



Report on Tunisia's Compliance with The UN Convention Against Corruption

I WATCH is a Tunisian watchdog NGO founded in March 2011 aiming at enhancing transparency and fighting corruption. I WATCH's mission is not only limited to fighting corruption, it also endeavors to engrain the culture of fighting corruption in the coming generations. In November 2013, I WATCH was selected to be the national contact of Transparency International in Tunisia. I WATCH is made up of like-minded young professionals and motivated volunteers who, through their innovative work, are determined to tackle the issue of corruption and lack of integrity in both public and private sectors through laying the foundations of good governance.

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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, 170 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, criminalization and law enforcement, international cooperation, 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 (Criminalization and Law Enforcement) and IV (International Cooperation), and the second cycle on chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group, 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 promoting 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 enhance transparency in their public administration (Article 10); Article 63 (4) (c) requires the CoSP to agree on procedures and methods of work, including cooperation with relevant non-governmental organizations.

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 CoSP secretariat on their compliance with the UNCAC, 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 cooperation and coordination with the State Party under review, and finalize 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, using 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, organized by theme, in a thematic

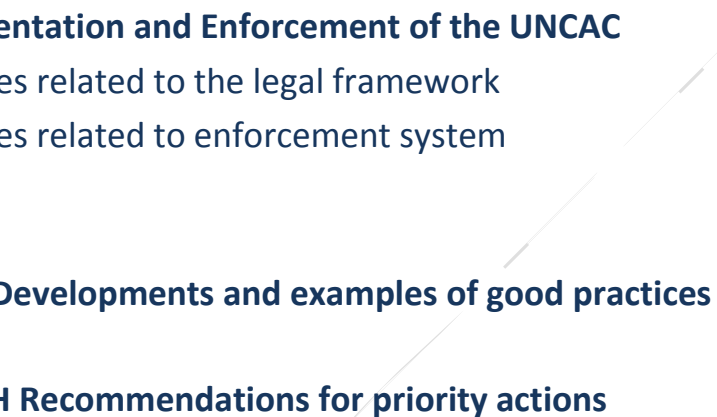
implementation report and regional supplementary agenda for submission to the Implementation Review Group". The terms of reference call for governments to conduct broad consultation with stakeholders during preparation of the self-assessment and to facilitate engagement with stakeholders if a country 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 organizations around the world are actively seeking to contribute to this process in different ways. Transparency International (TI) has offered small grants for civil society organizations (CSOs) engaged in monitoring and advocating around the UNCAC review process. This aims to support the preparation of UNCAC implementation review reports by CSOs, for input into the review process.



Contents

Introduction

- I. Executive Summary**
 - II. Assessment of the review process for Tunisia**
 - Conduct of Process
 - Access to Information
 - III. Implementation and Enforcement of the UNCAC**
 - Key issues related to the legal framework
 - Key issues related to enforcement system
 - IV. Recent Developments and examples of good practices**
 - V. I WATCH Recommendations for priority actions**
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Introduction

Corruption is defined by Transparency International as “the abuse of entrusted power for private gain”. It is also defined by both the World Bank and the UNDP as “the misuse of public office for private gain”. For I WATCH, corruption it is the spark that kindled the flames of the Tunisian Revolution. We consider it a global phenomenon that has been and still is affecting societies and countries to various extents and in different forms. We perceive corruption as a disease that has contaminated our country, Tunisia, for several years. That disease has had and is still having devastating outcomes, especially when it comes to the development of the nation. Our organization considers that corruption is behind most of the socioeconomic problems that our country is facing today.

Fighting corruption is a new trend in Tunisia. In fact, the fight against corruption in the years prior to the revolution was a taboo subject that could not be discussed openly.

Despite the fact that Tunisia signed the United Nations Convention against Corruption in 30 March 2004, and subsequently ratified it in 23 September 2008, it was neither taken into consideration nor implemented. However, soon after the revolution, legal and institutional frameworks started to be created in an attempt to implement the articles of the UNCAC, which is the broadest global anti-corruption legal device. It is to be praised for its strengths in addressing issues of corruption in both the private and public sectors.

This study, prepared by I WATCH, is an independent and parallel report designed to complement the work of the governmental team. On one hand, the report seeks to evaluate the integrity of the government’s review process, and draws attention to the areas where Tunisia’s anti-corruption legal system complies with UNCAC, noting particular areas of concern where Tunisia does not seem to respect its international obligations. On the other hand, the study reviews Tunisia’s implementation

and enforcement of selected articles in chapters III (Criminalization and Law Enforcement) and chapter IV (International Cooperation) of UNCAC.

Scope. The UNCAC articles that receive particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), illicit enrichment (Article 20), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), protection of whistleblowers (Article 33), compensation for damage (Article 35) and mutual legal assistance (Article 46).

Structure. Section I of the report is an executive summary, with the condensed findings, conclusions and recommendations on the review process and the availability of information; as well as the implementation and enforcement of selected UNCAC articles. Section II covers in more detail the findings on the review process in Tunisia 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 to the enforcement system, with examples of good and bad practice. Section IV covers recent developments and section V elaborates on I WATCH's recommended priority actions.

Methodology. This report was prepared by I WATCH with funding from the Swedish International Development Agency, the UK Foreign and Commonwealth Office, the German Federal Foreign Office and the support of Transparency International. IWATCH made efforts to obtain information for the report from government offices and through engaging in dialogue with government officials. As part of this dialogue, a draft of the report was made available to them. Furthermore, the group referred to several studies and reports by experts from both civil society and government; mainly the Ministry of Fighting Corruption and Good Governance.

The report was prepared using guidelines and a report template designed by Transparency International for use by CSOs. These tools reflect but simplify the United Nations Office on Drugs and Crime (UNODC) checklist and call for relatively short assessments compared to the detailed official checklist for self-assessments. The report template asks a set of questions about the review process

and, in the section on implementation and enforcement, asks 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, 35 and 46(9)(b) and (c).

The conclusion of this study shows that Tunisia has not yet fully implemented all articles of the convention; thus, I WATCH includes recommendations to overcome the different challenges to the implementation of the UNCAC.



I. Executive Summary

The overall findings of this report indicate that the Tunisian legal framework does not fully comply with the reviewed articles of the United Nations Convention against Corruption; mainly in the areas of whistleblower protection, and money laundering. Furthermore, the Convention is not implemented when it comes to the areas of bribery of foreign public officials and officials of public international organizations, as well as illicit enrichment. Nevertheless, Tunisia does include some good practices when it comes to the areas of bribery of national public officials, embezzlement, misappropriation or other diversion of property by a public official, and mutual legal assistance. However, Tunisia has a long way to go before it is in full compliance with the convention.

• Conduct of process

Tunisia was selected by the UNCAC Implementation Review Group in July 2010, by a drawing of lots, for review in the third year of the process, which is 2013. Therefore, in 2013, Tunisia started its self-assessment by putting a group of government experts in place to study the national legal system vis-à-vis the articles of the Convention and to detect any loopholes in Tunisian legislation.

As part of the review mechanism, two countries, Togo and the Seychelles¹, are expected to visit Tunisia to perform a country-evaluation of Tunisia's UNCAC implementation.

Apart from the government experts, a group of CSOs called "Coalition de la Société Civile pour la Lutte Contre la corruption" was formed in order to follow the evolution of the self-assessment. The coalition did not have a direct role in the review, but its role was rather as a consultative group who provided feedback to the government.

Table 1: Transparency and CSO participation in the review process

Did the government make public the contact details of the country's focal point?	Yes
Was civil society consulted in the preparation of the self-assessment?	Yes
Was the self-assessment published online or provided to CSOs?	Yes
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Not yet
Was civil society invited to provide input to the official reviewers?	Yes
Has the government committed to publishing the full country report?	Yes

¹ http://www.cac.tg/onudc_mai13.htm

- **Availability of information**

Access to laws was straightforward as they are generally available online, so it was possible to assess their compliance with the UNCAC. However, access to information and statistics concerning previous or present corruption cases was challenging due to the lack of a data collection system².

The data to which I WATCH had access was selective and vague for two main reasons: there is little information about corruption cases, and the existing studies that were conducted under the rule of former President Ben Ali cannot be considered accurate.

Moreover, the lack of information on corruption cases in is in part due to the fact that the fight against corruption and the anti-corruption legal framework are new phenomena in Tunisia, and have only emerged after the revolution. Hence, both the government and civil society suffer from a lack of expertise in the anti-corruption field.

This lack of data on corruption posed significant challenges during the preparation of this study; especially for the statistics section. It should also be noted that even the Tunisian National Portal against Corruption³ does not contain statistics on corruption cases. Besides which the confidential settings on searches and investigations obstruct following up on corruption cases.

- **Implementation into law and enforcement**

Evaluating the implementation of the Convention has been impeded by the absence of statistics and studies about the practical work of the judiciary.

Table 2: Implementation and enforcement summary table

Convention's articles	Implementation in national law
Article 15 Bribery	Fully Articles 83 to 94 of the Penal Code criminalize all bribery offenses covered by UNCAC, when committed by a national public official.
Article 16 Foreign Bribery	Not implemented The Penal Code does not criminalize bribery of foreign public officials and officials of international organizations.
Article 17 Embezzlement	Fully Articles 95, 96 and 97 of the Penal Code criminalize embezzlement by public officials.
Article 20 Illicit enrichment	Not implemented There is no Tunisian law that criminalizes illicit enrichment. However, Article 71 of Code des obligations et des contrats provides that a person having obtained profits/properties through illicit enrichment is bound to return it back.
Article 23 Money laundering	Partially The law criminalizes the activities described in Article 23 of the Convention, if the proceeds are supplied by a terrorism offense.
Article 26	Partially

² Please see 'access to information' below.

³ <http://www.anticor.tn/>

Liability of legal persons	The responsibility of legal persons is not implemented in the Tunisian law as a general principle, but is put under specific provisions. General liability of legal persons is established only for money laundering, but not for other corruption offenses.
Articles 32 and 33 Protection of witnesses, experts and victims; Protection of whistleblowers	Partially Tunisia does not have a law that protects witnesses, experts, victims and reporting persons, but there are provisions distributed in different legal texts that establish some of the measures for these persons' protection. Law No. 2003-75 dated 10 December 2003 concerning the support of international efforts in the fight against terrorism and the repression of money laundering provides for protection concerning reports on these offences. Public officials are obliged to report on corruption offences, and they are provided the necessary protection in case of false reporting, except in cases where there is evidence of malicious intent by the reporting person.
Article 35 Compensation for damage	Partially The Tunisian legislature has established the right to compensation, distinguishing between penal compensation and civil compensation; this applies to all offenses mentioned in the Penal Code and other judicial texts. The court is authorized, when issuing a sentence of imprisonment to a non-recidivist for an offense and misdemeanour punishable by imprisonment for a period not exceeding six months, to replace the sentence with financial compensation to be paid to the victim by the accused. This compensation can be neither less than \$12 nor more than \$3200, and must be paid within 3 months. This compensation shall not preclude the exercise of the right to civil compensation. If proof of enforcement of the compensation is not presented, the state prosecutor shall continue the procedure of implementation of the imprisonment sentence.
Article 46(9)(b) &(c): Mutual Legal Assistance	Fully Tunisia has concluded numerous bilateral agreements on judicial cooperation and further regional agreements have been concluded (the Riyadh Arab Agreement for Judicial Cooperation and the Legal and Judicial Cooperation between the countries of the Arab Maghreb Union). These are certified by the Parliament. In cases of inexistence of bilateral conventions of legal assistance, Articles 331 – 335 of the Penal Code state the possibility of adoption of diplomatic channels to issue judicial requests.

- **Recommendations for priority actions**

1. **Availability of information**

Problem: Legal texts are fragmented; the legislative system criminalizes some cases of corruption such as the bribery of a government official, embezzlement of public funds and money laundering. However, these articles are distributed between the criminal code and other legal documents rather than consolidated in one place, which could lead to lack of clarity over whether law establishes a criminal offence or not, which itself reduces the chance of citizens observing the law and may also discourage them from reporting corruption.

Recommendation: Create a booklet/guidebook that includes a simplified version of all anti-corruption laws and procedures, and types of corruption offenses that are criminalized by law, so that citizens know what to report.

2. Whistleblowers/reporting persons' protection

Problem: Protecting whistleblowers is the first incentive in promoting the reporting of corruption. Unfortunately, the current legal framework does not include mechanisms and procedures to ensure their protection.

Recommendation: Pass a law that would: 1) Provide legal protection for citizens who report corruption and their families; 2) Mandate the National Anti-Corruption Agency to follow up and protect whistleblowers.

3. Review the criminalized corruption offences

Problem: Only certain corruption crimes are criminalized in the Tunisian legislative system.

Recommendation: Introduce all the corruption offences mentioned in the UNCAC to the Tunisian legislative system, including corruption offences relating to foreign public officials.

4. Sanctions for serious corruption offences

Problem: Imprisonment depends on the type of corruption; whereas financial sanctions do not depend on the seriousness of the deed and are not high enough to be a deterrent.

Recommendation: Revise the sanctions' ladder. Sufficient punishment, which reflects the severity of the crime, should take place through meaningful financial penalties, and meaningful imprisonment durations, depending on the type of corruption offence; including whether it is petty corruption or grand corruption.

5. Illicit enrichment and asset declarations

Problem: There is no Tunisian law that criminalizes illicit enrichment. The system of asset declarations has serious inadequacies.

Recommendation: 1) Introduce criminal penalties for illicit enrichment, with effective taxation of assets which cannot be reasonably explained as the lawful income of public officials; 2) Mandatory, annual and sanctioned reporting that should be extended to at least four years after the end of the tenure for principally high level public officials, along with their relatives, when appropriate, on their assets to the Court of Accounts (the reported assets to be made public); 3) Raising public official awareness about the essence and goals of the assets declaration/reporting system.

II. Assessment of the review process for Tunisia

• Conduct of Process:

Table 3: Transparency of the government's UNCAC review process

Transparency of the Government's Undertaking of the Review Process		
Did the government make public the contact details of the country focal point?	Yes	The appointment of the chairman of the Public Interest Oversight Board as the country focal point was announced in accordance with governmental proclamation No.52 of the 7th of September 2012, regarding the review process guided by the relevant provision of the United Nations Convention against Corruption.
Was civil society consulted in the preparation of the self-assessment?	<p>Yes</p> <p>If yes, who?</p> <p><input type="checkbox"/> Access to information groups</p> <p><input type="checkbox"/> Academic networks</p> <p><input checked="" type="checkbox"/> Anti-corruption groups</p> <p><input type="checkbox"/> Trade unions</p> <p><input type="checkbox"/> Women's groups</p> <p><input type="checkbox"/> Other (please list)</p>	A civil society coalition ⁴ was formed in collaboration with the United Nations Development Program on May 2013. The intergovernmental working group in charge of the preparation of the self-assessment report has submitted a copy to the coalition in order to inspect it and then to organize both regional and national workshops ⁵ to make observations and recommendations.
Was the self-assessment published on line or provided to the expert assessing? If so, by whom?	Not yet	The self-assessment report shall be published after the visit of the two reviewing states, so is not yet published. However, the report was presented to a group of CSOs to make observations.

⁴ I WATCH, Ofiya, Transparency First, ATP, IACE, UTIL

⁵ <https://fr-fr.facebook.com/PNUD.Tunsie/posts/498957663447875>
<http://www.anticor.tn/base-de-connaissance/actes-de-conferences/forum-international-de-lutte-contre-la-corruption/videotheque/>

Did the government agree to a country visit?	Yes	The visit shall be undertaken upon the finalization of self-assessment report and the preparation of a translation for the intergovernmental working group.
Was a country visit undertaken?	Not yet	Not yet, the visit shall be undertaken upon the finalization of the self-assessment report, and the preparation of a translation for the intergovernmental working group.
Was civil society invited to provide input to the official reviewers? Please enter the form of input invited.	<p>Yes</p> <p>If yes, who? (please tick)</p> <p><input type="checkbox"/> Access to information groups</p> <p><input type="checkbox"/> Academic networks</p> <p><input checked="" type="checkbox"/> Anti-corruption groups</p> <p><input type="checkbox"/> Trade unions</p> <p><input type="checkbox"/> Women's groups</p> <p><input type="checkbox"/> Other (please list)</p>	No official invitations have been sent. It happened through UNDP's intervention.
Has the government committed to publishing the full country report (Please indicate if published by UNODC and/ or country)	Yes	The government did commit to publishing the full report. But at the time of going to press, the report is not ready.

• Access to Information:

Decree No. 41 for 2011, dated May 26, 2011 on accessing administrative documents has been revised and complemented by Decree No. 54 for 2011, dated June 11, 2011. The Prime Minister issued Circulated Note No. 25, dated 5 May 2012 aimed at providing interpretation of the decree.⁶ This decree is considered to be Tunisia's first dedicated text that tackles, even in part, the relations between the public administration and its service seekers. Article 3 of this decree grants all natural or legal persons the right to access administrative documents. Access is provided either on the initiative

⁶ <http://www.mincom.tn/fileadmin/PDF/circulaires-ar.pdf>

of the public sector in the form of proactive publication of the information, or at the request of the interested party, abiding by the exceptions set forth in the decree.⁷

However, this decree fails to establish an institutional entity that would promote access to information and help implement its provisions, or a supervising entity that would ensure its enforcement. This law scored 92 out of 150⁸ in the Freedom of Access to Information rating (an evaluation system developed by the Centre for Law and Democracy and Access Info Europe), mainly due to the absence of a special body ensuring the proper enforcement of the law and deterring violations against the right of access to information, as well as the many exceptions that limit this right and the vagueness of those exceptions. Last but not least, the law provides for non-deterrent sanctions. An organic law on the right of access to information has recently been developed following national consultation. It aims at promoting the principles of transparency and accountability in the public sector, and enhancing the citizens' trust in public structures, by stipulating a set of actions that constitute in their entirety an integrated system that effectively sanctions the right of access to information in favour of the Administration's clients.

As for corruption, the state did not seek, through its policies, to deal with corruption and access to information in a dedicated fashion. The Ministry of Justice does not collect statistics on corruption cases, and no surveys were conducted on the impact of corruption on the national economy. The evaluation of individual ministries of the extent of corruption in their respective services has never been examined. All of this has created impediments throughout the drafting of the present research; due to the difficulties we encountered ascertaining the reality of corruption on the national level.

It was impossible to obtain data on the number of corruption cases or complaints, and statistics were not available on the rulings issued by courts concerning convictions. The absence of data on corruption cases is in part due to the lack of specialized courts for corruption and the absence of a modern and efficient data collection system for courts, but is also exacerbated by a high volume of cases. Added to that, judges are not numerous enough to be able to cover all the cases, especially as they are generally not specialized. However, the Financial and Judicial Pole has been established as the specialized body in investigating corruption cases.⁹ This may be a positive sign of the improvement of gathering information and publishing statistics, using its annual report.

⁷ Articles 16 and 17 of *The Organic Act n°2004-63 of July 27th, 2004 on the protection of personal data* set exceptions on accessing a number of administrative documents, such as containing personal information including among others: Intellectual and literary property rights, judicial orders prohibiting access to documents, documents obtained by a given public structure under confidential terms, etc... And it prohibits (Article 17) disclosure of an administrative document that may inflict harm to: Relations between states or international organizations, the creation and development of an effective government policy, public security or national defence, discovering or preventing crimes, arresting and prosecuting culprits, the good functioning of the judiciary or the fairness in granting public contracts, procedures of deliberation, exchange of views and opinions, examination, trial or legitimate financial and business interests of the public structure concerned.

⁸ <http://www.rti-rating.org/>

⁹ The Judicial Finance Pole was created on January 10, 2013 by the Ministry of Justice to realise the government's program for the year 2012. It specializes in prosecuting all aspects of financial and administrative corruption, and consists of examining magistrates and public prosecutors. (<http://maitremahmoudyacoub.blogspot.com/2013/08/blog-post.html?m=1>)

III. Implementation and Enforcement of the UNCAC

- Key issues related to the legal framework:

1. Areas showing good practice

UNCAC Article 15: Bribery of National Public Officials.

Bribery of a public official is criminalized in accordance with Article 15 of the Convention.

Articles 83 to 94 of the Penal Code, as amended by Law 33 of 23 May 1998, cover both active bribery (Arts. 87, 91, 92) and passive bribery (Arts. 83, 84, 85, 87 bis), including solicitation of bribes.

Moreover, the second paragraph of Article 87 doubles the standard punishment of three years and approximately \$1,800 when it is evident that the bribe is solicited by a public official.

The penal code stipulates a framework for bribery taken by judges within Articles 88, 89 and 90 of the Penal Code.

According to Article 93 of the Penal Code, the bribe-giver or the middleman does not face prosecution if s/he comes forward voluntarily, and confesses about bribing a public official, and agrees to testify; this could be considered as a way to encourage whistleblowing.

Article 91 of the Penal Code states that the penalty for public sector bribery is around \$3000, and up to 5 years of imprisonment.

UNCAC Article 17: Embezzlement, misappropriation or other diversion of property by a public official.

Article 95 as amended by Law 23 of 27 February 1989, Article 96 as amended by Law 85 of 11 August 1985, and Article 97 as amended by Law 33 of 23 May 1998 of the Penal Code criminalize embezzlement by public employees. Embezzlement is also covered by Articles 99 and 100 of the penal code, as amended by Law 23 of 27 February 1989, while Article 96 criminalizes the wasteful use of public funds by a government official.

According to the Supreme Court, the concept of 'public funds' includes not only liquid assets, but all movable capital. For example, trees seized after being cut down by a park ranger are considered 'public funds'¹⁰. In other instances, clothes¹¹, books¹² documents, legal papers and correspondence¹³ have been considered 'money' that can be seized if given to a public official due to his position.

Article 99 of the Penal Code distinguishes embezzlement of public funds from ordinary theft by stating that, among other conditions, the money must have been in the possession of the embezzler before the crime was committed in order for the crime to be considered embezzlement.

Article 98.2 places the burden of proof upon the accused public official to prove the source of the money and/or property in question.

UNCAC Article 35: Compensation for damage

The Penal Code establishes the right to compensation, distinguishing between criminal injury compensation and civil compensation; this applies to all crimes mentioned in the Penal Code and other judicial texts, not just to corruption.

Criminal injuries compensation was added by decree No. 68 of August 12, 2009 to the Code of Criminal Procedure. The court is authorized, when issuing a sentence of imprisonment for an offense punishable by imprisonment for a period not exceeding six months and in the presence of the non-recidivism to replace the sentence with financial compensation to be paid to the victim by the accused. This compensation must be no less than \$12 and no more than \$3,200 and must be paid within three months.

This compensation shall not preclude the exercise of the right to civil compensation. If proof of enforcement of the compensation is not presented. The state prosecutor shall continue the

¹⁰ Supreme Court ruling, criminal, number 12504 dated 14 July 1984, Supreme Court publication of 1985 P. 184-192.

¹¹ Supreme Court ruling, criminal, number 3925/3932 dated 4 June 1965, Supreme Court publication of 1966, criminal sector, P. 117.

¹² Supreme Court ruling, criminal, number 3410 dated 1st April 1965, Supreme Court publication of 1966, criminal sector, P. 94.

¹³ Supreme Court ruling, criminal, number 16996 dated 18 December 1985, Supreme Court publication of 1986, criminal sector, P. 165.

implementation procedure of the imprisonment sentence as declared in Articles 5 and 15bis, and Article 335 of the Code of Criminal Procedure.

The law has ruled out certain crimes mentioned in Article 15.4 from the Criminal Injuries Compensation Scheme. As far as civil compensation is concerned, the Tunisian lawmakers established, within several articles, the right to compensation for damage and loss of profits.

UNCAC Article 46 (9): Mutual legal assistance in the Absence of Dual Criminality

Tunisia's legal framework allows legal cooperation in the fields of civil, commercial and penal laws.

The Tunisian state has mainly used international conventions, protocols and/or memorandum to validate international cooperation, that are mainly based on bilateral conventions (there are currently 29 agreements), which are usually approved by Parliament.

In addition, Tunisia is party to several regional conventions such as the Riyadh Arab Agreement for Judicial Cooperation and the Convention on Legal and Judicial Cooperation between the States of the Arabic Maghreb Union. In case there is no agreement between Tunisia and a certain country, Article 331 of the Code of Criminal Procedures provides for the possibility of accepting diplomatic letters issued by foreign authorities. Those letters are forwarded to the Minister of Justice in cases of urgency. The same article allows the judicial authorities of the two countries to also exchange letters directly.

2. Areas with deficiencies:

UNCAC Article 16: Bribery of foreign public officials.

Tunisian law does not criminalize the bribery of foreign public servants and public international institutions' employees, as required by Article 16.

UNCAC Article 20: Illicit enrichment.

Article 276 stipulates that an individual who has previously been sentenced to corporal punishment for an attack against property, and has been found in possession of currency, securities, or commodities not in keeping with his/her condition, and is unable to prove its legitimate origin, will be sentenced to six months in prison. An individual who is found in possession of instruments for the opening or picking of locks, and cannot justify their legitimate use will be sentenced to a year in prison. Any currency, securities, and/or instruments will be confiscated. Despite this, the law does not classify illicit enrichment as a corruption offence, as stated in article 20 of the Convention.

To overcome this legislative shortcoming, a special committee was composed to prepare a bill, and organize seminars in cooperation with the United Nations Development Program. The seminar was concluded with a bill on illicit enrichment. The bill is now under consideration by the National Constituent Assembly.

As far as asset declarations are concerned, Law No. 17 dated 10 April 1987¹⁴ regulates the declaration of assets by members of the executive. Article 1 of the law defines the concerned members of government and civil servants; it also states when they have to declare- upon appointment and after completing their service. Article 7 stipulates that executive branch members who violate this law will be dismissed from their posts. However, there are no specific mechanisms to ensure the veracity of the asset declarations, and the law does not provide sanctions for untruthful declarations. Finally, these declarations are not made public to citizens or the media, which can be considered a gap in the law.

UNCAC Article 23: Money laundering

Through Law No. 75 of 10 December 2003, the legislature criminalized the offence set forth in Article 23 of the Convention. The Tunisian legislature defined money laundering in Article 62 as follows:

¹⁴ <http://lejuriste.montadahlilal.com/t690-topic>

“Any act that aims, by any means, to obscure the illegal sources of assets, whether movable or fixed, or income generated directly or indirectly from a misdemeanor or a felony, is considered money laundering. Any act that aims to invest, deposit, hide, manage, integrate, or save the proceeds generated directly or indirectly by a misdemeanor or a felony, or any act which intentionally aids any of the above, is also considered money laundering.”

Articles 62 to 67 of the same law lay out the legal framework for fighting money laundering.

In Article 62, the legislature defines money laundering using a wide scope to secure the efficiency of the legal text. The legislature worked to strengthen the sanctions to include deprivation of liberty, financial punishment and disciplinary sanctions. Article 64 criminalizes any act of money laundering with a maximum of six years imprisonment and a fine of approx. USD\$60,000. Where the laundered amount is known, guilty parties have to return that amount. Article 66 of the same law states that the same punishment is applicable to the leaders of a particular legal entity involved in money laundering. Paragraph 2 of the same article allows for the prosecution of legal persons profiting from or engaging in money laundering, and in this case, the fine will be five times that paid by natural persons.

The fine may also be increased to equal the amount of the laundered money. Additionally, disciplinary sanctions can be applied to legal persons such as prohibiting any activity for a certain period or dissolving the entity.

UNCAC Article 26: Liability of legal persons.

The liability of legal persons is not implemented in the Tunisian law as a general principle, but rather under specific provisions.

The Framework Act on Anti-corruption No. 120 of 14 November 2011 endorsed within its first chapter that “all natural and legal persons shall be held accountable when proven guilty of a corruption crime regardless of their quality or position” to establish a general liability of legal person only for the offence of money laundering.

Article 32 of the same decree states that “legal persons can be prosecuted when proven guilty of

committing an act of corruption.” Prosecuting the legal person does not prevent the criminal liability of the representatives, managers, or influential partners once proven guilty of committing such deeds.

The liability of legal persons is limited to acts covered by Article 66 of Law No. 2003-75 dated 10 December 2003 concerning support of international efforts in the fight against terrorism and the suppression of money laundering. The article states that “the penalties mentioned in the previous articles are applied, according to each case, to the managers and representatives of the legal person, if their personal responsibility is proven. This does not prevent prosecution of the legal person as well, if it is shown that it derived benefit or profited from the money laundering, or if intent on the part of the legal person can be established. The fine paid by juridical persons will be five times the amount of that paid by natural persons, and may be increased to equal the amount of the laundered money.”

Article 69 of the same law sets out a number of precautions that legal persons must take against money laundering. For example, they must refrain from accepting donations or financial assistance from unknown sources and/or from entities involved in terrorism. The article also requires all legal persons receiving funds from abroad to use a Tunisian-based intermediary. According to Article 66, failure to adhere to those rules will render the legal person indirectly responsible and criminally liable. This leads to applying the administrative procedures stated in Article 72, and the judicial procedures stated in Article 73, namely, the legal person may be required to obtain a permit in order to accept financial transfers from abroad, may be subject to an external audit carried out by experts.

If found guilty of violating *inter alia* the provisions of Articles 69, 73 and/or 74, the directors or representatives of the legal person may be punished with six months to three years in jail or a fine of approx. US\$3000 to US\$6000, and the legal person itself may be fined five times that amount. All these show the importance of complying with Article 69.

Law No. 2009-65 dated 12 August 2009, amending and completing Law No. 2003-75 dated 10 December 2003, concerning support of international efforts in the fight against terrorism and the suppression of money laundering, added a provision for freezing the assets of the legal persons. This applies whether it is a movable or a fixed property, whatever the source, and includes the income, gains, documents and securities, physical or electronic, that it owns and has a right over, without damage to persons acting in good faith.

UNCAC Article 32: Protection of witnesses, experts and victims

The convention states that this protection should include witnesses, experts and victims who testify on corruption crimes mentioned in the Convention. However, Law No. 75 of 2003 concerning the support of international efforts in the fight against terrorism and the suppression of money

laundering provides protection only for cases involving money laundering of proceeds related to terrorism.

The law exclusively states the protected persons within a list identifying them by their position in the case and capacity.

People who are protected by the law are:

- Individuals legally charged with investigating and/or punishing terrorist crimes including judges, judicial officers and public officers.
- Ordinary citizens: judicial assistants, witnesses, victims and everybody who, through any means, informed the authorities about the crime and family members of the aforementioned.
- Victims: persons who received damages from the crimes mentioned in Law 75 either directly or indirectly.
- Witnesses: persons who heard or witnessed something; however the opposite is not always true, a person may not witness or hear anything but still have information that may help in determining the case.
- Family members and relatives can be included in the protection as long as they are identified. They are considered a third party to the case.

The protection mechanisms include both, protection from publicity and protection from assault.

Protection includes the confidentiality of identity and address. This protection is included in Article 50 of Law No. 75 of 2003. This article states “the people stated in paragraph 3 of the previous article when called to testify in front of judicial officials or the investigating judge or other judicial bodies, may state their address as that of the public prosecutor. In this case, their original identities and addresses are included in a secret book, numbered, signed, and are kept at the public prosecutor’s office in Tunis.”

Article 51 (new) – amended by Law No. 65 dated 12 August 2009 states that “in extreme danger, and if necessary, it is possible to separate all the information that reveals the identity of the victims, witnesses and anyone who, in any way, informed the authorities about the crime, in distinct records from the original file. In this case, the identity of the people listed in the previous paragraph, and other information that may reveal them, including their signatures, can be kept in a special secret book numbered and signed by the public prosecutor in Tunis.”

Article 52 allows the suspect or his/her representative to file a request to reveal the identity of protected persons listed in Article 51. The court may choose to approve this request, according to its discretion, if it determines that the request is serious, and that there is no danger to the life and property of the protected person or his/her family. To guarantee the seriousness and effectiveness of the protection, the legislature criminalized in Article 54 endangering the lives or property of the protected persons or their relatives’ by revealing any information on purpose through 5 to 20 years of imprisonment, and a fine of approx. US \$3000 to US \$30000. The purpose of the protection is guaranteeing the confidentiality of the person’s identity, and all the information concerning the protected person, thus, the legislature should have criminalized not only intentional release of information, but also revealing the information without the intent to harm.

Secondary protection is found in Law No. 75 and this is against assault and it includes the protected person, their property and their relatives. Law No. 75 of 2003 does not include all the crimes stated in the convention, but just money laundering as a corruption crime.

UNCAC Article 33: Protection of whistleblowers

Article 29 of the Code of Criminal Procedure encourages public officials to report certain corruption offences, and it provides them with the needed protection in case of false reporting. But there is no stand-alone legislation that protects whistleblowers.

Framework decree No. 120 dated 14 November 2011 concerning fighting corruption states in Article 11 that: “the state guarantees in its policy to fight corruption the encouragement of declaring corruption by spreading social awareness of its danger and reducing the legal and practical obstacles that prevents its discovery and by establishing measures to protect victims, witnesses and whistleblowers.” However, this Article did not state the legal mechanisms to be followed and did not clearly refer to the Law No. 75 of 10 December 2003 concerning the support of international efforts in the fight against terrorism and the suppression of money laundering, which renders it difficult to specify the range and procedures of protection; it could therefore be considered more of an un-used article since its issuance.

Article 29 of the Criminal Procedures Code obliges “all the authorities and public servants to inform the public prosecutor about the crimes they learn about while performing their official duties, and to deliver to him all the notes and documents concerning them. It is not possible to prosecute them for false claims or request indemnity from them upon the opinions this article obliged them to deliver unless their malice was established.” The article does not include punishment for not reporting crimes.

- **Key issues related to the enforcement system:**

Money laundering:

In 2007, for the purpose of preparing an evaluating report¹⁵ on money laundering in Tunisia, the FATF¹⁶ team concerned with the financial procedures in Middle East and North Africa¹⁷ used a specific system to assess the compliance of the law with the standards used by the team. It provided recommendations, and suggested a program to implement them. This study¹⁸ includes the legal system, pre-emptive procedures and special measures for institutions and international cooperation.

Most recommendations were focused on developing the legal system to prevent money laundering whether directly or indirectly. Also, the team called for the independence of the financial auditing bodies and providing financial and logistical means, training experts from the judiciary and law enforcements. In addition, the mechanisms of protecting and discovering money laundry were

¹⁵ http://www.menafatf.org/images/UploadFiles/MENAFATF.7.07.F.P5R2%20_with%20response_.pdf

¹⁶ <http://www.fatf-gafi.org/pages/aboutus/> and <http://www.fatf-gafi.org/fr/documents/documents/evaluationmutuelledelatunisie.html>,

¹⁸ This detailed assessment report on fighting money laundering and the financing of terrorism in Tunisia was prepared by the World Bank. The report assesses the compliance of Tunisia to the 40+9 FATF recommendations based on the evaluation methodology of the FATF that was prepared in 2004. The report was adopted as a mutual evaluation MENA-FATF by the plenary meeting of the MENA-FATF in April 3, 2007.

recommended for improvement, and international cooperation was recommended to be promoted, especially through judicial cooperation agreements.

As far as the implementation of the recommendations is concerned, the state answered to these recommendations by amending law No.75 of the year 2003 in 2009; no information regarding the implementation of these recommendations was found.

Protection of whistleblowers:

The final report¹⁹ of the Organization for Economic Co-operation and Development (OECD) on Integrity in Practice in Tunisia recommended ensuring and developing an effective system to protect whistleblowers by:

- Establishing a legal system and clear mechanisms to protect them
- The possibility of enacting laws within the criminal code or the labor code that includes protection mechanisms
- The necessity to adopt an effective system which contains clear procedures and means of reporting.

To implement these recommendations, the Organization for Economic Co-operation and Development on Integrity in Practice²⁰ called on Tunisia to take the following steps:

- Initially, Tunisia could avail itself of clear and complete legislation providing for protection – against retaliation, discrimination or disciplinary action – for employees who report suspected wrongdoing or corruption to the competent authorities. Particular attention could be paid to the introduction of a mechanism encouraging reporting.
- Once the legislation has been adopted, an effective institutional framework and clearly identified channels could be put in place to inform public and private sector employees of the party to whom they should report wrongdoing or corruption which comes to their knowledge. It is essential to assure public and private sector employees that an appropriate investigation will be carried out and that they will be informed of the results so as to reassure the public of the effectiveness of the reporting mechanism.
- The legislation could include appeals and penalties to protect whistleblowers against retaliation. In addition, the practical effectiveness of the whistleblower protection framework should be periodically evaluated and analyzed.
- Finally, awareness-raising activities could be provided to encourage the reporting of wrongdoing and corruption and to disseminate information on the whistleblower protection mechanisms available. These activities could also allow the authorities to gather suggestions from private sector officials and employees as to how to improve the system.

Mutual legal assistance:

Some of the cases in Tunisia proved that uncovering corruption requires international cooperation, in most cases either in the stage of collecting information or in investigations. International cooperation has consumed a lot of the authorities' efforts on retrieving stolen assets. Letters of request are the most adopted means of international cooperation that was used to fight corruption.

¹⁹ Scan d'intégrité Tunisie : L'Intégrité en Pratique, élaboré par OCDE-CleanGovBiz, juin 2013, p 116
<http://www.oecd.org/cleangovbiz/Tunisia-Integrity-ScanFR.pdf>

Difficulties in obtaining legal assistance:

The question of legal assistance cannot be fully answered; however, one could refer to the letter²¹ sent, by the UNCAC civil society coalition, on October 25, 2013 to the leaders attending the Arab Forum on Asset Recovery with the purpose of giving proposals for improving asset recovery efforts. The letter states the following:

“In the wake of the Arab Spring, asset recovery became an important issue in the Middle East and North Africa, whether in Egypt, Iraq, Libya, Tunisia or Yemen. Citizens in various parts of the Arab World have been deprived of their national wealth for too long, and they legitimately want it to be repatriated now. This is an opportunity for the international community to show its commitment to ensuring the return of stolen assets in the Arab region.

We believe that specific steps are needed within the framework of the UNCAC to remove barriers to asset recovery. Some priority steps are identified in the UNCAC Coalition’s attached statement for the 5th UNCAC Conference of States Parties (COSP) taking place in Panama in November 2013.

The proposals in the Coalition’s statement build on UNCAC provisions and experience from previous asset recovery cases. They aim to ensure effective asset recovery through (1) proactive enforcement action; (2) compensation; (3) information exchange and (4) transparency and accountability. These four areas for actions are expressed in Points 12-15 of the Coalition statement and are crucial to furthering progress on asset recovery.

We believe that the work of the Arab Forum on Asset Recovery could be advanced through robust decisions at the upcoming 5th COSP in Panama and that your meeting in Morocco offers a unique opportunity to discuss, review and - we hope - endorse the Coalition’s proposals, which are explained further in the second attachment to this letter.”

Of the main questions that were raised after the series of Arab Spring Revolutions, is why did countries (like France, Switzerland, Lebanon, etc.) that received stolen assets only freeze and investigate in the stolen assets when the dictators and their governments in Tunisia, Egypt and Libya began to collapse and why wasn’t there the will to take the appropriate actions and measures when these governments were still in place, especially that it is known that the longer the delay, the harder it is to recover the assets. Also, recovering the assets is a hard task especially that there is no judicial cooperation with the country that has lost the assets, in addition to the lack of political will of the leaders of that same country. However, the experience showed that it is possible to start these cases if the legal means are available. To conclude, the countries which received the stolen assets should have initiated the cases by themselves instead of waiting the request of cooperative legal assistance from the “stolen” countries.

At a regional high level conference entitled “The Role of National Justice Authorities in Applying the United Nations Convention against Corruption”²² held in Amman, Jordan in 25 and 26 June 2012,

²¹ <http://uncaccoalition.org/fr/learn-more/articles/286-proposals-for-improving-asset-recovery-efforts>

²² <http://www.pogar.org/arabic/resources/ac/details.aspx?aid=338>

Judge Faycal Ajina explained²³ the most important lessons gained from the Tunisian experience in international cooperation in fighting corruption. He stated at the beginning that the bilateral and regional judicial cooperation conventions do not meet the requirements of international cooperation in the area of fighting corruption and retrieving assets because its rules are general, and do not deal directly with cooperation requests required in these cases, especially in collecting data around the availability of the assets, identifying it, tracking its movements, to seize or freeze it. Added to that, the scope of the conventions does not include all the concerned countries. He considered that the UNCAC is an acceptable basis for international cooperation in fighting corruption and retrieving assets because it includes specific regulations which are in harmony with cooperation requests in corruption cases. He evaluated its usage as an international basis to be unsatisfactory, as it did not achieve the hoped for goals. Concerning the requirements for cooperation especially in retrieving assets stated in the Convention, they are incompatible with the requirements of the United Nations Convention against Transnational Organized Crime. Also, he stated that some countries received cooperation requests based on the convention, yet they preferred to treat them on bilateral or regional conventions.

Other countries applied the special rules in their national law, which raises the problem of not complying with national laws and practice stated in the convention, and the lack of awareness on the importance of international cooperation to fight corruption²⁴.

- **Statistics :**

Mr. Samir Annebi, president of the National anti-Corruption Agency, stated in an interview that his agency investigated more than 1000 cases of corruption, of which 500²⁵ were referred to the courts to justice, but only 50 have been brought to trial at the time of writing.

He also added²⁶ that his agency faced/s several problems during its investigations and that is because some jurisdictions do not allow them to do their job properly, mainly because of bureaucracy.

During the same interview²⁷, Mr. Samir Annabi underlined the fact that his agency lacks financial resources, which is probably one of the reasons behind the weakness of anti-corruption efforts. Furthermore, he stressed the difficulties of investigating corruption cases involving money invested abroad.

²³ <http://www.pogar.org/publications/ac/2012/RHM%20Amman/%D9%88%D8%B1%D9%82%D8%A9%20%D8%AD%D9%88%D9%84%20%D8%A7%D9%84%D8%AA%D8%B9%D8%A7%D9%88%D9%86%20%D8%A7%D9%84%D8%AF%D9%88%D9%84%D9%8A.pdf>

²⁴ ورقة حول التجربة التونسية في التعاون الدولي في مجال مكافحة الفساد
(<http://www.pogar.org/publications/ac/2012/RHM%20Amman/%D9%88%D8%B1%D9%82%D8%A9%20%D8%AD%D9%88%D9%84%20%D8%A7%D9%84%D8%AA%D8%B9%D8%A7%D9%88%D9%86%20%D8%A7%D9%84%D8%AF%D9%88%D9%84%D9%8A.pdf>)

²⁵ <http://www.mosaïquefm.net/fr/index/a/ActuDetail/Element/34180-samir-annabi-sur-500-dossiers-de-corruption-50-seulement-devant-la-justice>

²⁶ <http://www.mosaïquefm.net/fr/index/a/ActuDetail/Element/20903-50-a-70-dossiers-de-corruption-transfères-a-la-justice>

²⁷ <http://www.mosaïquefm.net/fr/index/a/ActuDetail/Element/34180-samir-annabi-sur-500-dossiers-de-corruption-50-seulement-devant-la-justice>

Table 4: Cases statistics

	Trials (on going and finalized)	Convictions	Settlements	Acquittals	Pending cases
Bribery of Foreign Public Officials (Article 16)	Not Available	Not Available	Not Available	Not Available	Not Available
Bribery of national public officials (passive) (Article 15(b))	Not Available	Not Available	Not Available	Not Available	Not Available
Bribery of national public officials (active) (Article 15(a))	Not Available	Not Available	Not Available	Not Available	Not Available
Embezzlement, misappropriation or other diversion of property by a public official (Article 17)	Not Available	Not Available	Not Available	Not Available	Not Available
Illicit Enrichment (Article 20)	Not Available	Not Available	Not Available	Not Available	Not Available
Money laundering linked to corruption (Article 23)	Not Available	Not Available	Not Available	Not Available	Not Available

- **Information on cases and investigations**

Information on cases and investigations are limited, and in some cases not available.

Some of the cases that I WATCH was able to find a source for are:

- The trial of Ben Ali and his wife Leila²⁸:

The Court of First Instance in Tunis sentenced the ousted president Zine El Abidine Ben Ali, his wife Leila El-Trabelsi, and former Minister of State Properties Ridha Grira to four years in prison *in absentia* on charges of corruption in the establishment of the International School of Carthage.

The court also sentenced Samira Khayach, Minister of Equipment during Ben Ali's presidency to two years in jail, and stripped all of those convicted of their right to be nominated or elected to public office.

The Commission for Fighting Corruption and Bribery had expressed suspicions of financial corruption in the founding of the school, which was established in 2007 by Leila El-Trabelsi and Suha Arafat, the widow of the late Palestinian leader Yasser Arafat. The Military Court of Sfax Governorate, in southeastern Tunisia, had already sentenced Ben Ali to life in prison in May 2014 on charges relating to deaths and injuries, which occurred during the revolution in the town of El Hamma in Gabès Governorate. Several security officials were also given jail terms ranging between 10 and 15 years in the same trial. These rulings in turn came a month after the Military Court in Tunis sentenced Ben Ali to an initial life sentence and gave several leaders of the security forces jail terms of between one and three years on April 12 2014, on charges of killing and injuring protestors in Greater Tunis and five other governorates. The rulings in April 2014 were met with widespread criticism in Tunisia, with political parties and civil society organizations expressing shock at the light sentences. The rulings raised fears of a return by the symbols of the old regime to the political sphere.

Tunisian President Moncef Marzouki urged an appeal to this ruling in the Court of Cassation, and called for the case to be resolved in a reasonable timeframe.

- The detention of Semi Fehri²⁹ in August 2012³⁰:

The trial of Tunisian television chief Sami Fehri, accused of corruption during the rule of now-toppled strongman Zine El Abidine Ben Ali, opened in 2012 with the defence requesting bail and the court denying it. Fehri, who runs the private Ettounsiya TV and was a business partner of Ben Ali's fugitive brother-in-law Belhassen Trabelsi, was arrested in August 2012 accused of having illegally used state television funds to bolster his own production company Cactus Prod. Fehri risked a 10-year jail sentence if convicted. The court granted bail, following a brief hearing devoted to procedure, however, the decision was immediately overruled because he was also in custody in connection with another case. Now, Fehri has been out of prison since September 2013 because no proof incriminating him was found.

²⁸ <http://www.aljazeera.net/news/arabic/2014/5/30/%D8%A3%D8%AD%D9%83%D8%A7%D9%85-%D8%A8%D8%A7%D9%84%D8%B3%D8%AC%D9%86-%D8%B9%D9%84%D9%89-%D8%A8%D9%86-%D8%B9%D9%84%D9%8A-%D9%88%D8%B2%D9%88%D8%AC%D8%AA%D9%87-%D9%81%D9%8A-%D9%82%D8%B6%D9%8A%D8%A9-%D9%81%D8%B3%D8%A7%D8%AF>

²⁹ Fehri founded Ettounsiya TV in 2011, after the popular uprising that toppled Ben Ali. Before that, he was a producer and business partner of Belhassen Trabelsi who held 51 percent of the shares in Cactus Prod. Trabelsi, a brother of Ben Ali's powerful and hated wife Leila Trabelsi, fled to Canada and his stake in Cactus Prod has been seized by the authorities.

³⁰ <http://www.foxnews.com/world/2013/07/12/tunisia-tv-boss-on-trial-for-corruption/>

➤ The Bratel Scandal in La Goulette³¹:

In May 2011, a group of citizens sued several government officials for authorizing the demolition of homes in the Bratel district of La Goulette in 2008, in order to allow the family of then-president Ben Ali to implement a tourism-related construction project. The Juridical Pole issued warrants for seven defendants, including Mondher Friji, the former governor of Tunis, Fethi Soukri, the former director of the cabinet at the Ministry of State Property, Ali Riahi, the former commissioner of La Goulette, and Mohamed Maal, the former mayor of La Goulette. The defendants have been freed but the investigation by the juridical pole is ongoing. After papers were published showing the signature of newly appointed mayor of Monastir Taieb Nefzi on demolition orders, a lawsuit was brought against Nefzi and the former Minister of State Property Slim Ben Hmidane in March 2014.

➤ SNC-Lavalin Case³²:

In 2012, the Québécois engineering firm SNC-Lavalin was accused of involvement in corruption with former President Ben Ali's son-in-law, Sakher El-Materi. The Commission for Investigating Corruption and Embezzlement (CICM) found a document in the Presidential Palace in Carthage implicating the company in corrupt practices surrounding a US\$ 320 million contract awarded in 2010 for the construction of a thermal power plant in Sousse. The document indicates that SCN-Lavalin's North Africa director Kébir Ratnani acted as power of attorney for El-Materi's luxurious residence in Westmount, an upscale suburban neighbourhood of Montreal. CICM has passed on hundreds of documents to the Tunisian judiciary, but the case has not come to trial for lack of incriminating evidence. Meanwhile, Canada's federal government seized the house in Westmount under a law freezing the assets of corrupt foreign leaders, and in May 2013, the Royal Canadian Mounted Police (RCMP) and Swiss authorities uncovered evidence that SNC-Lavalin paid nearly six million dollars to Slim Chiboub, another son-in-law of Ben Ali, in exchange for lucrative contracts.

IV. Recent Developments and examples of good practices

A bill³³ under the number 32/2013 dated 24 May 2013 concerning transparency and fighting illegal enrichment was tabled at the National Constituent Assembly, and was passed.³⁴

Furthermore, Article 11³⁵ of the new Tunisian constitution states that "every person whole holds the position of the president or prime minister or a member of the government or of the National Constituent Assembly or a membership in any independent constitutional committee or any superior position has to declare his properties according to law."

Tunisia developed a national anti-corruption strategy, which is the first in Tunisia's history, and which is probably the first step towards greater efforts.

³¹ <http://www.assabah.com.tn/article/81004/العمراني-التجديد-وكالة-الدولة-اعانت-المنستير-والي-حميدان-بن-سليم-ضد-تحقيق-فتح>,
<http://ar.webmanagercenter.com/2014/03/03/22264/الوطني-الوادي-خلق-بر-اطل-هدم-قضية-في-متور-ط-النفز-ي-الطيب-الجديد-المنستير-والي-تونس>,
<http://www.mosaiquefm.net/fr/index/a/ActuDetail/Element/28867-affaire-bratel-de-la-goulette-deux-ingenieurs-liberes>

³² <http://fr.allafrica.com/stories/201303300286.html>

³³ According to Tunis Africa news agency (<http://www.tap.info.tn/>) the bill was welcomed in the public legislation committee and some members called for inviting experts to the discussion.

³⁴ http://www.anc.tn/site/main/AR/docs/projets/32_2013.pdf

³⁵ http://www.anc.tn/site/main/AR/docs/constit_proj_26012014.pdf

The UNDP started working on a project³⁶ in partnership with the Tunisian National Anti-Corruption Agency and the former Ministry of Fighting Corruption and Good Governance. The project is expected to last from 2013 to 2016, with a total cost of \$3,797.000. The overall aim of the project is to support the establishment of a national integrity system in Tunisia. The UNDP has also developed a portal³⁷ to support the on-going anti-corruption efforts made by both the government and civil society organizations.

The adoption of the constitution on 27 January 2014 marked a momentous turning point for Tunisia. The institutionalization of the National Anti-Corruption Agency made fighting corruption a mandatory component of every government's agenda. In fact, by embedding the Agency and its mission in the Constitution, Tunisia has taken a very important first step forward, and has theoretically made it impossible for subsequent laws to undermine the agency.³⁸

Article 125 establishes the "Good Governance and Anti-Corruption Agency", alongside other constitutional agencies, and grants it financial and administrative independence. Additionally Article 130 states:

*"The Good Governance and Anti-Corruption Agency contributes to the policies of good governance and preventing and combating corruption, and to following up on its implementation and the dissemination of its culture, and enhances principles of transparency, integrity and accountability. The Agency is in charge of detecting corruption cases within the public and private sectors, conducting related inquiries and verifications, and transferring them to the concerned authorities. The Agency is mandatorily consulted on draft laws related to its field of competency. It may provide its opinion on public regulatory texts related to its field of competency. The Agency is composed of independent, impartial, competent and honest members who undertake their responsibilities for one six-year term, with one third of its members renewed every two years."*³⁹

As soon as Prime Minister Mehdi Jomaa entered office, he made 29 promises, including a promise to fight corruption. This could mean that the technocrat government has the political will to lead the country to the next level in terms of anti-corruption efforts.

Furthermore, Tunisia is playing a more active role at the regional and global levels in the field of anti-corruption, particularly as it prepares to assume the leadership of the Arab Anti-Corruption and Integrity Network, and to host the 16th International Anti-Corruption Conference, becoming the first Arab country to do so.⁴⁰ This means that the presence of the will to fight corruption is there despite the constraints.

Accomplishments of the Ministry of Good Governance and Fighting Corruption in 2013 in the field of fighting corruption:

Toward a draft law on asset declaration and conflict of interest:

³⁶ http://www.tn.undp.org/content/tunisia/fr/home/operations/projects/democratic_governance/appui-a-l-etablissement-dun-systeme-national-dintegrite-en-tunis.html

³⁷ www.anticor.tn

³⁸ UNDP article: <http://www.undp-aci.org/publications/ac/Newspiece/Tunisia%20new%20constitution.pdf>

³⁹ Unofficial translation, original text in Arabic at http://www.anc.tn/site/main/AR/docs/constit_proj_26012014.pdf.

⁴⁰ <http://www.undp-aci.org/publications/ac/Newspiece/Tunisia%20new%20constitution.pdf>

- Commissioned a diagnostic report on current legal framework (Law of April 1987) prepared by experts from the OECD, as well as a comparative study on best practices. These studies were presented and discussed in an international seminar held on February 14, 2013.
- Hosted a seminar on the various options for a new framework on asset declarations, including international experts in the field from Brazil, Argentina, Estonia, Spain, France, Turkey, and Portugal, during a conference on the 19 – 21 of June, 2013.
- Produced a list of recommendations for the draft law.
- Finished choosing members of the leadership council who will be in charge of the draft law.

Toward a draft law criminalizing illicit enrichment:

- The Ministry of Good Governance and Fighting Corruption participated in two seminars organized by the Presidency on illicit enrichment with civil society and international experts, and participating in formulating a first draft of a law on illicit enrichment, in April 2013.
- Chose members of a leadership council who will take over formulating the law (in September 2014).
- Finished first draft of law to be presented to leadership council in 2014.

Toward a draft law on the protection of individuals who report, witness, and fight corruption:

- Selected members of a leadership council who will be in charge of formulating the law in 2014.
- Completed a preliminary draft of the law with the cooperation of the UNDP, to be presented to the leadership council in 2014.

Toward a draft law broadening the definition of corruption and increasing penalties for corruption-related crimes:

- Selected members of a leadership council who will be in charge of formulating the law in 2014.
- Completed a preliminary draft of the law with the cooperation of the UNDP, to be presented to the leadership council in 2014.

Activating the National Anti-Corruption Agency:

- Appointed members to the board of the Agency in 2014.
- Helped the Agency move to its new location on June 6 2014.
- The board began its work in 2014 and appointed three councils—one charged with organizing the recruitment of members for the Council of Prevention and Investigation, one charged with preparing the budget of the Agency, and one charged with preparing the organizational and administrative structure of the Agency.
- Accelerating the framework for asset recovery by activating the coordinating role of the Supreme Council for Fighting Corruption and the Recovery of State Assets
- Re-activated the Supreme Council for Fighting Corruption and the Recovery of State Assets in 2014.
- Organized two meetings in May 2013 concentrating on speeding up the asset recovery efforts.

V. I WATCH Recommendations for priority actions

1. Availability of information

Problem: Legal texts are fragmented; the legislative system criminalizes some cases of corruption such as the bribery of a government official, embezzlement of public funds and money laundering. However, these articles are distributed between the criminal code and other legal documents rather than consolidated in one place, which could lead to lack of clarity over whether law establishes a criminal offence or not, which itself reduces the chance of citizens observing the law and may also discourage them from reporting corruption.

Recommendation: Create a booklet/guidebook that includes a simplified version of all anti-corruption laws and procedures, and types of corruption offenses that are criminalized by law, so that citizens know what to report.

2. Whistleblowers/reporting persons' protection

Problem: Protecting whistleblowers is the first incentive in promoting the reporting of corruption. Unfortunately, the current legal framework does not include mechanisms and procedures to ensure their protection.

Recommendation: Pass a law that would: 1) Provide legal protection for citizens who report corruption and their families; 2) Mandate the National Anti-Corruption Corruption to follow up and protect whistleblowers.

3. Review the criminalized corruption offences

Problem: Only certain corruption crimes are criminalized in the Tunisian legislative system.

Recommendation: Introduce all the corruption offences mentioned in the UNCAC to the Tunisian legislative system, including corruption offences relating to foreign public officials.

4. Sanctions for serious corruption offences

Problem: Imprisonment depends on the type of corruption; whereas financial sanctions do not depend on the seriousness of the deed and are not high enough to be a deterrent.

Recommendation: Revise the sanctions' ladder. Sufficient punishment, which reflects the severity of the crime, should take place through meaningful financial penalties, and meaningful imprisonment durations, depending on the type of corruption offence; including whether it is petty corruption or grand corruption.

5. Illicit enrichment and asset declarations

Problem: There is no Tunisian law that criminalizes illicit enrichment. The system of asset declarations has serious inadequacies.

Recommendation: 1) Introduce criminal penalties for illicit enrichment, with effective taxation of assets which cannot be reasonably explained as the lawful income of public officials; 2) Mandatory, annual and sanctioned reporting that should be extended to at least four years after the end of the tenure for principally high level public officials, along with

their relatives, when appropriate, on their assets to the Court of Accounts (the reported assets to be made public); 3) Raising public official awareness about the essence and goals of the assets declaration/reporting system.

Appendix

The National Committee for investigating cases of bribery and corruption

It is clear today that Tunisia in the era of the previous president was a victim to systematic corruption and bribery. Systematic means several elements that are connected and interactive in a way that the action of one element provokes the rest.

Dismantling this system began since the 17th of January 2011, when the prime minister announced officially, next to the composition of the first transitional government, creating three committees including the National Committee for investigating cases of bribery and corruption.

In 18 February 2011 Decree 7 concerning this committee was issued stating that it is a public independent body, composed of two committees, technical and general.

- The technical committee is composed of experts in different areas undertakes investigating, searching and studying files and forwarding them to courts in case it suspects corruption or bribery.
- The general committee is composed of representatives of the parties concerned with fighting corruption and bribery; it prepares general guidelines of the committees work and future strategies.

The committee published its first investigative work on corruption crimes committed by the previous system against the Tunisian population and his assets in 2011⁴¹.

The national committee to fight corruption

The framework decree number 120 dated 14th November 2011 concerning fighting corruption created this committee which replaced the national committee to investigate truth and fight corruption. The members were assigned by Order number 2394 of 2013, dated 4 June 2013.

Its duties are fighting corruption in the public and private sectors and especially to develop efforts to prevent it, discover it and guarantee tracking the people committing it, stop them and support the international effort to reduce its effects and work on retrieving stolen assets.

This committee knew many obstacles as affirmed by its president Mr. Samir Ennabi. Even though the committee was created in 14 November 2011⁴² its members were not assigned until the Order⁴³ number 2394 of 2013, dated 4 June 2013. It is composed of 27 members representing mostly regulation, judicial professional organizations and union bodies, and from the National Constituent Assembly, civil society and media, in addition to experts⁴⁴. This committee suffers from a lack of financial independence, which was the main obstacle in applying its obligations toward international donors which postponed its dealings because of what is considered a lack of seriousness in dealing and not accomplishing required goals⁴⁵.

A special committee for the NCA was established by its interior regulations and it was assigned to follow the cases concerning financial and administrative corruption, retrieving stolen public assets,

⁴¹ <http://www.anticor.tn/wp-content/plugins/download-monitor/download.php?id=1>

⁴² [http://www.legislation-securite.tn/sites/default/files/files/lois/D%C3%A9cret-loi%20cadre%20n%C2%B0%202011-120%20du%2014%20Novembre%202011%20\(Ar\).pdf](http://www.legislation-securite.tn/sites/default/files/files/lois/D%C3%A9cret-loi%20cadre%20n%C2%B0%202011-120%20du%2014%20Novembre%202011%20(Ar).pdf)

⁴³ [http://www.legislation-securite.tn/sites/default/files/files/lois/D%C3%A9cret%20n%C2%B0%202013-2394%20du%204%20Juin%202013%20\(Ar\).pdf](http://www.legislation-securite.tn/sites/default/files/files/lois/D%C3%A9cret%20n%C2%B0%202013-2394%20du%204%20Juin%202013%20(Ar).pdf)

⁴⁴ الفصل 20 – يتألف مجلس الهيئة من رئيس الهيئة و أعضاء يقع اختيارهم كما يلي :

- 1- سبعة أعضاء على الأقل من سامي الموظفين وممثلين عن هيكل الرقابة والتفتيش والتفتيش والتفتيش،
- 2- سبعة أعضاء على الأقل عن منظمات المجتمع المدني والهيئات المهنية من ذوي الكفاءة والخبرة في المسائل ذات العلاقة بمهام الهيئة،
- 3- قاض عدلي وقاض من المحكمة الإدارية وقاض من دائرة المحاسبات،
- 4- عضوين عن قطاع الإعلام والاتصال

⁴⁵ <http://www.youtube.com/watch?v=zdsZOxaQVUw>

following the modernization and development of the administration, fixing public service and preparing a monthly report showing the results of its work and recommendations. This was considered insufficient by the committee and requested the amendment of Article 72 of the interior regulation so that it could work on investigation and control as well as following.

The judicial financial pole

It was created by the Ministry of Justice in compliance with the governmental program of the year 2012 dated 10 January 2013 and is specialized in trying all aspects of financial and administrative corruption. It is composed of investigating judges, judges and public prosecutors.

The reasons and circumstances behind creating this body is summarized in the increase in cases and the need for specialization concerning the complicated nature of corruption cases, and the need for full-time work to hasten the investigation of cases.

According to the last press conference by the pole, it stated that it is working on around 800 files⁴⁶.

Access to administrative documents

Decree number 41 of the year 2011 dated 26 May 2011 concerning the access to administrative documents as amended by Decree number 54 of the year 2011 dated 11 June 2011 and explained by the governmental presidency's office publication number 25 dated 5 May 2012⁴⁷ is the first text in the republic fully allocated to deal, even though partially, with the relationship between the administration and the public.

Article 3 enables every physical and legal person the right to access administrative documents. This can be by the initiative of the public body or by a request from the person concerned taking into account the exceptions stated.

Articles 16 and 17 of the decree state the exceptions:

- Administrative documents concerning personal data (Law of 2003),
- An judicial injunction preventing access,
- Documents received by the public body entitled "secret".
- When allowing access to administrative documents may damage (article 17):
 - Relations between nations or international organizations,
 - Public security and national defense,
 - Detection of crimes or protecting from them,
 - Arresting the accused or trying them,
 - The good functioning of the judiciary or the integrity of the procedures of allocating public transactions.

This decree lacks the institutional structure that supports access to information and its application and an overseeing committee that obliges application.

This law scored 92 out of 150⁴⁸ on the right to information rating, which is a rating system that was out by the Center for Law and Democracy and Access Info Europe and that goes back, basically, to the absence of a special committee that oversees the proper application of the law and works to prevent violations on the right to information. In addition, many exception exist which limits this right. Finally, this law includes non-deterrent sanctions in case this right is violated.

Lately, an organic bill was prepared concerning the right to information after conducting a national consultancy to improve transparency, accountability in the public sector and people's trust in public

⁴⁶ <https://www.facebook.com/video/video.php?v=400753686688072>

⁴⁷ <http://www.mincom.tn/fileadmin/PDF/circulaires-ar.pdf>

⁴⁸ <http://www.rti-rating.org/>

bodies. That is through stating several procedures that form an integrated system to establish actual access to information for the person dealing with the administration.

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