



General Assembly resolution  
of 31 October  
United Nations Convention  
against Corruption

The General Assembly,  
Recalling its resolution 55/61 of 4 December 2000,  
in which it requested of an effective  
ad hoc committee for the negotiation and  
negotiation of an effective  
instrument to examine  
governmental corruption and requested  
the Secretary-General to convene  
a group of experts to examine  
the feasibility of such an instrument  
and to report to the General Assembly  
at its 56th session, in 2001,  
and to convene a conference  
of plenipotentiaries to negotiate  
such an instrument, and  
the Secretary-General's report  
thereon, and the resolution  
of the General Assembly  
of 12 December 2001,  
in which it requested  
the Secretary-General  
to convene a conference  
of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 57th  
session, in 2002,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 58th  
session, in 2003,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 59th  
session, in 2004,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 60th  
session, in 2005,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 61st  
session, in 2006,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 62nd  
session, in 2007,  
and to convene a  
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instrument, and to  
report to the General  
Assembly at its 63rd  
session, in 2008,  
and to convene a  
conference of plenipotentiaries  
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instrument, and to  
report to the General  
Assembly at its 64th  
session, in 2009,  
and to convene a  
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instrument, and to  
report to the General  
Assembly at its 65th  
session, in 2010,  
and to convene a  
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to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 66th  
session, in 2011,  
and to convene a  
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to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 67th  
session, in 2012,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 68th  
session, in 2013,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 69th  
session, in 2014,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 70th  
session, in 2015,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 71st  
session, in 2016,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 72nd  
session, in 2017,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 73rd  
session, in 2018,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 74th  
session, in 2019,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 75th  
session, in 2020,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 76th  
session, in 2021,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 77th  
session, in 2022,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 78th  
session, in 2023,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 79th  
session, in 2024,  
and to convene a  
conference of plenipotentiaries  
to negotiate such an  
instrument, and to  
report to the General  
Assembly at its 80th  
session, in 2025,

UN CONVENTION  
AGAINST CORRUPTION  
CIVIL SOCIETY REVIEW:  
MOROCCO 2011

## Context and purpose

The UN Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in December 2005. It is the first legally binding anti-corruption agreement applicable on a global basis. To date, 154 states have become parties to the convention. States have committed to implement a wide and detailed range of anti-corruption measures that affect their laws, institutions and practices. These measures promote prevention, criminalisation and law enforcement, international co-operation, asset recovery, technical assistance and information exchange.

Concurrent with UNCAC's entry into force in 2005, a Conference of the States Parties to the Convention (CoSP) was established to review and facilitate required activities. In November 2009 the CoSP agreed on a review mechanism that was to be "transparent, efficient, non-intrusive, inclusive and impartial". It also agreed to two five-year review cycles, with the first on chapters III (Criminalisation and Law Enforcement) and IV (International Co-operation), and the second cycle on chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group (IRG), which met for the first time in June–July 2010 in Vienna and selected the order of countries to be reviewed in the first five-year cycle, including the 26 countries (originally 30) in the first year of review.

UNCAC Article 13 requires States Parties to take appropriate measures including "*to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption*" and to strengthen that participation by measures such as "*enhancing the transparency of and promote the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.*" Further articles call on each State Party to develop anti-corruption policies that promote the participation of society (Article 5); and to enhance transparency in their public administration (Article 10). Article 63 (4)(c) requires the conference of the States Parties to agree on procedures and methods of work, including co-operation with relevant non-governmental organisations.

In accordance with Resolution 3/1 on the review mechanism and the annex on terms of reference for the mechanism, all States Parties provide information to the conference secretariat on their compliance with the convention, based upon a "comprehensive self-assessment checklist". In addition, States Parties participate in a review conducted by two other States Parties on their compliance with the convention. The reviewing States Parties then prepare a country review report, in close co-operation and co-ordination with the State Party under review and finalise it upon agreement. The result is a full review report and an executive summary, the latter of which is required to be published. The secretariat, based upon the country review report, is then required to "compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the technical review reports and include them, organised by theme, in a thematic implementation report and regional supplementary agenda for submission to the Implementation Review Group". The terms of reference call for governments to conduct broad consultation with stakeholders during preparation of the self-assessment and to facilitate engagement with stakeholders if a country visit is undertaken by the review team.

The inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Thus, civil society organisations around the world are actively seeking to contribute to this process in different ways. As part of a project on enhancing civil society's role in monitoring corruption funded by the UN Democracy Fund (UNDEF), Transparency International has offered small grants for civil society organisations (CSOs) engaged in monitoring and advocating around the UNCAC review process, aimed at supporting the preparation of UNCAC implementation review reports by CSOs, for input into the review process.

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of October 2011. Nevertheless, Transparency Maroc and the UNCAC Coalition cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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# Introduction

The Moroccan government signed the UN Convention against Corruption (UNCAC) on 9 December 2003 and ratified it on 9 May 2007.

This report reviews Morocco's implementation and enforcement of selected articles in Chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation) of the UNCAC. The report is intended as a contribution to the UNCAC peer review process currently underway covering these two chapters. Morocco was selected by the UNCAC Implementation Review Group in July 2010 by the drawing of lots for review in the first year of the process. The final version of this report was provided to the government of Morocco.

**Scope.** The UNCAC articles that receive particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), trading in influence (Article 18), embezzlement of property in the private sector (Article 22) money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), protection of reporting persons (Article 33) and mutual legal assistance (Article 46).

**Structure.** Section I of the report is an Executive Summary, with the condensed findings, conclusions and recommendations about the review process and the availability of information, as well as about implementation and enforcement of selected UNCAC articles. Section II covers in more detail the findings about the review process in Morocco, as well as access to information issues. Section III reviews implementation and enforcement of the convention, including key issues related to the legal framework and the enforcement system, with examples of good and bad practice. Section IV covers recent developments, and Section V elaborates on recommended priority actions.

**Methodology.** The report, produced with UNDEF funding, was prepared by Transparency Maroc. The group made efforts to obtain information for the report from government offices and to engage in dialogue with government officials. In order for the views contained in the reports to be conveyed to government officials as part of this dialogue, a draft of the report was made available to them.

The report was prepared using a questionnaire and report template designed by Transparency International for use by CSOs. These tools reflected but simplified the UN Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments, compared to the detailed official checklist self-assessments. The questionnaire and report template asked a set of questions about the review process and, in the section on implementation and enforcement, asked for examples of good practices and areas in need of improvement in selected areas, namely with respect to UNCAC Articles 15, 16, 17, 20, 23, 26, 32, 33 and 46(9)(b) and (c).

The report preparation process went through a number of steps, with respondents first filling out the simplified questionnaire and then preparing the draft report. The report was peer reviewed by a national expert selected by TI.

The draft report was shared with the government for comments before the final version was completed. This final draft of the report was then sent to the government prior to publication, with the aim of continuing the dialogue beyond the first round of the country review process.

## I. Executive summary

The UNCAC was published in the Official Gazette of 17 January 2008. Since its ratification, there have been many government statements of its will to fight corruption,<sup>1</sup> and several laws and regulations have

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<sup>1</sup> Also, many Royal speeches addressed the issue, as in 2008: "Therefore, everyone has to show proof of vigilance and seriousness, use the force of law, the authority of an independent justice and use monitoring and accountability mechanisms in order to end impunity and take action against scams and frauds .... This is even more necessary against graft, bribery, corruption, abuse of power and tax evasion." 9 March 2011 speech announcing: "The consolidation of mechanisms of public life moralization and the need to link the exercise of authority and responsibility or public mandates to the necessity of control and accountability." In March 2011, the Minister of Justice Mohamed Taieb Naciri sent a letter to Attorneys General asking them to "ensure the acceleration of the provisions related to records of squandering public assets and corruption that are before their courts."

been adopted. Money laundering has been a criminal offence since the enactment of Law No. 43-05 on 17 April 2007. A law on the protection of witnesses, victims and whistleblowers of serious crimes, including corruption, bribery, misappropriation of public funds and money laundering, is being developed. The main problem lies in law enforcement. The law is not fully enforced in several areas; many corruption cases are not prosecuted or drag on in court. A second issue is the apparent insufficient judicial independence. Justice reform must be a priority. It must be deep and accompanied by a change in mentality.

## **Assessment of the review process**

### ***Conduct of process***

The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of Morocco.

**Table 1 Transparency and CSO participation in the review process**

Did the government make public the contact details of the country focal point?	No
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published online or provided to civil society organizations?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide inputs to the official reviewers?	No
Has the government committed to publishing the full country report?	Yes

### ***Availability of information***

Government officials contacted (the focal point of the Ministry of Modernization of Public Sectors, the Department of International Cooperation of the Central Agency for the Prevention of Corruption and the representative of the Ministry of Justice) to develop this report were very cooperative. However, the requested information was absent from the websites of these various institutions.

## **Implementation and enforcement of UNCAC**

Moroccan legislation is not perfect, but in its current state, it can allow proper criminal sanctions for most offences listed in the Convention. Concerning mandatory offences under UNCAC, one major shortcoming can be mentioned: the offence of bribery of foreign public officials and officials of public international organizations is not provided for by the criminal law.

As for non-mandatory offences, such as trading in influence, illicit enrichment and bribery and embezzlement in the private sector, three of these offences are clearly set out by the Criminal Code. The non-mandatory offence of abuse of functions is not an offence as such under the code. However, it can sometimes fall within the scope of another offence, such as “concession” (not mentioned by the Convention) and is very close to corruption and trading in influence.

The deficiencies in Morocco are not primarily caused by gaps in the law. While existing legislation should be supplemented and improved, the problem lies in its poor enforcement. Decisions on prosecution are subject to the executive power and the independence of judges is not guaranteed.

The new constitution provides in its article 27 for the “right of citizens to access to information held by public services, elected institutions, and organizations serving a public service mission”.

## **Recommendations for priority actions**

1. Achieve real reform of the judiciary system as a whole to ensure its independence and efficiency
2. Ensure proper enforcement of existing laws
3. Reorganize the Central Agency for the Prevention of Corruption and provide it with powers allowing it to play a real role in prevention and possibly gathering data on corruption cases
4. Develop a law on access to information and enforce it to promote greater transparency and accountability.
5. Promptly enact a law effectively providing for the protection of witnesses, victims and whistleblowers of corruption, bribery, misappropriation of public funds and money laundering
6. Review laws related to secrecy and confidentiality of public servants in their functions (particularly Article 18 of the General Status of Public Service) in order to allow public access to information and whistle blowing
7. Ensure systematic follow up of corruption cases, particularly those detailed by the Court of Audit in its annual report.

## **II. Assessment of the review process for Morocco**

### **A. Conduct of process**

The Moroccan government designated the Ministry of Modernization of Public Sector (MMSP), in the person of the Director of Administration Modernization, as a focal point for Morocco in the review process. This information was not published on the Ministry's website, but was disclosed to Transparency Morocco upon request.

In order to produce the self-assessment report, the government formed a committee consisting of representatives from some government departments, the ICPC (Instance Centrale de Prévention de la Corruption) and the private sector. Since the ICPC includes civil society members, they were indirectly represented in the self-assessment committee. It seems, however, that these members were not fully involved in the exercise.

The self-assessment report was submitted to UNODC in Arabic and the translation consumed a large amount of time.

Morocco accepted a country visit by a review team that was conducted, according to what the focal point reported, between 5-8 July 2011. CSOs were not invited to meet with the review team.

States Parties to the UNCAC agreed in Doha that the full report cannot be published without the consent of the concerned state. Only the executive summary will be automatically published by the UNODC. Morocco has always supported the publication of the full report. The focal point indicated that the decision to publish the full report will be taken after receipt of the last version of the report and analysis of its content.

### **B. Availability of information**

Both the focal point of the Ministry of Modernization of Public Sectors and the Department of International Cooperation of the Central Agency for the Prevention of Corruption were contacted for the preparation of this report and provided good cooperation. It is regrettable, however, that no information is available on these institutions' websites.

Concerning court cases, no information is available on the website of the ministry or in activity reports. Upon request by Transparency Maroc, the Ministry of Justice provided general statistics on the number of corruption cases registered in the regions as of 27 June 2011.

A specific law on access to information would allow greater transparency and accountability. Article 27 of the Constitution, adopted in July 2011, establishes the right for citizens to “access information held by administration, elected institutions and public service institutions.” The adaptation of Moroccan legislation on this point is crucial, as some laws will be in conflict with this constitutional right.

Also, in order to actually ensure access to information, it is necessary to define more clearly the obligation of public officials to maintain confidentiality, given that its violation is criminalised, so as to avoid that the administration rejects any disclosure of information under the pretext of respecting professional secrecy.

### III. Implementation and enforcement of UNCAC

#### A. Background

A new decree on public procurement was published in 2007. However, the government soon concluded that this new decree was not sufficiently effective. New draft legislation has been in preparation for months.

A draft law on witness protection has been drafted and recently was voted on in Parliament. There is thus important legislative activity to ensure compliance of national legislation with the UNCAC since its ratification in 2007. Despite its flaws, inadequacies and shortcomings – such as the lack of criminalisation of bribery of foreign public officials – current laws in their present state might be sufficient to ensure the implementation of the convention if properly enforced.

#### B. Key issues related to the legal framework

This section covers Morocco’s compliance with the provisions of UNCAC Chapter III on Criminalisation and Enforcement, and Chapter IV on International Cooperation.

**UNCAC Article 15: Bribery of national public officials.** The Criminal Code sanctions corruption of public servants. Article 248 provides that judges, civil servants and elected officials who accept or solicit any gift to act or refrain from acting in the exercise of their official duties commit an offence. Thus, passive bribery is also sanctioned. Offering or agreeing to make a donation or whatsoever benefit – i.e. active corruption – carries the same penalty under Article 251.

The code also penalises arbitrators, experts and judges who accept donations to rule in favour of one defendant, and doctors who issue fake certificates.

**UNCAC Article 16: Bribery of foreign public officials.** The Criminal Code does not sanction bribery of foreign public officials.

**UNCAC Art 17: Embezzlement, misappropriation or other diversion of property by a public official.** First, Article 241 of the Criminal Code punishes any public officer who embezzles, dissipates, unduly retains or removes public or private assets. Racketing is incriminated if assets diverted are worth 2,000 Dirham (US \$250) or more. If they have a lower value, the offence is a misdemeanour. Second, Article 243 criminalises “concession” (misappropriation),, i.e. when a civil servant requests or collects what he knows is not due, or exceeds what is due. Third, Article 245 sanctions illegal acquisition of interests by civil servants.

**UNCAC Article 18: Trading in Influence.** Trading in influence – which is soliciting or accepting donations in order to obtain or attempt to obtain awards, jobs, contracts or any favourable decision in general by using a real or supposed influence – is sanctioned by Article 250 of the Criminal Code.

**UNCAC Article 21: Bribery in the private sector.** Corruption of employees of private companies is criminalised by Article 249 of the Criminal Code.

**UNCAC Article 22: Embezzlement of property in the private sector.** Corporate law provides for the punishment of the misuse of corporate assets by administrative and management bodies of a company if the company's assets, credit, powers or votes are used in bad faith, and in a way that is contrary to the companies' economic interests, or to promote another company or business in which they are directly or indirectly interested.

**UNCAC Article 23: Laundering of proceeds of crime.** Money laundering has been a criminal offence since the enactment of Law No. 43-05 on 17 April 2007, which added Articles 574-1 to 574-7 to the Criminal Code. The law defines money laundering as concealment and transformation of assets from a number of offences provided in a long, exhaustive list. Corruption offences are explicitly mentioned: "Corruption, extortion, influence peddling and embezzlement of public and private assets" (Article 574-2 of Penal Code).

The Financial Intelligence Unit (UTRF, Unité de Traitement du Renseignement Financier) was established by law in December 2008 and began operation in April 2009. Given the low degree of use of banking services in Morocco, it is essential to consider other mechanisms to detect money laundering to control areas where transactions are often made in cash, such as real estate and trade of precious metals and jewelry.

**UNCAC Article 26: Liability of legal persons.** The liability of legal persons is provided by law. The Criminal Code establishes in Article 128 penalties and other measures applicable to legal persons.

The liability of legal persons (Article 26 UNCAC) is provided for by law. Article 128 of the Penal Code states the provisions and other measures applicable to legal persons. Complicity and an attempted crime is always punishable under Moroccan criminal law. The actual wording of the code's articles is very broad and includes attempt, given the fact that a misdemeanour includes not only bribe payment but also merely requesting or offering it.

**UNCAC Article 27: Participation and attempt.** Complicity in crimes is always punishable. Moroccan criminal law includes complicity in crimes and offences. Attempted crime is always punishable. Attempted offences are only punishable if the law explicitly says so. The actual wording of the code's articles is very broad and includes attempts, as the offence is not only made through the payment of the bribe but by merely requesting or offering it.

Other corruption-related offences:

Election violations are covered in Section 100 of the Electoral Code, which punishes anyone "obtaining or attempting to obtain the vote of one or more constituents with donations or gifts in cash or in kind, promises of gifts, public or private employment favours or other benefits to influence their votes, either directly or through a third party, or have used the same means to bring one or many voters to abstain from voting."

**Articles 32: Protection of witnesses and Article 33: Protection of reporting persons.** The Criminal Code penalises witness bribery (Article 373) though no law or regulation provides for their protection. A law providing for the protection of witnesses, victims and whistleblowers was presented to and voted on by the first Chamber of Parliament recently, and it is currently pending in the second chamber. Transparency Maroc was not consulted during the drafting of this law or before it was sent to Parliament. Transparency Maroc stated in a press release that it considers the draft law ineffective and misleading, and it also developed a document analysing the pros and cons of the draft law.

**Article 46 (9): Mutual legal assistance.** Articles 713 to 749 of the Code of Criminal Procedure contain provisions on relations with foreign judicial authorities. Article 713 provides that "international conventions take precedence over national laws regarding judicial cooperation with foreign authorities". This means that provisions of the UNCAC on mutual legal assistance prevail. The Criminal Code provides for the execution of rogatory letters (rogatoire) requested by foreign authorities, and the opportunity to ask foreign authorities to execute rogatory letters for ongoing judiciary proceedings in Morocco. Recognition of foreign criminal convictions, extradition and witness summoning is also regulated.

## **B. Key issues related to enforcement**

The deficiencies in Morocco are not caused primarily by gaps in the law. While the law may have to be supplemented and improved, the main problem lies rather in its poor enforcement. Current

legislation on suppressing corruption could well be sufficient if prosecution were systematic. This is not the case. In fact prosecutions are rare. There are serious concerns about tolerance of corruption, nepotism and cronyism as reasons for the spread of corruption.

The Central Agency for the Prevention of Corruption (Instance Centrale de Prévention de la Corruption) was established in 2007. However, the agency cannot decide on corruption offences.

The recently adopted Constitution foresees, in Articles 36 and 167, the implementation of a national agency of probity, prevention and fighting corruption, whose goal is to “initiate, coordinate, monitor and follow up the implementation of prevention and anti-corruption policies, collect and broadcast data related to this field; contribute in raising moral standards of public life, and consolidate the principles of good governance, public service culture and responsible citizenship values”.

## 1. Prosecutorial and judicial institutions

The Public Prosecutor’s Office is responsible for prosecuting all offences. There is no specialised agency for prosecuting corruption cases, contrary to other areas, where such specialised bodies do exist (i.e. customs, forestry). The question of allowing a specialised body to record and/or to prosecute corruption violations is likely to be debated as part of the reorganisation of the Central Agency for the Prevention of Corruption.

The Public Prosecutor’s Office is responsible for initiating, carrying out and monitoring prosecutions. It is a hierarchical body, requiring each official to follow the superior’s instructions. It operates under the authority of the Minister of Justice. The Minister of Justice may refer corruption-related offences to the Public Prosecutor and ask him in writing to prosecute, engage prosecution or request the competent jurisdiction in the way that seems appropriate to the Minister of Justice. A restrictive interpretation of Article 51 of the Criminal Code leads to the conclusion that the Minister of Justice may order a prosecution.

It is difficult to access information about the investigating authorities’ activities (i.e. complaints, decisions). Prosecution-related information usually is not disclosed. Transparency Maroc only has access to information revealed in the media and has no access to judicial decisions. A number of cases that have been referenced in the press are presented below.

The Court of Audit is responsible for ensuring the regularity of the state’s revenue and expenditures. If, during its inspection, the court discovers elements justifying criminal sanctions, it requests the Minister of Justice “to take any action he or she considers appropriate” (Article 111, Paragraph 3 of the Code of Financial Jurisdictions). The latter, however, is free to determine whether or not to prosecute, and again, the decision remains subject to the discretion of the executive power. Consequently, many cases identified and described by the Court of Audit or in the press have not resulted in prosecution.

Regarding the judiciary, the Constitution states that it is independent of the legislative and executive branches, and that “professional judicial career judges are irremovable.” Full independence of judges, however, still seems to be lacking for a number of reasons. First, the terms for holding office are not clearly defined. Second, there are concerns that the Superior Council of Magistrates for disciplinary matters is not fully independent from the executive, including the Ministry of Justice.

## 2. Statistics and cases

Lacking statistics on corruption-related cases, Transparency Maroc sent a request to the representative of the Ministry of Justice at the Central Agency for the Prevention of Corruption (ICPC). A note was thus sent to all of the Kingdom’s Tribunals in order to collect the requested data, explaining the delay in completing this portion of the report. The data were provided as shown in the table below, in the given nomenclature.

It was not possible to obtain detailed statistics from the Ministry of Justice in order to complete the proposed questionnaire for the study initiated by TI. However, the following general statistics were kindly provided upon request:

**Table 3: Statistics of corruption cases provided by the Ministry of Justice**

Year	Prosecution conditions, Men			Prosecution conditions, Women			Prosecution conditions, Foreigners			Number of crimes committed	Total prosecutions
	Arrested	Sentenced but set free	Escaped	Arrested	Sentenced but set free	Escaped	Arrested	Sentenced but set free	Escaped	Crimes committed	General
2007	202	7,065	0	7	15	0	1	0	0	7,258	7,290
2008	235	6,320	2	15	174	0	0	0	0	6,548	6,746
2009	151	6,870	0	6	7	0	0	1	0	6,983	7,035
2010	538	7,612	207	5	26	0	0	2	0	8,342	8,390

Many corruption cases appear to be either bogged down in court or very leniently punished. It is very difficult to provide specific reasons for the delays. The following cases have been reported in the press:

- **The case of Public Administrations Personnel Mutual Insurance (MGPAP):** (MAP, 1 April 2011), (Le Soir, 28 April 2011). The Court of Criminal Prosecution in charge of financial crimes, on behalf of the Salé Court of Appeal, returned a verdict on 31 March 2011 in the case of "embezzlement of public money, forgery and use of forgery, corruption, breach of trust, abuse of power, money laundering and complicity..." The court sentenced the main defendant, Mohamed El Ferraâ, to four years in prison, with 30 months suspended and a fine of MAD 10,000 for "embezzlement of public money, breach of trust, abuse of power and money". He was acquitted on the charges of "forgery and use of forgery and of corruption." This verdict raised an outcry on the part of the defence of MGPAP and associations for their protection of public funds, and as such they have appealed the ruling.
- **Embezzlement at the Sherifian Office of Phosphates:** (MAP, 21 and 22 May 2011): The criminal chamber of the Court of Appeal of Safi is to review the case from last May about the Sherifian Office of Phosphates (OCP)'s mutual insurance. The case arose last year. The defendants are charged with the misappropriation of public funds, forgery in public writings, fraud and breach of trust. Billions of dirhams were allegedly "stolen" in the OCP. Public perceptions of wrongdoing have persisted, due to the fact that neither the successive directors of the office, prime ministers or even CEOs have tackled this issue.
- **Scandal of the National Fund of Social Security** (Caisse Nationale de Sécurité Sociale): (Al Bayane, Al Alam, Bayane Al Yaoum, Al Mounataf, 9 July 2011): This case concerning fraudulent management, squandering of public funds and embezzlement has vitiated the management of the CNSS for many years, leading to an endless flow of negative publicity. The investigation of this case was triggered by the damning report by the parliamentary committee, which investigated in 2001 and revealed the disappearance of MAD 115 billion due to alleged fraudulent management of the pension fund over three decades. The first hearing, scheduled on 4 August, has been postponed repeatedly.
- **The case of Wholesale Fruits Market in Casablanca:** (Assabah, Attajdid, Akhbar Al Yaoum, 23 June 2011): On 21 June 2011, the Court of First Instance of Casablanca sentenced Mourad Gartoumi, the main plaintiff in the case of the fruits and vegetables wholesale market in Casablanca, to five months in prison and a fine of MAD 2,000 for slander. Mourad Gartoumi was arrested for criticising the investigation's slow pace in the case of wholesale market in Casablanca. The judge sent a complaint to the Attorney General of the King against Mourad Gartoumi for slander. The judge justified the complaint with the testimony of several police officers and clerks of the courts.
- **The Attorney General's refusal to acknowledge a complaint against Moncef Belkhatat for embezzlement of public money** (Panoramarc.ma/Lakome.com, 16 September 2011): The National Agency for Public Money Defense issued a press release announcing that the Attorney General of the Supreme Court in Rabat has refused to acknowledge the complaint against Moncef Belkhatat, Minister of Youth and Sports, about the case of the Audi A8 that the ministry had rented for 36 months at a monthly cost of MAD 90,000. The organisation explained in its official statement that the prosecutor justified his refusal on the grounds that the complainant is not a public benefit organisation and therefore

the complaint is inadmissible because it has no standing to be filed with the court. The organisation, however, noted that it has recently filed a number of complaints of this nature in several courts across the country, and that these complaints were received by all of the attorneys involved.

- **Soir/Al Massae** (16 September 2011): The director general of the Marketing and Exports Office refused to answer the Parliament's Committee of Investigation and hand over requested documents. In the matter of the Commission of Inquiry of the House of Counselors on the Marketing and Exports Office, the director general refused to answer questions by members of the commission who requested an explanation of malfunctions of the organisation and who has requested but not received certain documents. The counselors have encountered the CEO's refusal of the Marketing and Exports Office, who has justified his position due to instructions he has received from the Chairman of the Board of Directors, prohibiting him from answering any questions from Parliament, on the grounds that a judicial inquiry was underway and that refusing to address the Parliament's request was within the law.

### 3. Summary of the most significant inadequacies in the enforcement system for UNCAC-related offences

- Important cases are either not brought to court, are delayed or are given inappropriately light sentences, as can be seen from the above press reports. The failure to systematically prosecute corruption cases especially affects those referred by the Court of Audit.
- There is a lack of independence of justice institutions, including prosecutors and judges. It is very difficult to give reasons for poor enforcement of laws, though surely there are many. The following may play a role. Corruption affects justice, and impedes prosecution according to statement by several victims of corruption and several reports by CSOs. Magistrates, the press and the TI Advocacy and Legal Advice Centre keep records of cases in which people were asked to pay a bribe in exchange for court formalities that are normally free of charge, or in order to obtain light sentences. Several international NGO reports have stated that the Moroccan justice system is deeply corrupt.
- Interventions have allegedly been made in order to prevent the prosecution of well-placed people. Certain individuals have been accused by the media of trying to halt prosecutions against certain persons.
- There appears to be a lack of commitment within the judiciary. In the last decade, many national and international reports on the national judicial system have revealed its deficiencies.
- Insufficient legal expertise appears to be a problem in many institutions. Many public institutions lack the resources to develop their legal expertise.

## IV. Recent developments

In the legislative field, several laws have been enacted and promulgated in the last years. The law on money laundering was enacted in 2007 and completed at the end of 2010. This law provides for sanctions for money laundering and created the Financial Intelligence Unit, which was established in 2009 to be in charge of determining the rules for identifying money laundering operations (i.e. minimum amounts, conditions of application), and also for creating a database of recorded crimes. Furthermore, it must deal with international requests for freezing assets related to terrorist financing.

A set of texts establishing the monitoring of judges, and elected and high officials' assets was published in 2008. The following persons/agencies are covered by the law: government members, members of the Constitutional Council, members of the House of Representatives, members of the House of Councillors, magistrates, court judges, financial members of the High Authority of Audiovisual, elected local councils and chambers as well as certain civil servants and public officials (including officials appointed by the King, the officers, collectors, and managers of public money). However, the implementation of these texts is

rather problematic, given the significant number of persons required to report on the one side and the small number of persons responsible (Magistrates of the Court of Audit) on the other side.

The Central Agency for Prevention of Corruption was established by the Decree of 14 March 2007 and installed on 2 December 2008. It has the power to gather information, create a database, propose measures and evaluate policies for fighting corruption. However it has no power to make decisions or take legal action regarding detected violations.

As mentioned, a bill providing for the protection of victims and witnesses of corruption was voted on by the first chamber of the Parliament, and eventually by the second chamber as well. According to the media, the law was published on 7 October 2011.

## **V. Recommendations for priority actions**

In order of importance, the needed priority actions are:

1. Achieve real justice reform, to ensure its independence and efficiency
2. Ensure proper enforcement of existing laws.
3. Reorganise the Central Agency for the Prevention of Corruption and ensure it has the necessary power and tools to play an actual role in prevention and possibly data collection on corruption cases.
4. Develop a law on access to information and enforce it in order to promote greater transparency and accountability. The new Constitution provides for the "right of citizens to access to information held by public services, elected institutions, and organisations serving a public service mission." This has to be quickly followed by a specific law on access to information identifying its content and limiting in details its exceptions.
5. Review legislation on the obligation of public officials to maintain confidentiality (namely Article 18 of the General Status of Public Service). Specify the content of professional secrecy in order to (1) allow access to information, and (2) free whistleblowers from prosecution for violation of public secrecy when their good will is proven.
6. Ensure systematic judiciary follow-up of corruption cases, particularly those identified and presented in the annual report of the Court of Audit.

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