## ANNEX H <br> (PUBLIC)

Date //2012
Subject: Memorandum Explaining the Guaranties of the Accused In front of the Libyan judicial system through the accusation and trial phases

The Libyan project, like civilized legislation, seeking the protection of the public interests of the community and in establishing the principle of just and equality in front of the law, and in guarantying the principle of equality in front of court, aiming at providing all the procedures guaranties aiming at protecting the accused freedom and his right to have a just trial in front of his normal judge through an established court that has specific aims stipulated through general and just rules, and prior to the date of the crime, that has the right to handle the case and has the neutrality and independency that guarantee the right of the accused to have a quick and public trial with his presence and to be treated as innocence until proven guilty, and guarantee his right to defend himself and have an attorney, and not to be trialled for the same crime twice, the criminal system explained and organized his rules according to the law issued in 1953, amended by the law issued in 1956, that consists of 3 parts, as follow:

## First: Panel code, which is divided into two parts:

1) The general part, the explain the general rules that this law is subject to and the general theories that govern the issues of criminalization and punishment, though it includes all the organizing texts of the crime bases in general and the conditions specified to the individuals responsible of committing the crime and the reasons of allowing criminal illegal actions.

And the rules applying the panel and organizing crimes into felonies, misdemeanours and violations, and the bases of such organization and kinds of panels, and the reasons of the termination of the crime and the punishment, including amnesty, (1) general or inclusive amnesty, that aims at removing the consequences of some crimes, and that is not done unless by a law issues through the legislation system in the state, where criminal acts that are subjected to it is set (2) a private amnesty, where the accused are freed from implementing the punishment as a whole or part of it or it might be substituted by lighter punishment

Volume II of this Section titled "Public Crimes" from Article 1 to Article 164 provides that:

- Amnesty shall be issued by a resolution of the Supreme Council of Judicial Authorities in Libya, while in other countries it shall be issued by a presidential resolution.
- The principle of legality of the imposition of offenses and penalties "Nullum crimen, nulla poena sine praevia lege poenali" - there is no crime or punishment except by law.
- Penal Code can be enacted retroactively only if it serves the interests of the indictee. The Judge shall have the discretionary authority to give a sentence of the minimum penalty and the maximum penalty, suspend, mitigate or replace the penalty.
* Analogy shall not be allowed in incrimination and punishment issues.
- Highlighting that the highest goal of punishment is rehabilitation and reform, education, discipline and re-integration into society in addition to deterrence and public protection.


## 2 - The Special Section

It includes incrimination provisions that provide for various forms of crimes and penalties prescribed for each crime. The legislator has divided this Section into three Volumes, namely:

Volume 1: On Felonies and Misdemeanors against the Public Interest and contains eight chapters, which are: Felonies and Misdemeanors against the Personality of the State Crimes against Public Administration - Crimes Committed against Public Justice - Crimes against Religion and Recognized Religious Rites and the Infringement on the Sanctity of the Dead People - Crimes against Public Safety - Crimes against Public Security - Crimes against the Public Trust - Crimes against the General Economy, Industry, Trade and Freedom of Work.

Volume II: On Crimes against Individuals. The Volume contains six chapters, which are respectively: Crimes against Individuals - Crimes against the Family -Crimes against Freedom, Honor and Morality - Crimes against the Freedom of Individuals- Crimes against Honor - Crimes against Property.

Volume III: On crimes and Offenses. The Volume has four chapters, which are respectively: Other Misdemeanors and Offenses related to Public Order -Other Misdemeanors and Offenses related to Public Safety - Other Misdemeanors and

Offenses related to Public Morality - Other Misdemeanors and Offenses related to the Protection of Public Properties.

The provisions of the three Volumes have been regulated under Article 165 through Article 507.

## Second: Law of Criminal Procedures

It regulates the rules regarding the institution of the criminal action and the commencement thereof starting from the occurrence of the crime until the issuance of the judgment, as well as rights and obligations arising within the scope of the legal relationships which result from such proceedings, whether they are related to criminal action, civil action or execution complications.

Such procedures pass through several stages or procedures, which are as follows:
1 - Pre-Institution Procedures: which are called the stage of evidence collection, that are undertaken by judicial officers who collect the evidence and material elements that prove the occurrence of the criminal act and conduct necessary investigation on the perpetrator. The legislator has regulated evidence collection procedures through Article 11 to Article 48. In such articles, the legislator has specified the persons who shall undertake such procedures and who shall have the capacity of judicial officers as well as their authorities granted to them, and jurisdictions related to inference and investigation. The legislator has allowed the Public Prosecution to dispose of the records based on the evidence gathering minutes, whether by archiving, pursuant to Article (49), or issuing a criminal order in the permitted cases, or bringing the criminal action to the competent court in the articles regarding misdemeanors and offences.

2 - The stage of bringing the public action, which contains a set of proceedings to be taken as of the date of reporting the occurrence of a certain crime to the public prosecution until the completion of the initial investigation. Pursuant to Article 1 of the Code of Criminal Procedures, the public prosecution shall have exclusive authority to submit and proceed with a criminal action, and in no case shall such an action be submitted by another authority except as provided in this law. The public prosecution through one of the public prosecutors who are supervised by and report to the Attorney General shall submit and proceed with the penal action according to the law. The public prosecution's jurisdiction in the regard shall include the while State.

The legislator has regulated the investigation to be conducted by the public prosecution through articles Article 172 to Article 187 bis C, but the legislator has put into force the
principle of separation between indictment and judiciary authorities. In order to guarantee the principle of the investigator's neutrality, the legislator has exceptionally granted other entities the authority of investigation and institution of the public action, such as:

## A - Investigating Judge

In the Articles related to misdemeanors and felonies, the law has allowed the public prosecution in general and the Attorney General in particular, to petition the Chief Justice of First Instance the Court of Appeal to assign an investigating judge or magistrate to investigate certain crimes specified in the petition. The law has allowed the indictee in Articles related only to felonies to petition the Court to assign an investigating judge; and the Chief Justice shall take his decision in this case, after hearing the statements of the public prosecution. The said decision shall be final and nonappealable.

Upon referring the action to the investigating judge, he shall be exclusively competent to investigate it; however, he shall not investigate an incident other than that specified in the order of remittal or in the form of a summons. The investigating judge, after the completion of the investigation, shall dismiss the action if he finds out that there is no sufficient evidence, the incident is not punishable by law or other reasons causing the action to be dismissed. If the investigating judge finds that the evidence is not sufficient, in regards to misdemeanors and offences, he shall refer the same by an order of remittal to the summary jurisdiction court, while in case of a felony, he shall refer the same to the indictment division and shall be entitled to set it aside and refer it to the summary jurisdiction court if there are legal excuses or judicial circumstances that will mitigate the penalty thereof to the limits the of penalties prescribed for misdemeanors.

## B - Indictment Division

The Law has provided that in each court of first instance, an indictment division shall be constituted of its chief justice or one of its judges appointed by the general meeting to be competent to hear the criminal actions referred thereto by the investigating judge or the Public Prosecution. The Indictment Division shall have the authority specified for the investigating judge. However, it shall not be restricted to investigate the incident specified in the order of remittal or in the form of a summons. The Division shall be entitled to conduct supplementary investigations, introduce other facts or persons to the action that are not included in the order of remittal. After the investigation is completed, the Indictment Division shall render an order of dismissal if appropriate
grounds are available or shall refer the action to the summary jurisdiction court if the incident is deemed as misdemeanor or offence. In case that the incident is deemed as felony with the evidence being available and the indictee is likely to be convicted, the Indictment Division shall render an order of remittal to the Criminal Court. Such order of remittal shall include the following:
(1) A List of witnesses that the indictee and the Public Prosecution desire to hear their testimonies;
(2) Appointment of an attorney for the indictee before the Criminal Court if the indictee has not appointed an attorney;
(3) Notification of the Public Prosecution of the order of remittal within 24 hours and of the remaining litigants of the same within three days;
(4) Sending documents to Chief Justice of the Court of Appeal immediately.

The legislator has guaranteed and characterized the initial investigations as follows:
(1) The neutrality of the investigator regarding the conclusion and obtaining of evidence under legitimate means until proof be obtained under the method specified by the law;
(2) The confidentiality of investigation;
(3) The presence of a lawyer for the indictee;
(4) The recording of investigation.

Further, the legislator imposed a restriction on the Public Prosecution to tie its hands in proceeding with investigation procedures in the following except after obtaining permission from the judge of summary jurisdiction court:

Searching of non-indictees and their homes - Holding and seizure of all letters, messages, newspapers, publications and parcels at post offices, seizing of telegraphs, and wiretapping.

## The investigation is divided into two sections:

## Procedures of evidence collection

This means survey, expert works, as well as the indictee's right in seeking the help of a consultant expert, [It is established in the legal precedents of the Supreme Court that
the court shall neither replace the expert in the purely technical issues nor refute such issues based on personal information " Judgment rendered in Cassation Appeal No. $177 / 18$ on June 26,1967 ], inspection, seizure of the things related to the crime whether by inspecting the persons or homes, hearing testimonies, cross-examination and confrontation.

The legislator set a number of requirements for such procedures, as they are deemed coercive procedures that prejudice the freedom of individuals.

## 3-Trial Phase

Although the Libyan judicial system depends on the integrity of judicial authorities, it is practically divided into two kinds; civil judiciary whose jurisdiction includes the civil, commercial and personal status actions, and criminal judiciary whose jurisdiction includes the criminal actions. Further, the Libyan judicial system consists of summary jurisdiction courts that are competent to decide on misdemeanors and offences.

Appeal Court of Misdemeanors and Offences, which has the jurisdiction to hear appeals against judgments rendered by summary jurisdiction courts.

Criminal Court, which has the jurisdiction to hear criminal actions referred thereto by the Indictment Division.

Court of Cassation, which the jurisdiction to hear challenges filed on conclusive judgment rendered by Appeal Court of Misdemeanors or the criminal court.

Certain rules shall govern the criminal trials unless otherwise their procedures become invalid. These rules are as follows:

The judge who will decide on the action shall be the one who has proceeded with all procedures thereof. Further, the hearing sessions shall be publicly held, in which pleadings shall be verbally made in attendance of litigants, and the bill of indictment, minutes and papers shall be read out. Additionally, the evidence shall be brought to discussion, and the court shall hear the pleadings and defenses of litigants. Finally, all proceedings shall be recorded.

After a judgment is rendered in the action, the legislator has required that such judgment shall be in writing, shall include some statements that if they are neglected, will become invalid, and shall include the grounds on which its operative part is based. The law guarantees the right of filing a challenge against the judgment for litigants whether they are the Public Prosecution, the indictee, the civil plaintiff or the individual
in charge of civil rights. The challenge against judgments may be filed via two ways; first: the ordinary means that include challenge by appeal in judgments in presence and default judgments, and challenge by objection against judgments in absentia. Second: the unordinary means that includes challenge by cassation or petition for certiorari. The law has specified the challenge means through the above ways, as well as the related provisions and cases, the requirements to file each case, the filing legal period and the appropriate court to hear each.

Further, the law has allowed the indictee to file execution complication against the judgment in the case that a judgment appears ambiguous or obscure, or is not capable of being executed. The law has specified the means of filing for such execution complication and the mechanism the court uses to hear or decide on the same. Finally, the Libyan legislator, to ensure that the indictee's right to a fair trial be guaranteed, has established a division called the people's attorneyship division pursuant to the provisions of Law No. 4 of 1981. It has entrusted such division with the task of presence with and defending for the indictee throughout the phases of the initial investigation and trial in all levels and categories of courts free of charge.

## Third Integral laws of penal code

These laws are drafted to govern a certain kind of crimes and provide for penalties specified therefor because that the Penal Code has not provided for such crimes, or such laws specify more severe penalties. These laws include but are not limited to the Law of Economic Crimes, the Law of Criminalization of Mediation and the Nepotism and Anti-Graft Law.

Eventually, the aforementioned is a summary on the guarantees given to an indictee before the Libyan judiciary throughout the phases of indictment, investigation and trial.

Competent Judge
Mustapha Ali Khamaj
South Tripoli Court of First Instance

- Seal of Office of Ministry of Justice


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 جيع



 المترتبة كلى بـه



الكتاب الثالث:- في الجرائم الاخرى والمخالفات ويحنوي على اربعة ابواب هي على اللتوالي :- الجنح الآخرى والمخالفات المتتلقّة بالنظام العام الجنح الآخرى والمخالفات المنتعلقة بالسلامة اللعامة، الجنح الآخرى والمخالفالفات المتعلقةّة بالاداب العامة، الجنح الاخرى والمخالفاات المتعلقة بالحمـاية العامة للأموال.

وقـ نظمت احكام الكتب الثلاثلةٌ المشثار إليها بموجب المواد من المادة -165 إلى المادة 507

دانيا: عقانون الاجراءات الجنانية.
و هو القانون اللاي ينظم القواعد الخاصة بالدعوى الجنائية وطريق مباشرتها منذ لحظة وقوع
 على تلك الاجراءات سواء تعلقت بالادعاء الجنائي أو الإدعاء المدني أو باثشكالات الثنفيذ.

## وهي طلى هذا النحو تمر بعدة هراحل أو إجراءات هتميلة في الاتتي:ع

1- الاجراءات المهيئة لل1عوى الجنائبة والنسابقة عليها وهي مـيطلق عليها
 بتجميع العناصر والأنلة المادة التي تُبت وقوع الفعل الاجرامي إلتحريات اللعزمةة عن مرتكبه وقث نظم المشبع اجزاءات جمع الاستدلالات بمالمواد من المالدة 11- المى المنالّة 48 حدد بموجفها الاشثخاص القائمين بهذه الاجراعات والأين تطلق عليهُ صفة مأموري الضبط القضاني والسلطات الممنوحة لهم وتحديد اختصاصياتُهم المتعلقة بالاستنلال والاخرى المتعلقة بالتحقيق ، وأجاز للثيابة العامِة التصرف في الاوراق بـا باء على محضر جمع الاسنتدلات سواء بالحفظ طبقا للمادة "49" أو إصدار أمر جنائي فيما يجوز فيه ذلكك ، أو رفع اللاعوى الجنائية للمحكمة اللمختصة في مواد الجنح والمخالثفات. 2- مرحدة تحريك الدعوى العمومية و هي مجموعة الاجراءات التي تتخذ من وقت إخطار النيابة العامة بوڤوع جريمة معينة حتى الاتتهاء من التحقيق الابتدائي وتتختص الليابة الُعامة طبقا للمـادة "1" من قانون الإجراءاء الجنائية حسب الأصل بتحريك اللاعوى العمومية ورفعها ومباشرتها أمام

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الوقتصادية وققانون تجريم الوسناطة والمحنوبيةً وقانون من أين لك I 18

وفي الختام هوا هما أدردنا ثبياته في هذه البسطة المختصرة بشأن
 والتحاكمة.


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