were the country to prioritise the capture of only 10% of assets estimated to be lost through IFFs.

4.3 Investment of Recovered Assets into Libyan Development

Health Sector

The 2011 conflict resulted in substantial changes in the country's health system: the closure of primary health care centres due to damage from the war, critical shortages of funds, medicines and supplies, and the lack of healthcare workers forced citizens to seek health care in overburdened hospitals.[336] Disrupted immunisation and disease prevention programmes combined with weak disease surveillance and outbreak control systems have greatly increased the risk of communicable disease outbreaks. In addition, the schemes set up for evacuation of war-wounded patients for special treatment abroad has been marred by a lack of transparency and accountability.[337]

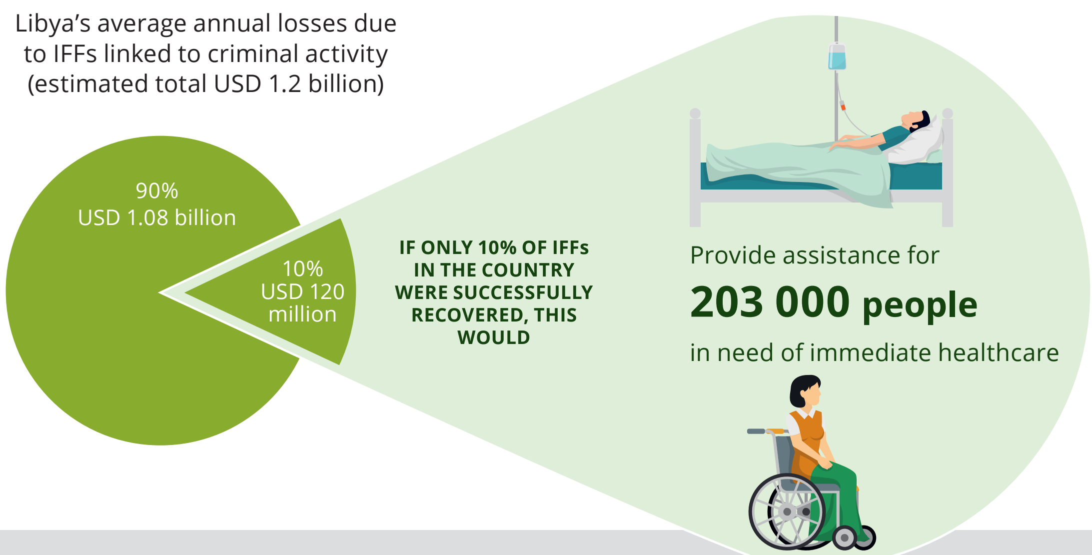
Currently, Libya's health care services are still highly deteriorated, with only 17.5% of hospitals functional in 2018.[338] The country has no active national health plan.[339] The government expenditure on health per capita increased between 2005 and 2013 from USD 219 to USD 432. The health financing system is characterised by a high share of out-of-pocket spending, 29.7% in 2013, a decrease from 2005 when it was 35.3%.[340] Health financing constraints facing the country and the scarcity of budgetary allocations for the past year have contributed to a significant deterioration of health services. Although the health budget has been increasing in recent years, it remains modest compared to that of other oil-producing countries in the region. New sources of funds for health are being explored while also focusing on rationalizing the existing health sector budget.[341]

A critical problem facing Libya's health care system is the lack of primary health care facilities, such as local clinics and district hospitals. The government spends 3.3% of its GDP on health care.[342] However, due to lack of an overall long-term health care strategy, health care expenditure is often non-targeted and inconsistent. Tens of thousands of Libyans are currently receiving healthcare abroad, costing the Government millions of dollars per day.[343]

According to a 2014 report from the Ministry of Health, only eight percent of the existing primary health care facilities are functioning; the rest (92.0%) are not functioning due to maintenance, conflict, shortages in health workers and supplies, or damage. Insecurity has led to restrictions in movement of people and health workers in conflict areas.[344] Maternal and child health care and care for patients with chronic diseases, disabilities and mental health disorders are compromised by restrictions in access to the few functioning health facilities. The health workforce is being rapidly drained; qualified staff are leaving the country and those remaining face barriers to accessing health facilities.[345]

In a scenario in which Libya were to prioritise the recovery of only 10% (approximately USD 120 million) of the assets lost through IFFs, it would be possible to cover nearly 400% of the funding requirement of the United Nations Humanitarian Response Plan's budgetary request for the Libyan health sector (as of 2020), benefitting an estimated 203,000 individuals in need of life-saving and life-sustaining humanitarian health assistance.[346] Channelling this funding through the UN Humanitarian Response team would help to ensure that support is provided in an equitable manner across all geographical regions in Libya, and would also reduce the likelihood that such funds would be corruptly used, a significant concern given the current Libyan dynamic.

How Recovered Assets Can Strengthen the Healthcare Sector in Libya



Social Sector

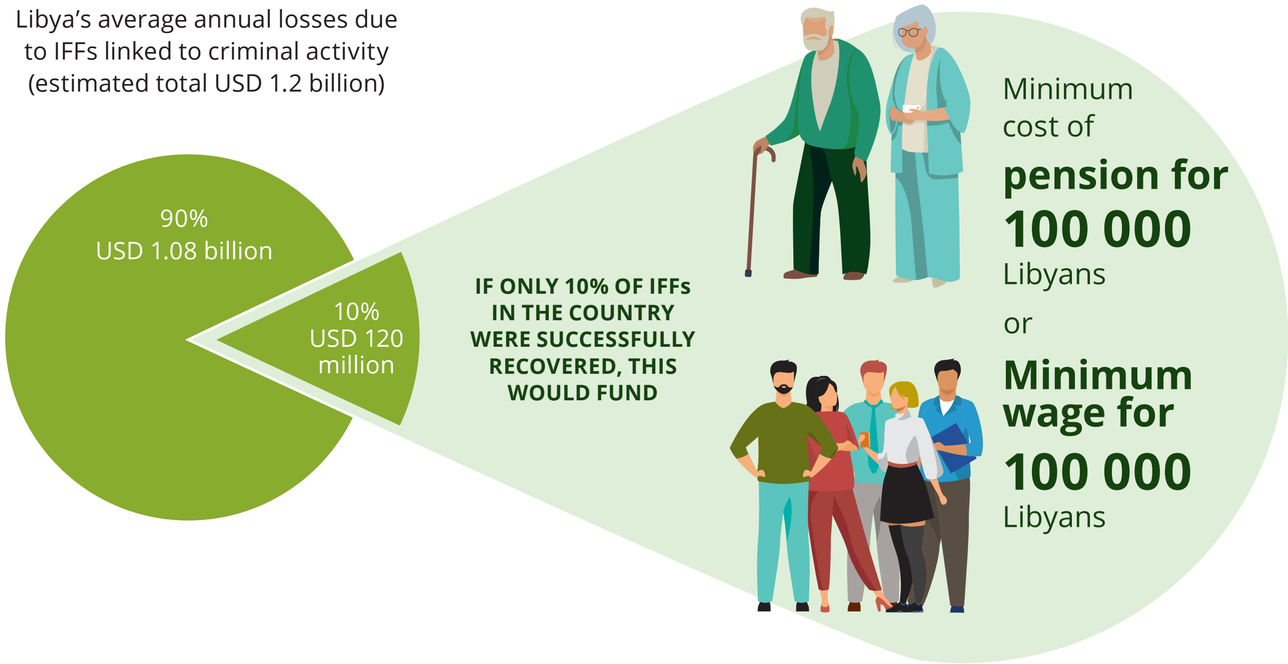
Libya's government lacks planning of social protection mechanisms.[347] No significantly reliable and recent data exists with respect to the percentage of people in Libya living below the poverty line. According to at least one source, however, it is estimated that approximately one third of the population lives below the poverty line and more than 30% of the population is unemployed.[348] According to the UNDP's Human Development Report for 2019, Libya's HDI value for 2018 is 0.708, placing the country in the high human development category and positioning it at 110 out of 189 countries and territories.[349]

Still, Libya has been failing to address unemployment (with youth unemployment at 50%).[350] The country's volatile political and security status is preventing the emergence of a new development framework which could generate employment.[351] The impact of this on the country's poverty levels has been mitigated by the government's social safety net programs. The subsidies, which constituted around 16% (USD 7.7 billion) of the 2013 budget, are believed to result in high levels of inefficiency and fuel smuggling without targeting communities in most need.[352] The subsidies are due to be replaced with cash transfers to the citizens. Progress on these reforms is unknown given the country's uncertain political climate.[353]

Society is fractured, with many groups excluded from public, social, and economic life. These include large shares of women and youth as well as migrants, refugees, and asylum seekers. Women in Libya continue to face significant restrictions on mobility, suffer serious disparities in terms of job opportunities, equality before the law, participation in political and public life, and overall inclusion in decision making. Libya ranks 41 out of 148 countries in the Gender Inequality Index 2018.[354]

In a scenario in which Libya were to prioritise the recovery of only 10% (approximately USD 120 million) of the assets lost through IFFs, it would be possible to cover the entire minimum cost of "old-age pensions" (those 65 and older) for 100,000 Libyans, at a reported 2019 rate of 450 Libyan Dinars per month.[355] Alternatively, the recovered assets could subsidise the entirety of minimum wage costs for some 100,000 Libyans, every year, at approximately the same rate of 450 Libyan Dinars per month.[356]

How Recovered Assets Can Strengthen the Social Sector in Libya



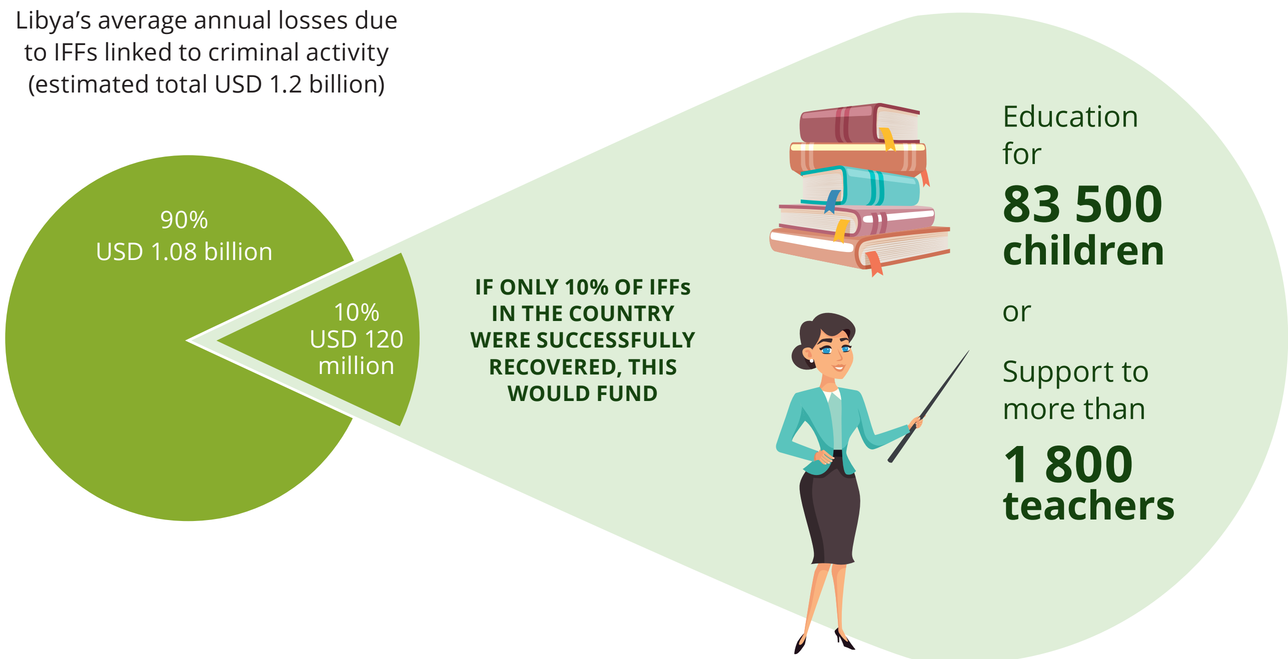
Education Sector

Libya lacks high-quality education systems.[357] Despite healthy literacy levels of around 84%, among the highest in the region, Libya scores very poorly when it comes to the quality of educational services. Libya's Education Index ranked 119th out of 189 countries in the Human Development Report.[358] This problem is likely to be exacerbated over the next decade, as conflicts tend to interrupt school and university activities.[359] Education and training should be at the core of Libya's development, particularly given its significance in tackling unemployment and providing training and opportunities to young Libyans.[360]

In a scenario in which Libya were to prioritise the recovery of only 10% (approximately USD 120 million) of the assets lost through IFFs, it would be possible to easily cover the entirety of the funding requirement of the United Nations Humanitarian Response Plan's budgetary request for the education sector in Libya (as per 2020 estimates), ensuring access to safe, inclusive and quality education for 83,500 children and adolescents (46,000 girls and 37,500 boys).[361]

The recovered assets would also provide much-needed support for more than 1,800 teachers and education personnel across multiple geographic areas, including baladiyas in Al Jabal Al Gharbi, Aljfara, Alkufra, Azzawya, Benghazi, Derna, Edjabia, Misrata, Sebha, Tripoli and Zwara mantikas.[362] Again, channelling this funding through the UN Humanitarian Response team would help to ensure that support is provided in an equitable manner across geographical regions in Libya, and would also reduce the vlikelihood that such funds would be corruptly used, a significant concern given the current Libyan dynamic.

How Recovered Assets Can Strengthen the Education Sector in Libya



5. Conclusions and Recommendations

This report analyses the IFFs problematic in Libya and explains the main organised crimes present in the country and the harm that can be generated by criminal economies. This study is intended to assist in providing at least a partial roadmap in the creation of a more holistic approach to addressing IFFs, and to strengthen efforts to seize and confiscate assets linked to organised crime, corruption and the financing of terrorism.

Despite the diversity of criminal economies considered in this report, a number of common conclusions can be drawn. These relate in particular to the enabling conditions in Libya that allow individuals to undertake these activities without significant resistance.

Libya should consider the following to better target IFFs, to improve the seizure and confiscation of assets linked to corruption and organised criminal activity, and to therefore facilitate more accelerated development within the country:

1. Identify and Implement Mechanisms to Improve Efficiency in Seizure of Assets

Identify and implement mechanisms that improve efficiency in seizure, confiscation of assets, liquidation of those assets, and the distribution of funds, in a highly transparent manner, to high-priority development needs (needs identified in close cooperation with civil society organisations, and needs identified through regular feedback from citizens).

2. Address Resources Towards Tackling Organised Crime, ML/FT and IFFs

Provide the direction and resources needed to prioritise enforcement to tackle organised crime, ML/FT and IFFs in the country. This requires an increase in budget, personnel and skills, and also funding research that supports effective policy with evidence-based analysis of the scale of the IFF threat, the forms it takes, and the ways it is evolving in Libya and in its region.

3. Improve the Quality of Statistics on IFFs

Improve the quality of statistical information and the measurement of IFFs. Moreover, research needs to be carried out to better understand the political and economic factors driving IFFs, as well as the impact of IFFs.

4. Collect and Analyse Statistics to Perform Strategic Assessments

Collect and analyse statistics on the level of funds-generating crime together with seizures and confiscations, to perform a strategic assessment of the ML/FT risk.

5. Publish Clear and Unambiguous Statements and Policies with Respect to IFFs/ML

Publish clear and unambiguous statements and policies with respect to IFFs / ML and the priority of the Government to seize and confiscate (with due process) assets linked to organised criminal activity.

6. Establish the Use of Extended Confiscation as a Norm Within the Criminal Justice System

Adopt and implement, as the norm, not the exception, within the criminal justice system, the use of extended confiscation, which allows a court, once a conviction has been entered for specified serious crimes which can generate significant financial flows, to enter an order that there is then a legal presumption that ALL income and assets of the defendant acquired over, for example, the past five to ten years, shall be deemed to have been illicitly acquired, unless the title holder can prove that the property was acquired through legal means, with legally-acquired assets, and in good faith.

7. Establish the Use of Confiscation of Equivalent Value as a Norm Within the Criminal Justice System

Adopt and implement as the norm, and not the exception, within the criminal justice system, the use of orders to confiscate legally-acquired assets of equivalent value, where the illicitly-obtained assets of a defendant cannot reasonably be located or which have been depleted by the defendant or others. This is consistent with the principle that crime should not pay.

8. Ensure that the criminal justice system can continue proceedings against the assets of individuals charged with serious income-generating crimes even if:

a. the defendant is a fugitive from justice (as long as the State demonstrates to the court it has done everything reasonable to provide notice to the defendant of criminal proceedings against him or her);

b. the defendant dies prior to culmination of the criminal proceedings; or

c. the defendant is declared mentally or physically incapable of participating in the criminal proceedings against him or her.

All of the above are consistent with the principle that crime should not pay, even if the assets are found to be in the name or possession of others. The only exception here would be those who have acquired such assets in good faith and without any reasonable knowledge that such assets were the product of criminality.

9. Establish the Use of Unjustified Enrichment Proceedings as a Norm Within the Criminal Justice System

Adopt and implement as the norm, and not the exception, the initiation and prevalent use of proceedings against individuals for unjustified enrichment, or unexplained wealth, where the State can demonstrate to the court that an individual's assets significantly exceed his or her reported or reasonably possible income. Such can be done in criminal proceedings, civil proceedings or both.

10. Adopt more Agile Mechanisms for the Settlement of Criminal Cases

In light of heavy caseloads of prosecutors and the judiciary, adopt where possible more agile mechanisms for the settlement of criminal cases, where a defendant agrees to return assets reasonably believed by the State to be the product of serious crime, and/or provides reliable information to the State regarding the serious crimes or illicitly-obtained assets of others, in return for a proportionately lighter sentence. Consideration should be given to not allowing such a mechanism for principals in organised criminal syndicates.

11. Empower the Libyan Asset Recovery and Management Office (LARMO) as the Sole Entity for Tracing and Effectively Manage Assets

Strong consideration should be given to empowering the Libyan Asset Recovery and Management Office (LARMO) to be the sole entity for tracing assets, and to effectively manage all seized and confiscated assets, to conduct public auctions of seized assets subject to significant depreciation (with the proceeds from such sales to be held in a State bank account until the case is fully adjudicated), to conduct, as the rule and not the exception, public auctions of all confiscated assets, particularly if the State does not have the capacity to effectively optimise the ongoing management of such assets. Exceptions may exist, for example, for assets which are businesses in which innocent individuals may lose their jobs if a seized or confiscated business is liquidated, or where some assets can, in a transparent manner, be distributed to local communities for optimised use, or to State entities (e.g., vehicles to the National Police for undercover operations, as long as checks are in place to avoid corrupt distribution or misuse of such property). Public policies should be put in place to ensure that a significant percentage of the proceeds from the sale of confiscated assets should go to current and dire high-priority development needs (e.g., to build schools, clinics, infrastructure); in light of rampant corruption in the country, strong consideration should be given to ensuring that distribution of liquidated assets should be carried out in a transparent manner and through reliable entities with national reach within Libya (such as the Libyan Red Cross, the WHO or the WFP).

12. Adopt and Implement Mechanisms to Ensure that the Libyan Asset Recovery and Management Office (LARMO) Houses, Under One Roof, Officials with Access to Different Databases

Adopt and implement mechanisms to ensure that the Libyan Asset Recovery and Management Office (LARMO) houses under one roof, officials with access to databases of, for example, the taxing authority, vehicle registry authority, land registry authority, business records authority, criminal records authority and related entities, in order to allow the LARMO to provide law enforcement (police and prosecutors) with consolidated reports on the assets held by those suspected of serious criminal activity, as well as assets in the possession of their family members and/or possible associates – in light of the fact that most who launder assets do not launder them in their own name.

13. Establish or Strengthen Non-Penal Mechanisms (Civil Confiscation)

Given that money laundering cases often take years to adjudicate, and thus to produce a final order for confiscation of assets linked to organised criminal activity and corruption, and given that this produces an inherent, and often justified, perception by the public that the criminal justice system is too slow in the recovery of assets, strong consideration should be given to the establishment and/or strengthening of non-penal mechanisms for the seizure and confiscation of assets (civil confiscation) – once such mechanisms are in place, and are being implemented (still, with due process for any individual seeking to claim title over such assets), this can reduce the time to confiscate assets from a period of years to a period of several months, and thus bolster public confidence in the judicial system, as well as facilitate the funding of high-priority development needs, as well as funding for law enforcement and judiciary entities charged with the fight against organised crime and corruption.

14. Empower the Taxing Authority

Given that Libya is estimated to lose over US 50 million in taxes every year[363], consideration should be given to strengthening the authority and capacity of the Taxing Authority, to allow it to more effectively seize and confiscate assets linked to tax evasion and other unreported income and assets.

15. Tighten Controls on Financial Institutions to:

a. Report suspicious transactions;

b. Identify true ("beneficial") owners of bank accounts, companies and trusts;

c. Vigorously sanction financial institutions and other reporting entities which do not comply, including heavy fines and/or closure (temporary or permanent) of such financial institutions or reporting entities; and

d. Ensure that all reporting entities report suspicious financial transactions to the FIU.

16. Strengthen Incentives within the Financial Sector

Consider strengthening mechanisms within the financial sector to incentivise the use of bank services and to identify modalities to ensure a gradual but effective transition from informal payment mechanisms, such as *hawala* systems and remittance networks, to traceable and transparent formal financial transactions.

17. Monitor, Implement and Develop a National Anti-Corruption Policy Involving Civil Society, by:

a. Developing comprehensive evidence-based anti-corruption policies – within every public institution – with clear objectives, timelines, outcome indicators and budget for implementation. Moreover, existing corruption risks and problems should be systematically analysed and the evaluation of impact of anti-corruption measures carried out;

b. Setting up monitoring and evaluation mechanisms which incentivise transparency by Libyan institutions, in order to review progress and evaluate impact of implementation regularly;

c. Adopting and implementing anti-corruption awareness plans, particularly in corruption-prone sectors, such as the financial, health and security sectors, in light of the fact that prevention of corruption should be among the country's highest priorities;

d. Developing systematic training on ethical conduct and anticorruption standards for judges, paying special attention to the methodology applied in training activities. Training should include topics such as conflict of interests, incompatible activities, financial disclosure requirements, gift policies, and reporting of corruption; strong consideration should be given to adopting mechanisms that incentivise ethical conduct (not merely sanctioning unethical conduct) and, where beneficial, anonymous reporting of possible acts of corruption; and

e. Taking the necessary measures to facilitate the speedy and confidential access to bank and financial information for prosecutors investigating cases involving corruption (and organised crime), while ensuring that prosecutors are disciplined for any misuse of this power.

18. Strengthen Mechanisms for Regular Dialogue and Feedback from Civil Society and Citizens, Particularly with Respect to Where Recovered Assets Should be Distributed.

Consideration should be given to strengthening mechanisms for regular dialogue with, and feedback from, civil society and citizens with respect to sectors they feel should be of high priority for the investment of recovered and liquidated assets. This would help to engender a sense of public participation into government decisions, as well as facilitate more agile responses to identified needs.

19. Ensure that the Prosecutor General's Office Prioritises Seizures and Confiscation of Assets Linked to Corruption as Standard Procedure

Ensure that the Prosecutor General's Office prioritises seizures and confiscation (while providing due process) of assets linked to corruption (as well as the many forms of organised crime), as standard procedure.

20. Strengthen Regional and International Cooperation

Strengthen regional and international cooperation, particularly through regular face-to-face dialogue with police and prosecutorial focal points in other key countries regarding the tracing, freezing, seizure, confiscation and recovery of assets linked to organised criminal activity (and corruption), and the speedy resolution of pending cases. Such can include, on a case-by-case basis, agreements to share confiscated assets, as a means to incentivise cross-border cooperation.

21. Adopt a General Policy that all Libyan Assets Frozen, Seized and Confiscated Abroad Should Remain Abroad

In light of rampant corruption within Libya, adopting a general policy that all Libyan assets frozen, seized and confiscated abroad, should remain abroad; returning such assets in the current political and conflict-related climate might be interpreted as favouring the interests of one side (governmental or geographical) over another – exceptions to this general policy should be considered to facilitate urgent humanitarian needs, and where entities that are used to facilitate such needs are reliable, transparent and have broad geographical reach within the country (such as the Red Cross, World Food Programme or the World Health Organisation).

22. Adopt a Government-Wide Policy of Inter-Institutional Cooperation

In light of the highly fractious nature of governmental functions, as well as extensive distrust within and among government agencies within Libya, strong consideration should be given to adopting government-wide mechanisms and policies that incentivise intra and inter-institutional cooperation.

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14 These often include civil confiscation proceedings, which still place the initial burden on the State to prove that certain assets are the product of illicit activities, albeit at a lower burden of proof.

15 For example, Antigua and Barbuda, Austria, Canada, Colombia, France, Hong Kong, Italy, the Netherlands, New Zealand, the United Kingdom, Singapore and Switzerland.

16 For example, Colombia, Italy, the Netherlands and the United States. Notwithstanding this, while a number of jurisdictions have proven to be adept on seizing and confiscating assets, they remain quite weak in terms of actually returning seized and confiscated assets to the Requesting States (countries in which the illicit wealth was originally obtained, either through organised criminal activity or through corruption).

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DISCLAIMER

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ABOUT UNICRI

The United Nations Interregional Crime and Justice Research Institute (UNICRI) was established in 1968 pursuant to Economic and Social Council Resolution 1086 B (XXXIX) of 1965, which urged an expansion of the United Nations activities in crime prevention and criminal justice. The Institute is an autonomous institution and is governed by its Board of Trustees.

Working within the broad scope of its mandate to design and implement improved policies and actions in the field of crime prevention and control, the mission of UNICRI is to advance justice, crime prevention, security and the rule of law in support of peace, human rights and sustainable development.

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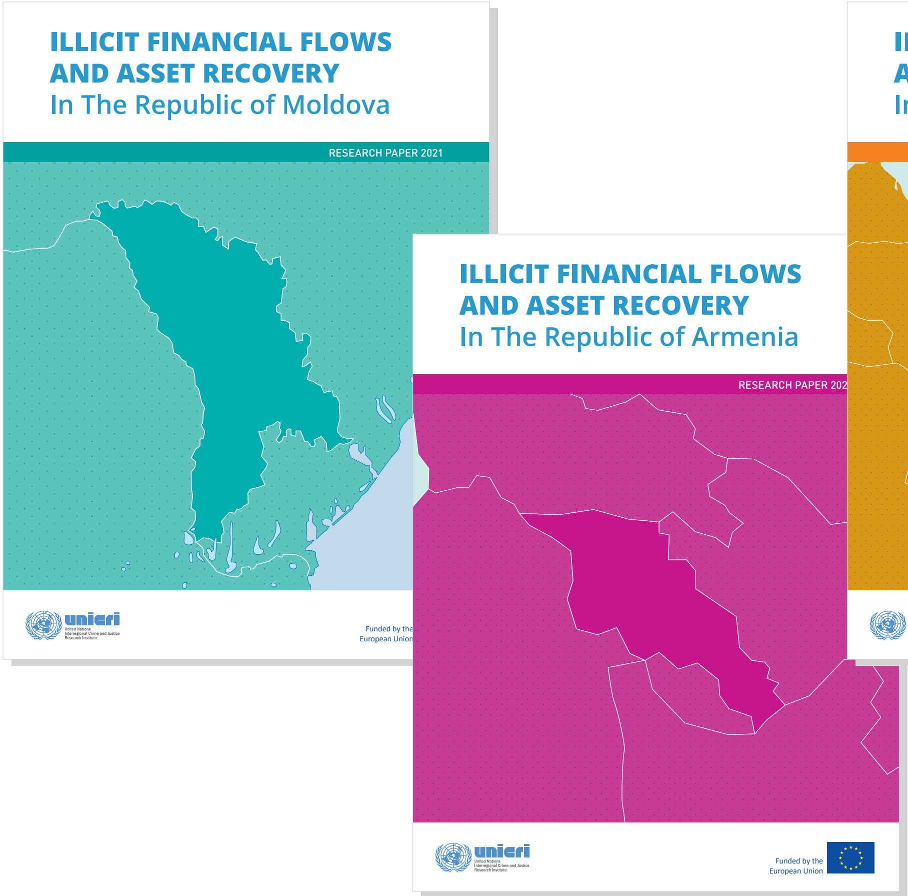

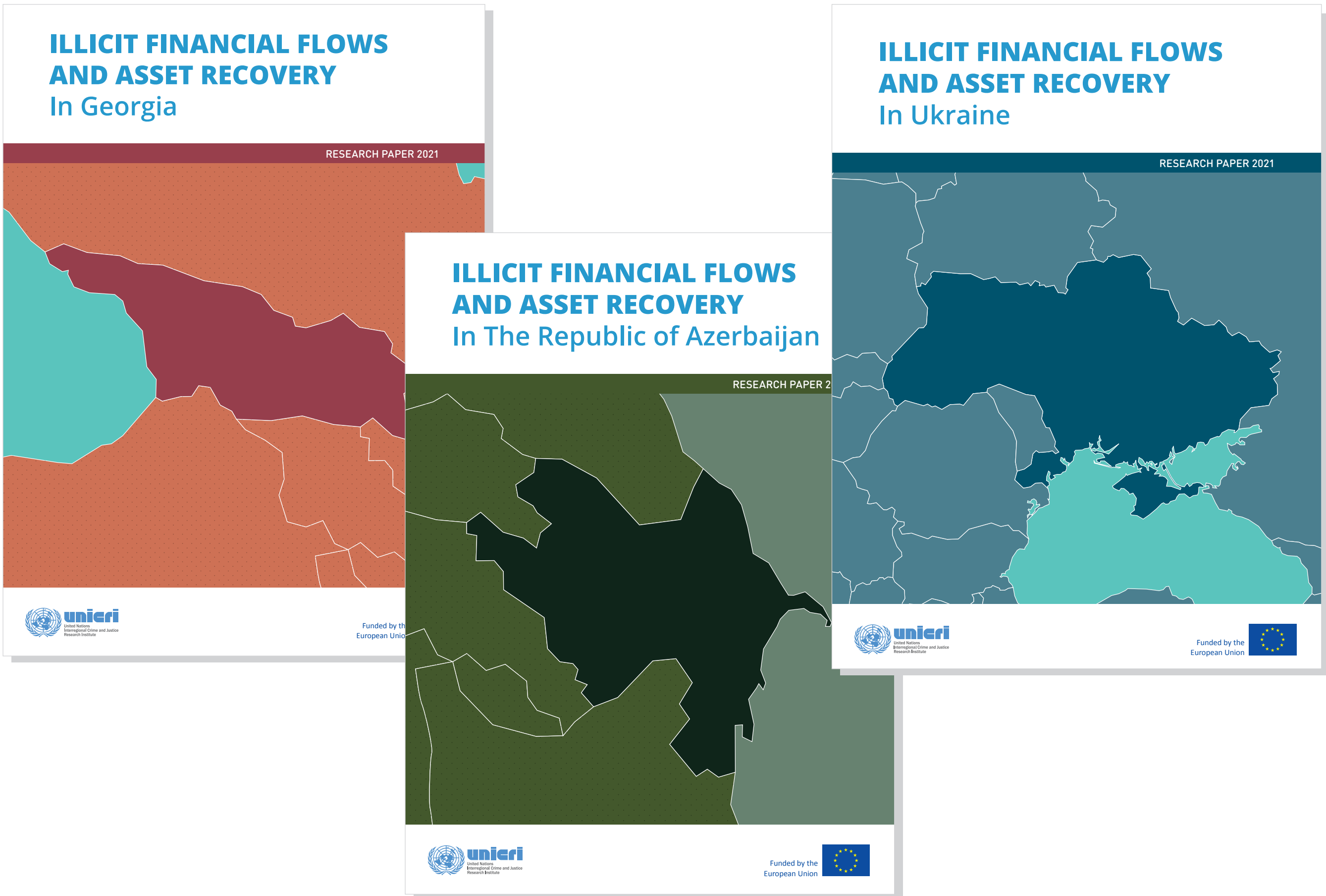

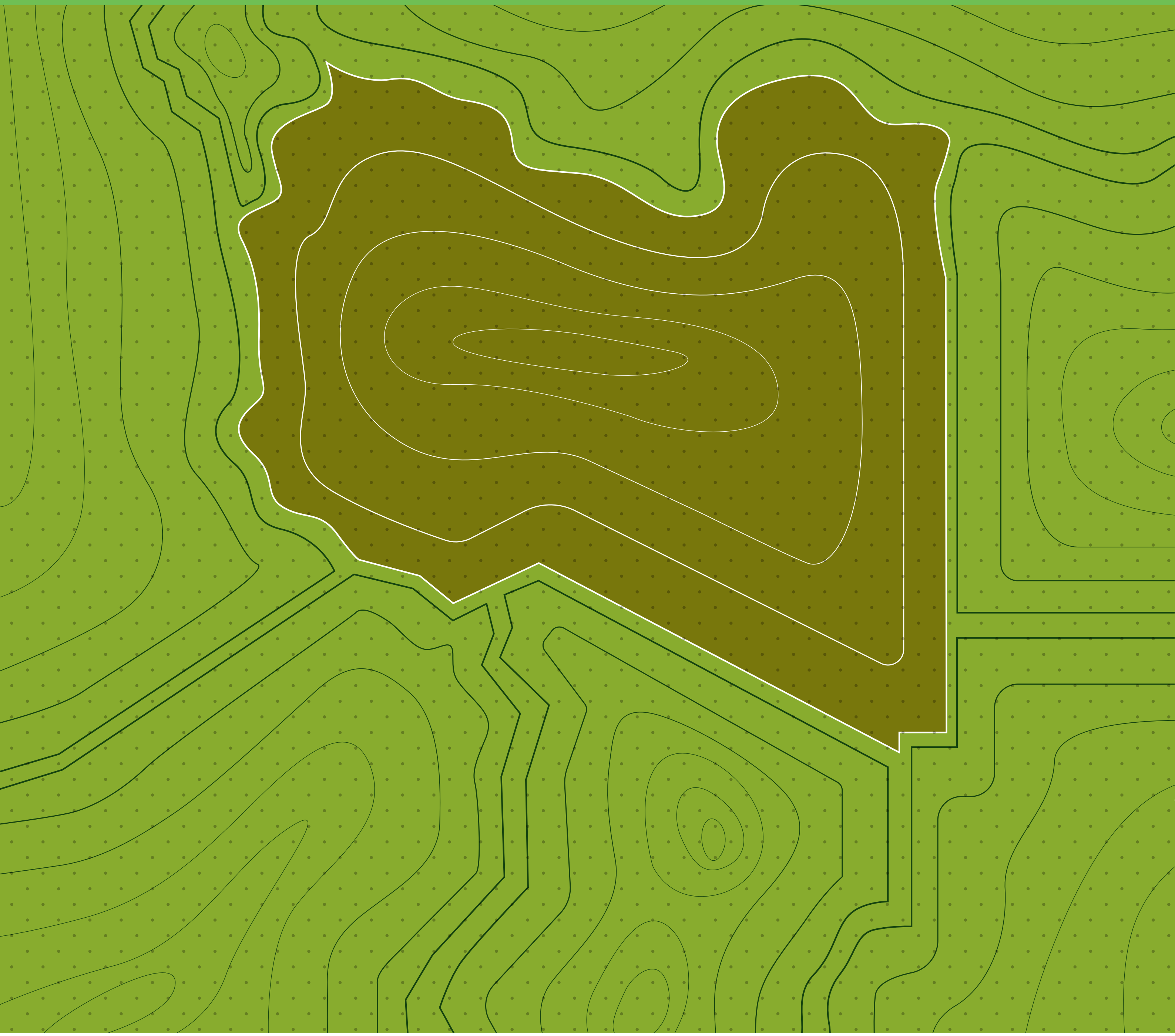

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