

**When EU Law meets Arabic Law: Assessment of Anti-Corruption Law in Morocco
and Some Proposed Amendments
Bryane Michael, Linacre College**

Introduction	2
Overview of Corruption in Morocco	3
Policy and Legal Framework to Fight Corruption.....	7
The Anti-Corruption Agency, National Strategy and Action Plan	10
Legal Strategy: East Meets West in Morocco	18
Conclusion.....	24
Appendix 1: Decree 2-05-1228 of the 13 march 2007 instituting the Central Agency of Prevention of Corruption	25
Appendix 2: Criminal Provisions against Corruption contained in the Moroccan Criminal Code.....	29

Summary

This article reviews the present state of the adoption of anti-corruption legal provisions usually adopted in EU (or candidate) countries in Morocco. Morocco lags behind many countries in its adoption of anti-corruption legislation and the recently established Central Agency of the Prevention of Corruption is unlikely to succeed in speeding up the adoption of these measures. English language translations of a number of Moroccan anti-corruption legal instruments are presented and amendments to these legal instruments are recommended (based on international best practice) in order to increase the likely effectiveness of Moroccan law enforcement institutions in fighting corruption.

Author biography:

Bryane Michael currently serves as a senior advisor to the European Union on anti-corruption and governance matters in Azerbaijan, Ukraine, Moldova, and Turkey (while away from Oxford University). He has published over 20 peer-reviewed academic articles in the anti-corruption field and served as an advisor to the Council of Europe, OECD, United Nations, World Bank, and a range of bilateral donors. He conducted legal analyses and helped with legislative and regulatory drafting in over 7 countries. **His** previous background includes almost 5 years at the World Bank and OECD and he received his graduate education in economics at Harvard and Oxford.

When EU Law meets Arabic Law: Problems and Prospects of Transplanting Anti-Corruption Law in Morocco

Bryane Michael, Linacre College

Introduction

In recent years, the Government of Morocco has increased its work on anti-corruption legislation and rule-making.¹ In line with most other countries, the Kingdom has adopted a national anti-corruption strategy (along with national action plan) and established a preventive anti-corruption steering committee to oversee work on the national strategy.² However, the strategy-action plan-committee model has mainly been applied in Eastern European and Former Soviet countries in which legal systems had been changing quickly. These countries aimed to adopt the *acquis communautaire* and ratify the international conventions against corruption as quickly as possible in order to improve their prospects of accession (or partnership) with the European Union (EU).³ However, the model – when applied to countries outside the European Neighbourhood Policy (ENP) space – has proven ineffective and legal instruments putting the system into force often had to be repealed.⁴ As such an institutional model of fighting corruption increasing becomes adopted in Arab countries, the role of legal analysis – assessing the current laws and evaluating whether proposed changes will be effective – will become particularly important (as it was for Central and Eastern European countries during the EU accession process). In Morocco specifically, few assessments of corruption (or anti-corruption work) have been done – much less assessments of the legal framework in place aimed at enabling law enforcement agencies to fight corruption.⁵

This article attempts to provide an extremely rudimentary analysis of Morocco's adoption of many "standard" anti-corruption legal provisions (particularly through comparisons with a group of "comparator countries") as well as provide estimates of the

¹ Numerous factors account for such work, including increased pressure by advocacy groups such as *Transparency Maroc*, the requirements to promote transparency as part of overall EU sector budget support, and upcoming \$700 million in US Millennium Challenge Account funding. For a broader geo-strategic background, see Alfred Tovias and Mehmet Ugur, *Can the EU Anchor Policy Reform in Third Countries? An Analysis of the Euro-Med Partnership*, 5 EURO. UNION POL. 4 (2004).

² The donor organisations – particularly the World Bank and USAID aggressively promoted this now widely criticised and ineffective method of structuring anti-corruption work in the 1990s. See David Morrissey, *The Fight Against Corruption by International Organizations*, 39 GEO. WASH. INT'L L. REV. 1 (2007) for an overview and for an empirically grounded critique, see Franklin Steves, and Alan Rousso, *Anti-corruption programmes in post-communist transition countries and changes in the business environment 1999-2002*, EBRD WORKING PAPER SERIES (2004). Perhaps one of the best and (rightly) scathing critiques comes from Luis de Sousa, Peter Larmour and Berry Hindess, *GOVERNMENTS, NGOS AND ANTI CORRUPTION: THE NEW INTEGRITY WARRIORS*, (2008).

³ Such ratification has not been without its critiques, see Indira Cart, *Fighting Corruption through Regional and International Conventions: A Satisfactory Solution?* BEPRESS LEGAL SERIES WORKING PAPER 1864, (2006).

⁴ Anti-corruption assistance financed by the World Bank in Bolivia, Georgia, Thailand, Mexico, Uganda, Tanzania, and other countries are examples of such programmes. However, even within the post-accession and ENP countries, attempts at elaborating such an institutional strategy have been criticised, see Ivan Krastev, *SHIFTING OBSESSIONS: THREE ESSAYS ON THE POLITICS OF ANTICORRUPTION*, (2004).

⁵ Of the assessments available, most focus on political economy aspects of anti-corruption work instead of detailed legal work. eg. Guilain Denoeux, *The Politics of Morocco's "Fight against Corruption"*, 7 MIDDLE EAST POLICY COUNCIL JOURNAL 2, (2000).

costs and benefits of adopting the various provisions contained in the current anti-corruption action plan. I describe the analysis as rudimentary because legal drafts in French or English are difficult to obtain – thus I try to provide the reader with translations and specific citations to laws. As a caveat before beginning, as assessment without Arab law countries proves difficult due to even slower progress on anti-corruption across the Arab world, comparisons have been made with similar non-Arab countries.⁶ The first section provides an extremely brief overview of corruption in Morocco for the reader who is not steeped in the issue. The second section makes very basic observations about the extent to which Moroccan legislation has incorporated the standard anti-corruption remedies found in the EU and most OECD member countries – focusing specifically on criminal law remedies against corruption. The third section discusses the new law which established Morocco’s strategy-action plan-committee model of anti-corruption work and evaluates (using cost benefit analysis) the likelihood of success in implementing the national anti-corruption action plan. The final section discusses the overall legal strategy for this (French-heritage) Arab law country as it adopts basically generally EU adopted anti-corruption provisions. At some point, the country will either follow the Western European model (which Turkey until recently has adopted which involves ad hoc amendment of the current legal codes) or the Eastern European model (involving the adoption of a single national anti-corruption law). Specific recommendations for amending the decree on the Central Agency for the Prevention of Corruption are given so the Central Agency can successfully lead the government to the successful implementation of future anti-corruption legislation (and particularly executive agency level regulation!). Two appendices provide English language translations of the criminal code articles about corruption and the decree for the Central Agency.

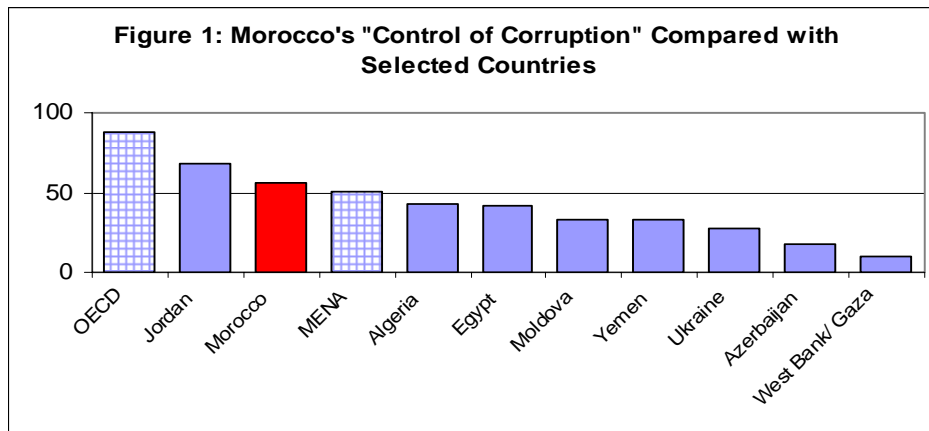
Overview of Corruption in Morocco

By many international indicators, Moroccan law enforcement agencies’ ability to control corruption compare favourably with similar countries. Figure 1 shows a World Bank indicator labelled “control of corruption” compared with the Middle East and North Africa (MENA) region in general as well as with five comparators within the Arab law world (Jordan, Algeria, Egypt, Yemen, and West Bank/Gaza) as well as four comparator countries outside the Arab world which have approximately the same GDP per capita.⁷ As shown in the graphic, Morocco ranks favourably with the MENA region in general

⁶ The comparator countries used in the analysis (Moldova, Ukraine and Azerbaijan) have been chosen for three reasons. First, they are most similar in GDP per capita at PPP terms (thus excluding Turkey for example). Second, Morocco’s French legal heritage makes comparison with other Continental legal systems (including post-Soviet legal systems) much easier than with Arab country legal systems in all their variety and often entirely different fundamental legal values. Third, I have worked in the comparator countries and feel more comfortable making comparisons with them than with countries I have never worked in.

⁷ Due to the well-known problems with the Transparency International Corruption Perceptions Index (and the increasingly wide-spread use of the World Bank Governance Indicators dataset), we do not report TI Index rankings in this report. For critiques of various international measures, see Stephen Knack, *Measuring Corruption in Eastern Europe and Central Asia: A Critique of the Cross-Country Indicators*, WORLD BANK WORKING PAPER SERIES 3968 (2006).

and with all the chosen comparator countries.⁸ Yet, compared to the OECD average, Moroccan law enforcement agencies still require a fair amount of reform.



While the estimation of the economic value of corruption poses serious methodological and even conceptual problems, back-of-the-envelope estimates can be made. According to a survey conducted by Transparency International in Morocco, the “bribe tax” (or the value of Moroccan companies’ turn-over paid in bribes) hovers at around 5%.⁹ A more realistic indicator for such a tax centres around 2% -- resulting in an overall impact of roughly **\$1.5 billion per year in bribes and other corrupt consideration**.¹⁰ The impact on GDP represents another \$1.5 billion in growth per year.¹¹ Such estimates are in line with other studies for comparator countries; for example \$980 million for Azerbaijan.

While many theories of systemic corruption exist for Morocco, the most likely systemic cause of corruption in Morocco stems from the exercise of clientelistic and

⁸ As mentioned previously, Ukraine, Azerbaijan, Moldova have been chosen as comparator countries mostly based on their relative similarity in GDP per capita (in purchasing power parity terms). The choice of comparators can naturally be criticised (as Bolivia and Vanuatu are the most comparable in GDP per capita terms). The reader may use comparisons to the extent he or she feels they are helpful and ignore areas where such comparisons do not elucidate.

⁹ CSA-TMO Maroc, SUMMARY OF THE NATIONAL INTEGRITY SURVEY OF ENTERPRISES, (2001), [hereinafter CSA-TMO Report].

¹⁰ The most accepted method of computing the bribe tax – as used by the World Bank – consists of asking companies directly, through enterprise surveys, about revenue loss as a result of bribe payments. Given that estimates for the closest comparator countries centre around 1% (1.5% for Ukraine and 1% for Moldova), a more realistic estimate for such a bribe tax for Morocco centres on 2% of turn-over. For a detailed discussion about the economic methodology used to estimate corruption impacts, see Bryane Michael and Mariya Polner, *Fighting Corruption on the Transdnistrian Border: Lessons from Failed and Successful Anti-Corruption Programmes*, TRANS. STUD. REV. (forthcoming). The estimate used 1997 Moroccan GDP of \$152.5 billion at a real dollar-dirham exchange rate based on purchasing power parity between the two currencies. I pass quickly over the methodology used to obtain these estimates in order to leave space for the legal analysis which follows.

¹¹ Morocco’s GDP when valued at its “real” exchange rate with the US dollar is \$152.5 billion for 2007. As discussed later, Sepulveda and Mendez estimate that for a country like Morocco, corruption costs roughly 1% of GDP growth. Naturally, these statistics are illustrative rather than precise scientific micro-level estimates. See F. Sepulveda and F. Mendez, *Corruption, Growth and Political Regimes: Cross Country Evidence*, EUR. J. POL. ECON. (2008).

patronistic relationships -- exercised by the Moroccan monarch -- leading to the monopolistic division of rents. Allegedly, King Mohammad VI and his entourage (the *makhzen*) sit at the centre of a large nexus of people who give favours and opportunities for corruption in order to maintain political power and accumulate wealth.¹² Proponents of this argument point to the lack of legislatively defined independence of bodies traditionally responsible for ensuring executive accountability (such as the courts or the audit chamber). They also point to the large concessions over public resources controlled by the Mohammad VI directly or by companies under His control and the control of individuals personally close to His Majesty.¹³ Thus, at the base of corruption, the underlying cause of such centralisation stems from the nature of Morocco's Arab tradition legal system, where King is both the maker of law and the implementer (though to a lesser extent than in other Arab countries).¹⁴

The very limited evidence available seems to confirm (at least in part) the centralisation of corruption and the use of bribes as a method of patronage (and clientalism). World Bank data show that only 14% of Moroccan firms expect to give "informal payments" to public officials (in contrast with the 30% of the MENA region in general).¹⁵ However, the average bribe paid is higher than in comparable economies – for example according to the data available, the average Moroccan importer paid approximately \$2,000 in bribes for imports and another \$2,000 for trade licenses (compared with the much lower \$32 bribe in Moldova). These data suggest (at least a move toward) a monopolistically efficient level of bribe collection.¹⁶ Moreover, the majority of respondents in the most recent survey of corruption perceptions note that "very important factors" leading to corruption stem from "pressure coming from senior officials" (about 60% of respondents) with about the same percentage of respondents noting that "the government is not serious about fighting corruption."¹⁷ While these data suggest Morocco is a highly corruption-ridden country, when compared with other countries (as shown in Figure 1), Morocco actually has a lower level of corruption than

¹² See G. Denoëux, *Corruption in Morocco: Old Forces, New Dynamics and a Way Forward*, MID. E. POL. (2007). The *makhzen* refers to the king's power network or "deep state." These allegations appear often in the popular press but are impossible to prove – thus the "alleged" nature of systemic corruption in the Kingdom.

¹³ See Michael Laskier, *A Difficult Inheritance: Moroccan Society under King Muhammad VI*, 7 MID E. REV INT'L AFF. 3 (2003).

¹⁴ I understand I am skating over an entire branch of comparative law in one sentence. However, I assume the reader has a basic familiarity with this general area of comparative law (Arab law) and I do not seek to justify this claim which I simply report others as having made. For an overview of the differences between the Arab and "Western" (and I use the term almost ironically given the Orientalist nature of defining a "Western" legal tradition), see Chibli Mallat, *Comparative law and the Islamic (Middle Eastern) legal culture*, in Mathias Reimann and Reinhard Zimmermann eds., OXFORD HANDBOOK OF COMPARATIVE LAW, (2006): 609-639. Such a supposition is not required for any of the analysis in this paper.

¹⁵ Perhaps as a reflection of the uncertainty over survey based corruption estimates, the CSA-TMO Report shows Morocco's 65% of Moroccan companies paying bribes (albeit for Moldova, as a comparison, only 15% of firms report paying bribes).

¹⁶ Schleifer and Vishny have argued that the profit maximising level of bribe collection would be observed in the case of a centralised bribe collector (with monopoly powers over bribe collection). The higher bribe "price" and lower "quantity," along with the lower relative level of corruption weakly supports this hypothesis. See Andrei Shleifer and Robert Vishny, *Corruption*, 108 Q. J. ECON. 3, (1993): 599-617.

¹⁷ CSA-TMO Report.

that predicted by its GDP per capita. Thus, the systemic aspect of Moroccan corruption remains elusive.

Yet, if the centralisation of corruption rents, along with royal impunity, result in the high corruption in the Kingdom (at least by EU or OECD standards), a number of commentators have argued that these same factors have resulted in the significant inertia for anti-corruption reform.¹⁸ Looking at the progress underway on the government's anti-corruption policy (as presented in Figure 3), such fears appear (at least at first glance!) unfounded. The Government of Morocco has adopted a law on asset declaration, on money laundering, and has committed itself to a range of activities. However, an evaluation of these reforms – particularly the legal reforms – remains lacking.

Figure 3: Government of Morocco Assertions of Anti-Corruption Achievements in 2007

According to the Moroccan Anti-Corruption strategy, the Government of Morocco asserts that they have completed the following edited list of activities:¹⁹

1- Consolidation of transparent government and a sense of responsibility

The adoption of laws related to about the responsibility of financial directors, auditors and public accountants (n° 61.79), about the reasons for administrative decisions (n° 03.01), reinforcement of transparency in the management of public procurement (decree n° :2-98-482 of 30 December 1998), the updating of the penal code (article 256.1) in order to remove all penal prosecution under certain conditions, of whistleblowers or informants of corrupt acts, reinforcing the measures allowing for the recuperation of embezzled or misused funds (n° 79.03), price deregulation and the promotion of competition (n° 06-99), enforcing a code of covering of public credits (n° 15-97), the renewal of the fiscal system in 2000 (reinforcing the declaration regime, reform of Customs Code and indirect taxation),

2- Improvement of the conditions of access to public results

Putting in place of an interactive system of determining customs excises and taxes, putting in place of computerised applications of fiscal management allowing for an automatisisation of the implementation of declarations, recoveries and surveillance. Other measures include the creation of regional one-stop shops, the publication of a range of the most used/common administrative procedures, as well as the development of new information and communications technologies and the communication in the public administrations (creation of an e-government committee and effective launching of projects of public services online).

3- Reinforcing of the institutional cadre and prevention of corruption

The creation of a High court of justice in charge of judging cases which involve the ministries, elimination of the Special Court of Justice (law 79.03) and the devolution of its competencies to the appellate courts of commun law, creation of the Ombudsman (*Diwan al Madhalim*) (decree of the 9 December 2001), establishment of regional financial courts.

Source : *Morocco Anti-Corruption Action Plan*

¹⁸ In the literature, commentators often argue that countries with an Islamic legal system (or at least an Arabic culture such as Morocco) are less democratic and less open to government reform. For an overview and empirical critique, see Steven Fish, *Islam and Authoritarianism*, 55 *WORLD POL.* 1, (2002): 4-37.

¹⁹ The reader should see the original action plan for the complete list. See ACTION PLAN FOR THE FIGHT AGAINST CORRUPTION, promulgated by the Ministry for the Modernisation of the Public Sector (2005). [hereinafter Morocco Anti-Corruption Action Plan]. I have omitted items which are non-specific and non-relevant (using the standard methodology for assessing anti-corruption policies and action plans). As I have not been able to verify the government's claims, I can not provide reasonable assurance about the report.

Policy and Legal Framework to Fight Corruption

According to an evaluation of the laws in place, Morocco's anti-corruption legal framework lags far behind several comparator countries. Morocco has neither adopted a consolidated anti-corruption law (which is not necessarily worrisome), nor relegated into its various legal codes the provisions which have come to be generally adopted world-wide.²⁰ These include the traditional provisions included in most anti-corruption reform programmes in the 1990s (and included recently in the UN Convention Against Corruption) -- including the extension of the definition of corruption to cover the range of possible participants in corruption offences, criminalisation of corruption to all natural and legal persons, co-operation in mutual assistance and other provisions (some of which are listed in Figure 4). As shown, Morocco scores lower than any of the comparator countries (with a quality score of 2.4) whereas Moldova ranks 2.9, Azerbaijan 2.7 and France ranks at 4.6.²¹

Figure 4: Quality Scores of Selected Legal Provisions Related to Morocco's Anti-Corruption Framework*²²
(1 is lowest score and 5 is highest)

	Morocco Rating	Moldova Rating	Azerbaijan Rating	France Rating
Main elements				
Criminalisation of corruption	3.2	4.4	3.9	4.7
Anti-Corruption Strategy/Plans	1.8	3.1	3.2	4.2
Explicit Anti-Corruption Laws	1.3	3.2	2.9	4.6
Corruption Investigations (all jurisdictions)	1.5	2.1	1.9	4.2
Corruption Prosecution (all jurisdictions)	2.2	2.1	2.2	3.9
Non-domestic standing for international cases	1.2	3.6	2.9	4.9
Other selected legal provisions				
Procedures for Financial Intelligence Unit (for money laundering)	1.2	3.1	2.7	4.5
Witness protection	2.1	2.5	2.5	4.7
Procedure for confiscation of "illicit gains"²³	2.9	2.3	2.3	4.7

²⁰ As discussed below, the new EU member states and the European Neighbourhood Policy (ENP) countries have adopted two general strategies for anti-corruption reform: either integrating various anti-corruption legislative provisions into a consolidated law (the Eastern European model) or *ad hoc* amendment of various branches of the legal system including criminal law, civil law, administrative law and so forth (the Western European model). For an overview of work done so far, see Edward Ampratwum, *The fight against corruption and its implications for development in developing and transition economies*, 11 J.M.L.C 1, (2008): 76-87.

²¹ The scale refers to the best international practice from the OECD member states. Thus, France will rate less than 5.0 because of other OECD members who provide better best practice.

²² Referencing of each legal act or regulation would make the article excessively difficult to read and have thus been omitted. The reasons for each score would also extend potentially hundreds of pages. The Quality Score Method has been chosen because of its relatively wide use (Africa, Azerbaijan, Macedonia, Ukraine and other countries). Cf Anwar Shah and Jeffrey Hunter, *Anti-Corruption Policies and Programs: A Framework for Evaluation*, WORLD BANK POLICY RESEARCH WORKING PAPER No. 2501, (2000). Shah and Hunter correct choose "relevance" as one of their assessment criteria, but then choose the impossible to measure indicators of efficacy, efficiency and sustainability.

Gifts/Favours/Abuse of Influence	3.9	3.7	3.2	3.9
Asset Disclosure and Monitoring	1.8	2.2	2.2	3.7
Whistleblower Protection	1.2	1.1	1.2	4.1
Independence of Public Hiring and Appointments	2.7	3.9	3.4	4.8
Immunity Lifting for Corruption	2.1	3.2	3.4	4.6
Ombudsman (public complaints unit)	1.1	1.1	1.1	4.0
Freedom of Information	1.5	3.1	2.5	4.6
Audits of Public Expenditures	2.5	2.0	1.9	4.7
Public Procurement	3.7	3.9	3.9	4.8
Business regulations	1.9	1.8	2.3	4.3
Totals	2.4	2.9	2.7	4.6

Source: author. The Quality Scores are based on a process known as data envelope analysis and consist of primarily an assessment of the specificity, relevance, completeness and goodness-of-fit of adopted legislation (and regulatory instruments to the extent they are available) relative to best practice within the OECD member countries. Scores are modified slightly to reflect their effectiveness (as reflected by any secondary sources as well as results of numerous interviews with the typical key informants contacted during an anti-corruption assessment mission). The scale ranges from 1 (least specific, relevant and close to international best practice). Naturally, as with any scoring of this kind, particular numerical values should be seen as guides instead of used of policy or resource allocation purposes.

The most salient trend in international anti-corruption legal work in the recent years has been the criminalisation of corruption offences. The previously mentioned UN Convention against Corruption and the Council of Europe's Criminal Law Convention Against Corruption represent the codification of principles which countries around the world are adopting as part of their anti-corruption legal framework. Figure 5 shows the extent to which the Kingdom of Morocco has adopted the provisions almost universally considered paramount to the effective criminalisation of corruption.²⁴ As shown, Morocco has only implemented 6 of the 25 standard anti-corruption provisions contained in many advanced developing countries' legislation. Azerbaijan and Moldova has much higher adoption rates -- in part because of their membership in the Council of Europe (in which member states undergo regular review of the anti-corruption legislation and are liable for prosecution in cases brought before the European Court for Human Rights). Both Azerbaijan and Moldova ministries of justices are also engaged in the process of "harmonising" national law with the EU's *acquis communautaire*.²⁵

²³ Macedonia represents a potential comparator in which the state has the right to "tax" 70% of unexplained wealth. In the other comparator countries, the seizure of illicit wealth has not been tried (despite ratification of the UN Convention against Corruption).

²⁴ Many of these principles are contained in the OECD's CORRUPTION - A GLOSSARY OF INTERNATIONAL CRIMINAL STANDARDS, (2006). For an excellent review of the legal provisions contained in the US legal system, cf Ashley Kircher, Brian Whittaker and Jordan Hicks, *Public Corruption*, 45 AM. CRIM. L. REV. 825.

²⁵ The *acquis* simply obliges EU member states to adopt the Council of Europe and OECD conventions against corruption (as well as provides for extra provisions for the protection of the Communities' financial interests). As Morocco adheres to the European Neighbourhood Policy, the Kingdom also has the obligation to protect the Communities' interests in relation to funds (such as from sector budget support received by the EU). Thus, the adoption of the anti-corruption *acquis* in Morocco should not pose, *prima facie*, a problem in the Kingdom.

Figure 5: Indicative Comparison of Standard Anti-Corruption Criminal Provisions²⁶

	Morocco	Azerbaijan	Moldova
Prohibition of active bribery (ETS 173 §2; UN §15)	X	X	X
Prohibition of passive bribery (ETS 173 §3)	X	X	X
Extra-territorial application (ETS 173 §17)		X	X
Removal of immunity (ETS 173 §16)	?	X*	X*
Application to foreign officials ((ETS 173 §6; UN 16)		X	X
Application to private sector participants (ETS 173 §7; UN §21)	X	X	X
“effective, proportionate and dissuasive sanctions” (ETS 173 §19)			X
Account offences (ETS 173 §14)	?	?	?
Trading in influence (ETS 173 §12; UN §18)	X*	X	X
Participatory Acts (UN §27)	?	?	X
Scienter (UN §28)			X
Corporate liability (UN §26)		?	X
Use of third-parties	X	X	X
Prohibition against third-party beneficiaries (UN §19)		X	X
Independence of specialised authorities			X
Mutual assistance	?		X
Extradition	?	?	X
Direct communication between working level law enforcement officials			
Preventive agency ²⁷			X
Measures for protecting confidentiality	?		
Establishment of financial intelligence unit to monitoring suspected money laundering offences		?	X
Embezzlement, fraud and theft by public officials (UN §17)	X	X	X
Cancellation of corrupt contracts and procurements (UN §35)		?	X
Compensation for damages (UN §35)			X ²⁸
Freezing, confiscation of “tainted assets” (UN §31)	?	?	?
Confirmed provisions adopted	6/25	10/25	22/25

Source: author. Vague or general treaty provisions (mainly applicable to UN Convention as shown in Figure 11) as well as non-criminal provisions have been excluded.

* Likely to be unenforceable vis-à-vis particular legal or physical persons

The Moroccan Criminal Code also contains several interesting provisions which are not found in many criminal codes (see Appendix 2 for an English language copy of the relevant articles of the Moroccan Criminal code). First, and most interestingly, according to article 253, a judge or jury member may be required to serve the sentence they hand down in a criminal case if they rendered their judgement in exchange for corrupt consideration. As Morocco has not yet abolished the death sentence, corruption can be – at least in theory – a matter of life or death of the perpetrator of the offence! Second, according to article 252, corruption which leads to another crime (such as a

²⁶ As several parts of the Moroccan legislation were unavailable at the time of this writing, I provide no assurance about the accuracy of the table, which is meant to provide the reader with a general estimate of the relative degree of the adoption of criminal sanctions vis-à-vis comparator countries.

²⁷ All three countries have only begun to establish such a preventative body.

²⁸ A recent case brought before the European Court of Human Rights (albeit against the Russian Federation) shows such remedies may be (at least in part) relied upon by victims of corruption.

murder) makes the corrupt person equally responsible for the murder.²⁹ Third, according to article 250, punishment is harder (doubled) for trafficking of influence offences than bribery offences. Usually, the law treats the trafficking of influence as a sub-section or part of any definition of corruption rather than as a stronger form or exception to the general legal definition of corruption. As such, the doubling of punishments appears a rather unusual provision. Fourth, the monetary fines for participating in corrupt transactions are very small (between \$35 to \$666). In a country with a GDP per capita of \$4600, such measures can be considered “dissuasive” (as required under article 16 and 26 of the UN Convention).

The other major area increasingly addressed by anti-corruption legislation worldwide involves the establishment of civil liability for corruption offences. In many transition economies of Central Europe (and countries such as Russia and Turkey), parliaments and courts are increasing conferring legal rights to victims of corruption to sue for damages in civil fora.³⁰ At present, a victim in Morocco has only weak resource to compensation in cases involving corruption for three reasons. First, Morocco has not yet translated into its civil code the principles contained in the Council of Europe’s Civil Law Convention Against Corruption (ETS 173). While victims may choose other jurisdictions in trans-national cases, these victims still face considerable expense.³¹ Second, no method of determining damages exists in the Moroccan Civil Code and even no jurisprudence or case law may guide a judge agreeing to sit such a case. Third, Moroccan administrative law appears not to actively recognise sovereign or administrative liability leading to the award of financial damages to the victims of administrative misdemeanours.³²

The Anti-Corruption Agency, National Strategy and Action Plan

Morocco also lags far behind other comparator countries (with the exception of Ukraine) in the establishment of a centralised anti-corruption agency in charge of

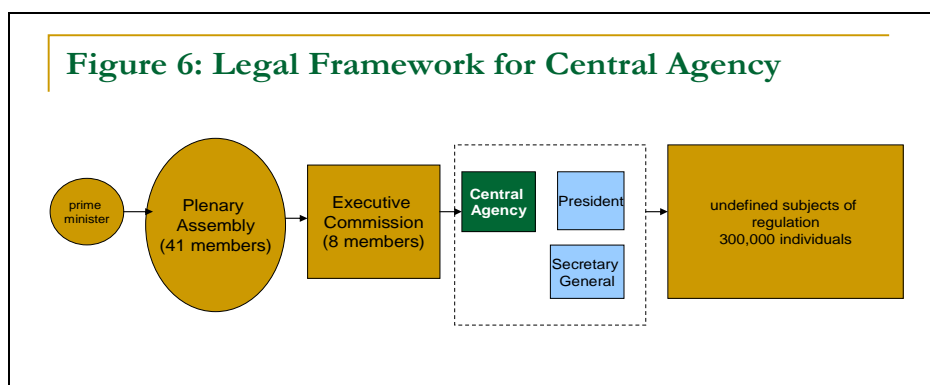
²⁹ At first glance, such a provision opens the perpetrator of a corruption offence to a much sterner punishment than any punishment available for a corruption offence. For example, if a Moroccan border guard accepted a bribe to let a truck into the country without any kind of inspection (which turned out later to be filled with explosives and detonated in the central part of Casablanca), that border guard would receive the same punishment as the truck drivers and the plot organisers. Presumably, either in legal practice or located somewhere in the Moroccan code lies a safeguard to prevent unjust judgements from being handed down.

³⁰ Such rights entail waiving sovereign immunity (in cases where it applies as such immunities often do not apply when civil servants commit offences outside the “colour of the law” (to use an Americanism) in order to seek damages from the civil servant’s agency (for a variety of reasons which are too complicated to address in a footnote). Such rights also include delict (tort) actions for third party victims of corruption (such as public service users who were physically or financially harmed due state non-performance of an entitlement or companies whose financial interests were harmed due to corruption involving their competitors).

³¹ At the time of this writing, a company had filed an action against the Government of Romania with the World Bank’s International Centre for Settlement of Investment Disputes (ICSID) on the grounds that a civil suit would be unlikely to succeed in Romania. In another case, the Government of the Russian Federation had by ordered to pay several millions to a victim of corruption in a hearing at the European Court of Human Rights. Given that Morocco has not been party to such claims in foreign jurisdictions (according to my recent Westlaw search), the lack of such claims suggests a lack of redress available to victims within Morocco’s jurisdiction -- even in foreign fora.

³² I base this claim on the lack of court cases in the Moroccan court reporter as well as the lack of articles in the popular press about awards made against state institutions in favour of particular individuals.

overseeing a national anti-corruption strategy and action plan (to be discussed below). The Central Agency for the Prevention of Corruption (the Central Agency) precedes Morocco's now abolished anti-corruption body, but in no way replaces it.³³ In November 2006, the Government adopted a decree establishing the Central Body for the Prevention of Corruption (see Appendix 1 for an English translation of the decree establishing the Central Agency).³⁴ The Anti-Corruption Agency Decree establishes the widely accepted anti-corruption commission organisational framework for policy related to preventing corruption – with three separate units: a Plenary Assembly comprised of approximately 41 members (which oversees preventative anti-corruption policy in general and is very heavily composed of government officials), an 8 member executive commission which oversees the results of the Central Agency, and the Central Agency itself (in practice the unit charged with the day-to-day work on preventing corruption).³⁵



As an inter-agency model of anti-corruption agency, the Central Agency has almost no legal competencies -- relying on each member of the Plenary Assembly to conduct particular anti-corruption activities.³⁶ Figure 7 shows the legal competencies of the Central Agency compared with similar “Article 6” structures in several comparator countries.³⁷ As shown, the Central Agency has relatively few competencies (2 out of the 8 possible competencies for such an agency); placing the agency squarely in the inter-agency category (as opposed to the universal, investigative or parliamentary categories).

³³ The Prime Minister abolished the Special Court of Justice (or CSJ) in September 2004 – and delegated its powers to the appellate court system. Unlike the “preventive” competencies of the Central Agency, the CSJ possessed “repressive” competencies (which were often abused and most likely explains the decision not to delegate special investigatory or prosecutorial powers to the Central Agency). For more on the former Moroccan system, and other law enforcement systems in the Arab world, see Hesham Nasr, Jill Crystal, and Nathan Brown, *CRIMINAL JUSTICE AND PROSECUTION IN THE ARAB WORLD*, (2004).

³⁴ Decree on the Central Agency of Prevention of Corruption, (Decree 2-05-1228 of the 13 march 2007), [hereinafter the Moroccan Anti-Corruption Agency Decree].

³⁵ Such a design constitutes a multi-agency model of anti-corruption agency (as opposed to the universal, investigative, and parliamentary models). For more, see John R. Heilbrunn, , *Anti-Corruption Commissions Panacea or Real Medicine To Fight Corruption*, WORLD BANK INSTITUTE WORKING PAPER SERIES, available at <http://siteresources.worldbank.org/WBI/Resources/wbi37234Heilbrunn.pdf>, (2007).

³⁶ For a comparison of this model and the outcomes in another Islamic country, cf Leslie Jacobs, and Benjamin Wagner, *Limits to the Independent Anti-Corruption Commission Model of Corruption Reform: Lessons From Indonesia*, 20 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 327.

³⁷ Article 6 refers to the article in the UN Convention Against Corruption which mandates that “Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption.”

In contrast, Moldova’s Centre for Combating Economic Crime and Corruption has almost all the competencies expected of a universal type anticorruption agency, with powers of investigation and prosecution in non-criminal cases). **The Central Agency is expected to cost the Moroccan treasury \$70,000 per year in operating and opportunity costs.**³⁸

Figure 7: Comparison of “Article 6” Anti-Corruption Agencies

	Morocco	Moldova	Azerbaijan	Ukraine³⁹
Ability to investigate		X	X	
Summary judgement on administrative/disciplinary cases		X		
Work on international cases		X	X	
Competence to carry out studies		X		
Independence from executive			⁴⁰	
Legal mandate for “awareness raising” ⁴¹	X	X		
Link with Anti-Corruption Commission	X	X	X	
Performance Audit of Government’s AC work		X	X ⁴²	
Score	2/8	7/8	3/8	0/8

Source: author. Organic laws establishing anti-corruption commissions in other Arab countries are not widely available online, thus no comparison could be made.

In practice, like in most countries with similar agencies, the Central Agency has the mandate to prepare, assist with the implementation, and monitor the results of, the national anti-corruption strategy (and accompanying action plan).⁴³ The Morocco national anti-corruption action plan comprises two parts (general public sector wide provisions and sector-specific activities). In both of these two parts, activities are

³⁸ Such costs include the roughly \$24,000 salary for the staff of the Central Agency, another \$30,000 in opportunity costs of the roughly 300,000 civil servants who will fall under the jurisdiction of the Central Agency (in submitting information, dealing with information requests, attending trainings, and so forth). For more details about the methodology used (and a comparison with the case of Azerbaijan), see Michael and Polner *at supra* note 10.

³⁹ Despite numerous declarations by President Yushenko about the establishment of such an Article 6 organisation (led by the Ministry of Justice), no concrete projects of law have been released for public inspection.

⁴⁰ The Anti-Corruption Department under the General Prosecutor’s Office benefits from all the legally endowed competencies to conduct inspections, investigations, gather criminal and operative intelligence.

⁴¹ The often-used phrase for awareness raising is not given a precise meaning in any legislation establishing these types of bodies.

⁴² The Anti-Corruption Commission possesses the legal competence to provide opinions about the general government’s work on anti-corruption. In practice, the Commission has not provided an effective performance audit of the government’s anti-corruption work.

⁴³ The legal status of the national strategy and accompanying action are unclear, though unlikely to represent real legal obligations imposed on the agencies listed in the Action Plan. In most countries, the parliament promulgates the action plan, making it an expression of parliamentary intent to legislation (something akin to a recommendation). In Morocco’s case, the strategy has been promulgated by the Ministry for the Modernisation of the Public Sector. Given the lack of an enforcement mechanism (or even the degree of detail found in most legislative acts), the action plan is unlikely to a law as recognised by EU member state officials.

organised in groups of six areas of activity: a) the deepening of ethical and moral values and norms, b) institutionalising the prevention of corruption, c) reinforcing the transparency of public procurement, d) improving the system of implementation, control and audit, e) simplifying administrative procedures and f) public awareness and education. In comparison with many national anti-corruption action plans, the Moroccan Action Plan is (rightly) unambitious and relatively focused.⁴⁴

Figure 8 shows each of the national action plan points and provides a back-of-the-envelope (economic) regulatory impact analysis for each point. The major points which are likely to occur the government's attention will be the asset declaration scheme, the money laundering law, and the public procurement law – as in most countries these activities involving the create of new laws and specialised agencies whereas the other activities involve gradual reform at the margins which rarely prove to be successfully implemented. Of these three major action plan points, two are expected to generate losses and the third a negligible social gain. An asset declaration scheme, roughly on par with the schemes being adopted in the former Soviet countries, would cost the Moroccan government approximately \$23 million, yet only reduce the value of bribery by \$5 million – resulting in a net loss of \$18 million.⁴⁵

The public procurement reform is also likely (albeit only in the short-term) to generate loses of around \$16 million. Given the current magnitude of Morocco's public procurements (estimated at roughly 5% of GDP or \$7 billion valued at purchasing power parity terms), the gains (in lower prices and reduced bribe payment concomitant with relatively closed procurements) are estimated at \$15 million. However, the cost of implementing the reforms envisioned in the new public procurement law range around \$31 million (including “paper work costs” of informing staff about tendering procedures, figuring out when purchases need to be made centrally, “disorganisation costs” of various types and other costs mentioned in the literature).⁴⁶ Indeed, in many cases, performance audits available for public institutions which adopted new national public procurement laws that the obligations imposed on these organisations had been violated and the cost of implementing such a policy outweighed the benefits in more efficient resource allocation, better quality goods and services and lower prices in the short-run.⁴⁷ However, because

⁴⁴ In comparison, Azerbaijan's action plan contains 202 points! *eg. Action Plan for the Implementation of the National Strategy on Increasing Transparency and Combating Corruption (2007-2011)*. As noted above, these generally large action plans fail to achieve their goal of reducing corruption.

⁴⁵ These calculations are similar cost-benefit analysis for Azerbaijan (which has roughly the same size of civil service, the same magnitude of bribery and same degree of centralisation of corruption). Moreover, these calculations assume that Morocco uses a risk-based method of auditing asset declarations. If the body in charge of auditing asset declarations tries for full coverage, the costs could be orders of magnitude higher! The methodology used to derive the costs of the asset declaration scheme and the expected social benefits as decreased in the incidence of bribe payments (as a function of decreased transaction specific risk of corruption) can be found at Michael and Polner *at supra* note 10.

⁴⁶ For example, the recent World Bank public sector reform project for Bangladesh cost roughly \$29 million (albeit for a much larger country) for two projects spanning over a 7 year period. See World Bank, PUBLIC PROCUREMENT REFORM PROJECT I&II.

⁴⁷ For a detailed analysis of the costs and benefits with public procurement reforms undertaken by the EU member states during their development of a common market, see EU, A REPORT ON THE FUNCTIONING OF PUBLIC PROCUREMENT MARKETS IN THE EU: BENEFITS FROM THE APPLICATION OF EU DIRECTIVES AND CHALLENGES FOR THE FUTURE, (2004). The real gains, experienced only many years after member states

most evidence is performance audit based (instead of econometrically or time-series based), the gain is certain to be positive over a long enough time horizon.

The money laundering law poses the greatest difficulty for cost-benefit estimation because most of these laws are relatively new.⁴⁸ However, given the likely magnitude of money laundering which occurs in Moroccan banks, the first high-return steps are likely to produce a social benefit of \$2.7 million. The Government, through a relatively effective money laundering surveillance, investigation and prosecution scheme, is likely to generate \$8.7 million from the discovery of illicit gains (from suspicious transaction declarations by complying banks) and the discovery of assets used in the commission of predicate offences (or during the layering or integration stages of the money laundering process). Balanced against such a gain is the \$10 million expense involved in setting up the financial intelligence unit and particularly the extra compliance costs involved for banks – which according to the KPMG Anti-Money Laundering Survey for 2007, has resulted in a 60% increase in costs of banks.⁴⁹

started implemented the relevant EU directives, came mostly from cross-border competition which lowered prices and helped provide effective oversight over domestic business-government relations.

⁴⁸ The Middle East & North Africa Financial Action Task Force (MENAFATF), despite three years of operation, has done relatively little in the area providing assessments of money laundering regimes in the region. To find which hole OECD member taxpayers throw half a million dollars into, see THIRD ANNUAL REPORT OF THE MIDDLE EAST & NORTH AFRICA FINANCIAL ACTION TASK FORCE, *available at*: <http://www.compliancealert.org/Linkcounter1.pdf>

⁴⁹ KPMG, ANTI-MONEY LAUNDERING SURVEY FOR 2007, *Available at*: <http://www.kpmg.co.za/images/naledi/pdf%20documents/global%20anti-money%20laundering%20survey%202007.pdf>

Figure 8: Overview of Moroccan Anti-Corruption Action Plan⁵⁰

Activity	Activity type	Institution	Expected cost	NET benefit ⁵¹
1- Deepening of ethical and moral values and norms				
Revision of the asset declaration law <ul style="list-style-type: none"> The law should cover government functions and civil servants at high risk of being engaged in corruption Implementation of the law should be decentralised⁵² 	Bill	MMSP / SGG ⁵³	\$23 million	-\$18 million
Approval of the money laundering law ⁵⁴	Bill	Justice / SGG Interior / Finances	\$8.7 million	\$2.7 million
Approval of the law mandating public agencies comply with administrative court rulings ⁵⁵	Bill	MMSP / Justice / SGG	\$20 million	\$9 million
Adoption of the law about government concessions and the delegated public service management	Bill	Finances and Privatisation	N/A	N/A
Putting into practice of institutional features of the competition law	Draft text ⁵⁶	Economic and General Affairs	N/A	N/A

⁵⁰ The English version of the action plan does not represent the official legal text and has been provided to help the English language reader understand the concepts contained in the plan. Estimates do NOT include opportunity costs of using state funds for other activities.

⁵¹ Net benefit is provided, gross benefits may be calculated by subtracting the expected cost from the net benefit to obtain a expected gross benefit.

⁵² The original text erroneously uses the word deconcentrated (as competencies rather than factors of production are to be devolved).

⁵³ MMSP refers to the Ministry of Public Sectors Modernisation and the SGG refers to the General Government Secretariat (roughly the equivalent of the Cabinet Secretariat). As the Action Plan does not mention the Central Agency, either the Action Plan precedes work on establishing the Central Agency, or the Action Plan assumes that anti-corruption work will be distributed to Central Agency member organisations and thus treats the Central Agency as a simple “pass-through” body.

⁵⁴ I obtained total foreign and domestic assets held in Moroccan banks from Table V of the most recent IMF Article IV consultation and assumed very conservatively that only 0.1% of all assets are involved in money laundering. IMF estimates for money laundering world wide place the aggregate sum at \$1 trillion. Most analysts (such as the US State Department) place Morocco on the money laundering source list. The expected cost of increased regulation stems from the usual market imperfections concomitant with increased reporting requirements and transactions costs imposed on banks. However, as Moroccan bank compliance with financial regulation is lax, such costs are not likely to be large in the short-run (these costs certainly do not approach a 60% increase in banking costs as estimated by the KPMG survey cited earlier).

⁵⁵ Estimates of costs derive from the establishment of a system of judicial surveillance, an effective performance internal audit department in the administrative court sector and the creation of the legal framework which provides for immunity from prosecution for actors who act (or fail to act) in compliance with administrative court decisions. Net benefits result from regression estimates related to the impact of a 1% improvement in the rule of law on economic growth.

Broadening competition for obtaining a public sector job Widening the call for applications for senior public sector jobs ⁵⁷	Executive decree	MMSP	N/A	N/A
Putting in practice of general framework of staff rotation ⁵⁸	Prime Minister Circular	MMSP	\$7 million	-\$6 million
2. Institutionalisation of the anti-corruption preventative strategy				
Putting in place of an organ of anti-corruption policy implementation and prevention ⁵⁹	Draft text	SGG	\$15 million	\$5 million
Making available to citizens telephone numbers, faxes and emails for complaining and making denouncements about corruption ⁶⁰	Operational measure	Unit responsible for follow up and preventing corruption	\$2 million	\$8 million
3- Reinforcement of transparency in the management of public procurement				
Adoption of text about public procurement: <ul style="list-style-type: none"> • reinforce transparency in the processing and execution of tenders • institute the advertising of tenders on the internet and their results specify in the PV the reasons for refusals in certain tenders ⁶¹	Draft executive decree	Public Procurement Commission	\$15 million	-\$16 million (qualified)
4- Improvement of implementation, control and audit systems				
Putting in place of a system of managerial control and establishing a functioning ministerial internal audit system ⁶²	Draft executive decree	Finances	\$5 million	\$10 million
Reinforcement of accounting principles Elaboration and publication of sectoral activity reports	Operational measure	Finances	N/A (vague)	N/A (vague)
5- Simplification of administrative procedures				
Putting in place of advice and information centres for citizens about	Operational	MMSP/ Relevant	\$7 million	\$13 million

⁵⁶ The draft text (*projet de texte*) represents the stage before (*projet de loi*) and represents the drafting stage before the first reading of a bill.

⁵⁷ Public sector human resource management issues are notoriously difficult to quantify.

⁵⁸ Estimates from 3 law enforcement agencies from countries in which the experts have worked in.

⁵⁹ Estimate derives from Twinning proposal from unnamed country, US law enforcement officials working on 2 year contracts with projects in two unnamed countries report similar budget estimates. Assuming investigatory and prosecutorial rates increase dramatically, a large financial gain can be expected if the “repressive” reform is carried out quickly before targets of the reform have time to adjust.

⁶⁰ These estimates have been taken directly from customs service of a country in which one of the experts has worked.

⁶¹ The evidence shows for the performance audits available for public institutions which adopted new national public procurement laws that the obligations imposed on these organisations had been violated and the cost of implementing such a policy outweighed the benefits in more efficient resource allocation, better quality goods and services and lower prices in the short-run. Because most evidence is performance audit based (instead of econometrically or time-series based), the gain is certain to be positive over a long enough time horizon.

⁶² Estimates derive from EU funded internal audit projects which the experts have participated in.

administrative procedures	measure (e-gov)	administrations		
Information for citizens and users about the procedures via internet and other means of information	Operational measure (e-gov)	MMSP/ Relevant administrations	\$100,000	\$500,000
Obligation to publish list of procedures for public services which specifies documents and other requirements as well as maximum waiting times ⁶³	Circular of Prime Minister	MMSP	\$300,000	\$2.5 million
Acceleration of the e-administration project	Operational measurement (e-gov)	MMSP	\$7 million	\$400,000
Adoption of the draft law about electronic signatures	Bill	Economic and General Affairs	\$0	\$0
6- Education, awareness raising and communication⁶⁴				
Elaboration of a set of activities informing the public about current anti-corruption measures	Operational measure	Justice / MMSP	\$50,000	\$-50,000
Making of a pedagogical kit and organising awareness raising campaigns in educational and training establishments	Operational measure	M.E.N	\$15,000	\$-15,000
Awareness raising campaign about the harms of corruption	Operational measure	MMSP / Communication	\$5,000	\$-5,000
Integration in continuous education (training) curricula of topics related to professional and moral integrity	Operational measure	Relevant ministries	\$5,000	\$-5,000
Communicating anti-corruption action plan and dialogue with civil society (associations, professional groups, etc.) about progress achieved	Operational measure	Justice / MMSP	\$12,000	\$-12,000

Source: author. N/A means that documents or other studies could not be obtained upon which to make a rough “back of the envelope” calculation.

⁶³ The simple benefit for the removal of transactions costs related to obtaining public services may be obtained by either calculating the hourly wage forgone of an individual engaged in bureaucratic procedures or the money the individual is willing to pay to forgo a particular administrative procedure (roughly \$500,000). As shown previously, survey data show few Moroccans are willing to engage in the latter (expressing a willingness to pay money to avoid a bureaucratic requirement), despite a relatively high bribery incidence. These two observations comprise a general empirical puzzle in anti-corruption research and practice with a range of explanations which will not be elucidated in this report. The relatively large magnitude for the net benefit derives from decrease in “rent seeking” (use of administrative barriers in order to coerce service users to pay bribes). The estimate assumes a 1% decrease in the World Bank’s Governance Indicators regulatory burden indicators and their effect on GDP (as measured by the previously mentioned regression analysis).

⁶⁴ Anti-corruption communication campaigns typically have a low or zero effect on bribe givers’ willingness to pay bribes (in the language of economics, this is measured as the elasticity of bribe incidence with respect to anti-corruption expenditure).

As these action plans have a roughly 10 year track record of implementation in other countries, an assessment of the specificity, relevance and “fit” of each action plan point can be conducted in order to determine the likelihood the action plan will succeed. Figure 9 compares the Moroccan national anti-corruption action plan with those of several comparator countries. Morocco’s action plan compares relatively well against its comparator countries.⁶⁵ While the Moroccan action plan is relatively un-ambitious and targets many areas may not be deemed as essential, the relative specificity of the action plan points suggests that the government policy has taken the very limited capabilities of the Moroccan executive into account. Despite the relatively well-conceived nature of the national strategy and action plan, the expected inability of the government to fund the plan make implementation unlikely.⁶⁶

Figure 9: The Moroccan Anti-Corruption Action Plan in a Comparative Perspective

	Specificity	Relevance	Goodness-of-fit	Summary
Morocco	3.7	3.2	3.8	3.4 (out of 5)
Ukraine	0	0	0	0 (out of 5)
Moldova	2.6	2.5	3.1	2.8 (out of 5)
Azerbaijan	2.1	2.0	2.1	2.1 (out of 5)

Source: Specificity refers to the extent to which Action Plan points define specifically actions to be taken by government authorities or other institutions (such as businesses or NGOs). Relevance refers to the extent to which the Action Plan point targets specifically corruption (instead of another objective like promoting democracy). Goodness of fit refers to the extent to which action plan points complement existing activities -- by promoting the completeness of the legal framework or addressing previously identified weakness (such as lack of provisions to conduct special investigations or controlled deliveries).

Legal Strategy: East Meets West in Morocco

Over the upcoming years, the Government of Morocco will need to decide which legislative strategy to choose as it adopts the range of anti-corruption provisions contained in the legal frameworks of its neighbours in the European Union (and elsewhere). The classical distinction between legislative strategies centres around the difference between Western European versus Eastern European styles. In the Western European model, the various anti-corruption laws (or legislative acts) are contained in various codes or as separate pieces of legislation.⁶⁷

⁶⁵ While these scores may seem relatively low, anti-corruption “action planning” in general has suffered from vagueness, generality and lack-of-fit in many countries (particularly those whose actions plans had been financed by one or more international donor organisations).

⁶⁶ A well known principle in public finance states that policies should be self-funding in that they either raise enough revenue to cover the cost of the programme or generate sufficient improvements in social welfare and the business environment in order to raise tax revenue by more than the programme’s cost. As mentioned above, the Central Agency alone is likely to cost the government \$70,000 per year with no appreciable income from such work. For ways which the US has used its anti-corruption work to generate finance for anti-corruption (particularly under its False Claims act), see Aron Petty, *How Qui Tam Actions Could Fight Public Corruption*, 39 U. MICH. JL REFORM 851, (2005).

⁶⁷ For a (somewhat dated) overview of anti-corruption legal work in Central and Eastern Europe, see EUMAP, *MONITORING THE EU ACCESSION PROCESS: CORRUPTION AND ANTI-CORRUPTION POLICY*, (2002). For the interesting case of Turkey (which has until recently pursued the Western European approach to

In the Eastern European model, legislatures – with the encouragement of donor funding – have tried to pass consolidated anti-corruption laws. Lithuania, Latvia, Poland, Ukraine, Moldova, Romania, and other countries exemplify this approach. In the Western European model (of which the USA and Canada are also examples), anti-corruption provisions are placed in various parts of law (or the United States Code in the case of the USA and in various Acts in the UK). Indeed, British prosecutors relied upon the Public Bodies Corrupt Practices Act from 1889, while the United States “although it holds itself out as an example for other nations to follow, [it] does not have a coherent set of domestic anti-corruption laws. Instead, one can best describe the federal law as a hodgepodge.”⁶⁸ The implicit strategy, which emerged in US law (much like former Soviet law), punished corruption as one instance of a misuse of public power.⁶⁹ The Western European approach has been seen as an organic approach whereas the Eastern European approach has been viewed more as an attempt to adopt rapid reform to legal systems in the process of “harmonising” with the EU.

Figure 10 provides an overview of the laws in place. As shown, within the Arab world, laws against corruption only appeared (in their modern incarnation) around the mid-2000s – as opposed to laws in Eastern Europe which appeared in the mid-1990s. While the Arab states’ control of corruption is overall lower than in Central and Eastern Europe (as shown in Figure 1), Jordan has an extremely strong anti-corruption framework in place, followed by Ukraine (if one believes the Global Integrity scores). Within the Arab world, only Jordan appears to have put in place an anti-corruption commission (though data from this part of the world are extremely sparse). In contrast, Central and Eastern Europe appear to be proceeding quickly with the establishment of anti-corruption agencies with some investigatory powers.

anti-corruption legislation), see Gune Okuyucu Ergun, *Anti-Corruption Legislation in Turkish Law*, 8 GERMAN LAW JOURNAL NO. 9, (2007)

⁶⁸ See Peter J. Henning, *Public Corruption: a Comparative Analysis of International Corruption Conventions and United States Law*, ARIZONA J. INT'L & COMP. L. 793 (forthcoming), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=298089 at 798).

⁶⁹ William A. Clark & Philip H. Jos, *Comparative Anti-Corruption Policy: the American, Soviet and Russian Cases*, 23 INT'L J. PUB. ADMIN. 101 (2000).

Figure 10: Comparison of Selected Provisions of Anti-Corruption Legislation in EU Neighbourhood and Arab states⁷⁰

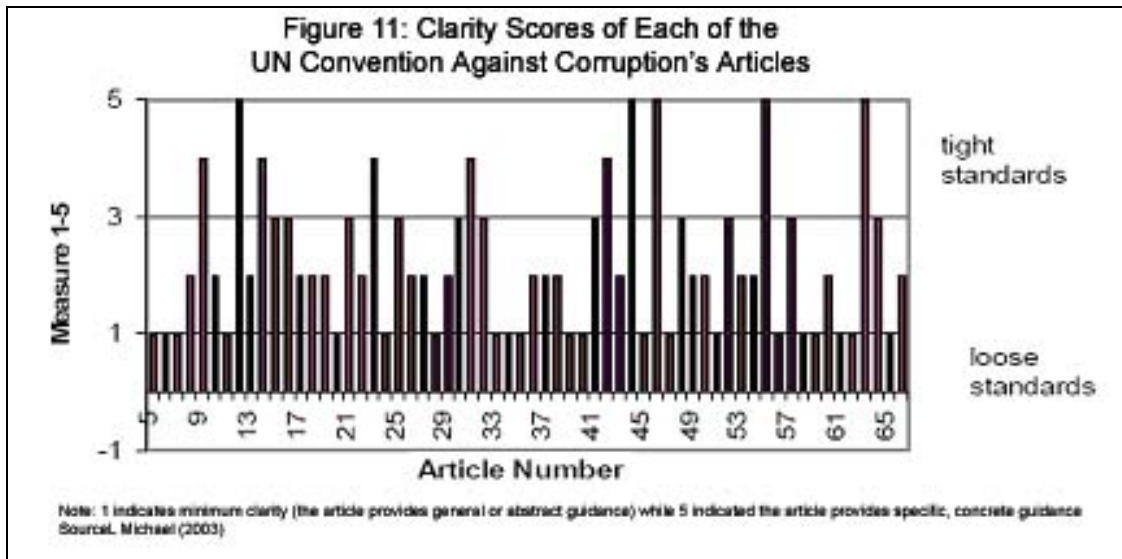
	Central Law	Criminal Law	Central Agency	GI score
Arab Countries				
Algeria	Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006	Title 4, Article 25, Section 1 & Article 52.	Inspection générale des finances (IGF), a division within the Bank of Algeria (Executive Decree No. 92-32 of 20 January 1992 Ministry of Economy JO N° 6 du 26 Janvier 1992).	59 (very weak)
Egypt	NO	Penalty law no. 58/1937, second book on the crimes and offenses damaging general welfare (articles 103-111).	No central agency, but laws establishing Government auditor (Law no. 144/ 1988), agency against illegal profit (Law no. 2/1977), law on administrative prosecution (Law no. 117/1958),	69 (weak)
Jordan	Law of the Anti-Corruption Commission # 62 of 2006 Article 5	Penalties Law #16 of 1960 and Economic Crimes Law # 11 of 1993	Law of the Anti-Corruption Commission #62 of 2006	94 (very strong)
Comparator Countries				
Moldova	Law on Corruption and Protectionism (No.900 of 27.06.1996)	Art.188/1 of the Penal Code (November 24, 1961)	Law on the Center for Combating Economic Crimes and Corruption (CCECC) (No.1104-XV of 06.06.2002)	67 (weak)
Ukraine	The 1995 Law on Fighting Corruption and "On urgent measures to Dshadow the economy and counteract corruption" (# 1615/2005).	Part 17 of the Criminal Code	The most recent incarnation of this agency appeared in early 2008 with another presidential declaration. The National Security and Defence Committee has legal authority of anti-corruption.	79 (Moderate)
Azerbaijan ⁷¹	On Combating Corruption, (13 January 2004)	Article number 33 of the Criminal Code	Law on the Anti-Corruption Department under the General Prosecutor	70 (Moderate)

Source: Global Integrity. Lebanon omitted due to problems with Global Integrity's assessment.

⁷⁰ For some reason, Global Integrity does not assess Morocco.

⁷¹ Global Integrity does not report the 1994 Anti-Corruption Law for some reason and misses the Law on the Anti-Corruption Department under the General Prosecutor. The Global Integrity reviewers are attributed too much weight to Ukraine's legal framework, seriously over-estimating the "strength" of the country's anti-corruption framework.

The Government of Morocco must choose a legislative approach – as simple ratification of the international anti-corruption conventions would be relatively useless without a ratifying legislation defining with more precision the various provisions contained in these conventions. The UN Convention Against Corruption represents an example of an international conventions with relatively vague provisions (as the OECD Convention and the Council of Europe conventions are more specific). Figure 11 reproduces an analysis (using the same assessment methodology as above) for each of the provisions contained in the UN Convention. As shown, the Convention contains a number of highly general or abstract admonitions which could represent drafting flaws -- or much more likely, the result of political compromise about a text which would be ratified by over 150 UN member states. Given the general nature of many of the UN Convention’s articles, specific legislation (or at executive agency regulation) is required in order implement the UN Convention’s general admonitions.



In some cases, legislation can be adopted which quickly, “where appropriate and in accordance with the fundamental principles of its legal system,” the provisions of the UN Convention.⁷² For example, article 8 requires signatory states to adopt codes of conduct while article 9 requires low corruption-risk public procurement procedures. In both cases, a number of countries have passed legislation implementing these provisions – article 8 usually appears as part of the Civil Service Act or the Anti-Corruption Law while article 9 appears as the public procurement law. In other cases, regulation within particular law enforcement agencies best implements the broad objective contained in the UN Convention. For example, article 10(b) encourages states to adopt “simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.” In this case, most ministries promulgate specific

⁷² The phrase “where appropriate and in accordance with the fundamental principles of its legal system” appears 33 times in the Convention, highlighting the importance of further legislative work in adopting the principles contained in the Convention. At present, many countries have simply passed a 2-3 line legislative act (being published in the Official Bulletin) stating that the country ratifies the UN Convention Against Corruption.

instructions (from the head of the agency or service) instructing staff to publish particular information on the internet. Especially in this area, Moroccan legal scholars and practitioners have much work to do.

Some of the priority areas for legislative reform have already been listed in Figure 4. The criminalisation of corruption needs to include all the physical and legal persons mentioned in the various international conventions. The number of non-criminal prosecutions (through the civil courts and in disciplinary proceedings) needs to significantly increase.⁷³ In matters of international co-operation, Morocco needs a “one-stop shop” which other countries’ prosecutors and investigators can go to when looking for evidence pertaining to cross-border corruption cases involving Moroccan citizens or companies. The national police, gendarmerie, customs and border guard should also institute corruption risk assessment methods and strengthen internal security (or internal affairs units) by devolving greater powers of investigation and prosecution (in cases which appear to involve non-criminal responsibility) – probably requiring a prime ministerial decree due to the cross agency nature of such rule-making.⁷⁴

As the Moroccan government has chosen to exclude any investigatory or prosecutorial powers from the Central Agency, the Central Agency should be charged with performance and compliance audits of the government’s anti-corruption programmes and policies.⁷⁵ The Central Agency should be independent of the government (in the present decree, the Prime Minister at present nominates staff and approves major Agency activities such as the publication of the annual report).⁷⁶ Such internal audit should produce recommendations which are binding on parties (or at least produce recommendations which executive agencies must by law respond to). Specific changes to the present decree (which can be found in Appendix 1) are provided below in Figure 12.

⁷³ For a discussion of the “growing pains” involving in adopting such provisions (in a common law context), see John Hatchard, *Recent Developments in the Laws on Corruption and the Regulation of Conduct in Public Life: Implications for Law Teachers and Legal Research in the Commonwealth*, 4 J. COMMONWEALTH L. & LEGAL ED. 2, (2006): 137 – 155.

⁷⁴ The executive wide adoption of such provisions poses interesting legal questions related to the delegation of authority to engage in anti-corruption law enforcement functions. The easiest solution comprises the adoption of a national anti-corruption law which devolves authority for internal security to executive agencies (and subject to the legislative framework already in place and particularly paying attention to the protection of both citizen and civil servant rights).

⁷⁵ Such an organisation would help bring Morocco to the same standard as other developing countries (particularly in the European Neighbourhood Policy region) which are implementing a system of internal audit. In effect, the present proposal would establish something akin to the US Inspector General system (but only focused on looking at the efficiency and effectiveness of anti-corruption).

⁷⁶ In almost all EU member states, the anti-corruption commission or agency is guaranteed independence from the government. For example, the 2005 Croatian Law on the Office for the Suppression of Corruption and Organised Crime does not directly provide for the independence of the office (the USKOK), but establishes it under the State Attorney’s Office (which is an independent entity). By contrast, the 2004 Azeri Law on the Department on Combating Corruption under the General Prosecutor’s Office does not provide for the independence of the agency (as the General Prosecutor is appointed by the President).

Figure 12: Summary of Changes to the Central Agency Decree

The Central Agency Decree should be amended as follows:.

Preamble – add “the agency shall be independent from the Prime Minister and any other state authority, have the right to use the state seal and establish relations with foreign institutions within its competence.”

Article 1 – “for the purposes of this decree, corruption shall be defined as per the UN Convention Against Corruption”⁷⁷

Article 2 – add after the extensive list of organisations “from the above list, civil society organisations must represent at least 60% of the institutions in the Plenary Assembly.”

Article 3 – remove the requirement that the Prime Minister approve of the Agency’s president and make nomination of the President based on majority vote of the Plenary Assembly.

Article 4 – add “the Central Agency shall conduct anti-corruption performance and compliance audits on state bodies with anti-corruption competencies whose recommendations shall be legally binding (or at least require the targeted institution to reply to the recommendation as is standard IAASB practice).”

Article 6 – add “the report should consist of an audit of anti-corruption activities and conform to IAASB standards” and add “the publication of the report on the Internet may be made at the Central Agency President’s discretion and need not incorporate any amendments made by the Prime Minister’s office or any other government entity.

Article 8 – add “minimum requirements for participation in the Plenary Assembly and the Central Agency shall include: a) the member is not under suspicion of engaging in corruption by any Moroccan law enforcement body, b) an obligatory fraud audit of their statutory asset declaration, and c) the President of the Central Agency shall have attended a course in performance and compliance audit (preferably with an anti-corruption focus) as well as attended at least one internationally recognised anti-corruption course.

Article 10 – add “appointment should be as majority vote of the Plenary Assembly” and remove the provision requiring Prime Ministerial appointment.

Article 14 – add “managers who fail to provide the Agency President with information shall be either: a) sanctioned according to the disciplinary measures outlined in the Civil Service Law (or code regulating the ministry where applicable), and/or b) the manager’s department be fined \$200 for failure to comply.”

Article 15 – remove requirement for Prime Ministerial approval of the Agency’s structure and working methods.

Article 16 (extra article) – add “The Central Agency shall be allowed to seek redress on behalf of the government for instances of corruption in Morocco’s civil courts (and administrative courts when wrongdoing involves public sector entities). In order to ensure the proper use of such authority, the Article 16 shall expire every two years, and be renewed upon favourable opinion rendered of an independent evaluator chosen by the Plenary Assembly.”

⁷⁷ The legality of the definition stems from the Kingdom’s adoption of the Convention last year.

Conclusion

Morocco's adoption of legislation focused on preventing corruption lags behind other similar countries (though its actual control of corruption rates higher than would be expected for a country of its level of economic development). In this respect, Moroccan anti-corruption efforts reflect the same trends as in other Arab legal systems. Thus, Morocco – in order to reduce corruption -- will thus either need to adopt an anti-corruption law or pass legislation making modifications to its criminal, civil and administrative codes (in line with EU member state experience). The recent decree on the Central Agency for the Prevention of Corruption provides a step in the right direction, though design flaws will require an amendment to the decree in order to make the Agency more effective by giving it the power to conduct performance and compliance audits (among other things). Such an Agency, if designed effectively, would be able help with the adoption of the wide range of other laws and regulations (many of which follow EU best practice). The result of the wide range of legislative reforms should be, if international experience serves as a guide, long-term expected reductions in the \$1.5 billion in bribes paid in the Kingdom each year.

Appendix 1: Decree 2-05-1228 of the 13 march 2007 instituting the Central Agency of Prevention of Corruption

The Prime Minister

Noting the Constitution, notably article 63;

After examination by the Counsel of Ministers reunited the 31 January 2007,⁷⁸

Decreases:

Article 1 – The Prime Minister establishes a Central Agency of Prevention of Corruption, hereafter named the “Central Agency”

For the purpose of the present decree, corruption consists of all the acts related with the traffic of influence or the use of public power for private gain, as they are defined in the penal code.⁷⁹

Dispositions related to the Central Agency⁸⁰

Article 2 – The Central Agency shall co-ordinate, supervise, and assure the implementation of policies aiming to prevent corruption in the public sector as well as collect and publicise information about these policies.⁸¹

To this end, the Central Agency is charged with:

- proposing to the government general policies related to preventing corruption, particularly involving co-operation in the fight against corruption between the public sector and the private sector,
- proposing measures of awareness raising among the public and organising information campaigns aiming at preventing corruption,
- contributing, in co-operation with the public administration and other concerned organisations, to the development of international co-operation in the area of preventing corruption,
- assuring the implementation and the evaluation of measures taken in order to implement government policy in the area of preventing corruption as well as addressing recommendations to the administration, public organisations, private enterprises, and other organisations which are involved in making policies related to preventing corruption,
- giving advice to administrative authorities about measures which can be taken to help prevent acts of corruption in the public sector,
- collecting all information related to corruption and managing such information in a database,
- informing the competent judicial authority about facts likely to constitute acts of corruption as defined and punished by the law.

⁷⁸ Islamic dates are not given in this translation

⁷⁹ The original text defines “detournement et concussion” without providing a formal definition of corruption. As such, I have tried to provide a definition which is likely to be in the penal code (though as the penal code is also not easily available in French, I have had to make a supposition based on international common practice in defining corruption offences.

⁸⁰ Subtitles added to assist reader organise concepts in the decree

⁸¹ These policies presumably are defined in the national anti-corruption strategy and action plan.

Article 3 – The Central Agency shall be composed of a Plenary Assembly, an Executive Commission and a General Secretary.

The Central Agency shall be presided over by an individual known for his or her competence, experience and probity, nominated by the Prime Minister for a non-renewable period of 6 years.

Dispositions related to the Plenary Assembly

Article 4 – The Plenary Assembly shall be charged with:

- proposing to the government a national strategy for preventing corruption, as well as proposing mechanisms to adopt in order to reduce corruption,
- recommending to the private sector measures to take to prevent corruption,
- giving advice to administrative authorities about measures which are likely to prevent acts of corruption,
- defining the Executive Commission’s work programme,
- evaluating activities undertaken to prevent corruption

Article 5 – The Plenary Assembly, which shall be presided over by the president of the Central Agency shall consist of, besides Ombudsman (*Wali-Al Madhalim*):

I – a member designated by each of the government authorities charged with: foreign affairs, interior, justice, habous property and Islamic affairs, public finance, the secretary general of the government, agriculture and fishing, employment, education, equipment and transport, health, communication, public sector modernisation, commerce and industry, national defence, environment, housing and urban affairs.⁸²

II – a representative from each of the following professional organisations: the association of the order of Moroccan lawyers, the represent of the federation of chambers of commerce industry and services, the notorial chamber, the national order of *adouls*, national order of accounting experts, general confederation of Moroccan enterprises, professional Moroccan banking group, the trade unions most representing workers, the association the most representative among those cited in the second bullet point section of the III point thereafter, and the national union of the Moroccan press.⁸³

III. The following associated members: 13 members nominated by the prime minister as follows:

- six members of civil society chosen for their activity in the fight against corruption
- three members of the associations working in the area of preventing corruption
- four members chosen among researchers-teachers known for the competence in the area of the fight against corruption.

The members of the plenary assemble shall be named for a duration of 4 years, renewable only once.

The Plenary Assembly may also include within its membership any person who can contribute to its work.

Article 6 – The Plenary Assembly may be convoked by the government for any question related to corruption.

⁸² *Habous* refers to a definition of property in Islamic property law whereby such property has restricted rights of sale and transfer in order to preserve the property for familial or social use. *Habitat et urbanism* has been defined as housing and urban affairs.

⁸³ *Adouls* refer to notaries as recognised under Islamic law.

The Plenary Assembly shall present an annual report about its work in preventing corruption and progress on previous recommendations to the Prime Minister.

This report should consist of proposals made to the government about preventing corruption as well as include an evaluation of the actions taken.

The Plenary Assembly shall publicise this report and provide for its publication. The Plenary Assembly shall be responsible for sending a copy of the report to the Minister of Justice. The Plenary Assembly may also publish all studies, advice or proposals in relation to the prevention of corruption.

Article 7 – The Plenary Assembly shall meet at least two times per year or by the request of the majority of its members,

The president of the Central Agency shall establish the Plenary Assembly's meeting agenda, in conformance with the objectives assigned to the Plenary Assembly as per article 2 above. The Central Agency's president shall submit this agenda to the Plenary Assembly.⁸⁴

The Plenary Assembly shall be quorate when two-thirds of its members are present. The Plenary Assembly shall take decisions by the majority vote of present members. In case of a tie, the president's vote decides the vote's outcome. If the meeting is inquorate, the Plenary Assembly shall meet after one calendar month.

Dispositions related to the Executive Commission

Article 8 – the Executive Commission shall be in charge of implementing, under the authority of the Agency's president, the tasks assigned to the Central Agency and shall assure the implementation of his or her decisions and recommendations.

To this end, the Executive Commission shall:

- centralise and process information related to acts of corruption brought to the attention of the Central Agency and inform the judicial authorities about these acts when these acts are likely to constitute acts of corruption punishable by law,
- establish and update a database related to corruption,⁸⁵
- develop actions which help co-ordination work aimed at preventing corruption between relevant administrative bodies,
- establish communication strategies and organise public awareness and information campaigns about preventing corruption.

Article 9 – The Executive Commission shall constitute, beside the president of the Central Agency, eight members chosen by the Plenary Assembly, in conformance with article 15 below.

The members of the Executive Commission shall include:

- four members designated by the government authorities defined in the first section of article 5 above,
- two members of the professional organisations mentioned in the second section of article 5 above,
- two members of the associations mentioned in the third section of article 5.

Dispositions related to the General Secretary

Article 10 – The president of the Central Agency shall be assisted by a Secretary General which shall be nominated by the Prime Minister.

⁸⁴ No deadlines are given in the original text. Presumably, the president of the Central Agency is required to submit this agency within a certain time before the Assembly's meeting.

⁸⁵ The original text refers to a database about the "phenomenon of corruption" which may refer to particular cases, to general theories and principles of corruption or other aspects of corruption.

The Secretary General shall manage, under the authority of the Central Agency president, the Central Agency's administrative functions, and shall conduct any work required for the preparation and organisation of Central Agency's work activities,

The Secretary General shall be responsible for the maintaining and storing Central Agency files and archives. He or she shall serve as the rapporteur during Plenary Assembly and Executive Commission sessions.

Final dispositions related to the Central Agency

Article 11 – in order to fulfil its legal obligations, the Central Agency's president may call upon experts and external service providers.

Article 12 – regional or local commissions be created by the president of the Central Agency, as necessary, who determines its composition and attributes, after agreement by the Plenary Assembly.

Article 13 – the Central Agency's personnel are all required to maintain the confidentiality of any acts of corruption and information in which acquire during the course of their work, except for information included in the annual report as required by article 6 of this decree.⁸⁶

Article 14 – the state administration and the administration of local collectivities must provide the Central Agency's president, upon his or her demand and by the deadline he or she gives, any documents or information, in conformance with the legal dispositions and regulations in force.

Article 15- The Central Agency's structure, activities and working procedures shall be determined by a regulation to be elaborated by the Plenary Assembly and submitted for the Prime Minister's approval.

Article 16- The Central Agency's finance for daily operations and equipment shall come from the budget of the Prime Minister's office. The Central Agency's president shall oversee and manage all Agency budgetary revenues and expenditures.

Article 17 – The present decree will be published in the Official Bulletin, executed in Rabat on the 13 march 2007.

Driss Jettou

⁸⁶ Presumably Moroccan law defines official state secrets and intelligence to be kept by law enforcement agencies which determines the types of information which may be included in the annual report. The decree does not make reference to external laws or rule-making.

Appendix 2: Criminal Provisions against Corruption contained in the Moroccan Criminal Code

Section IV: Offences related to Corruption and the Traffic of Influence⁸⁷

Article 248: **Applicable persons.**⁸⁸ For the individuals listed below,⁸⁹ whoever shall solicit or agree to offers or promises (of rewards), and whoever shall solicit or receive gifts, presents or other advantages shall be guilty of corruption and imprisoned from 2-5 years and fined between \$35 to \$666 US dollars:⁹⁰

1. judges, civil servants or persons holding an elected position – for a) acting or refraining from acting in his or her functions, justly or not, b) for activities which should not be remunerated; or c) for an act which is, or could have been, facilitated by the person's public sector job or function,⁹¹
2. mediator or nominated expert (whether appointed by an administrative or judicial authority or by the parties involved in a particular matter) -- take a decision or give a favourable or unfavourable opinion,⁹²
3. judge or a member of a jury -- decide either in favour or against a party,
4. doctors, surgeons, dentists, midwives -- falsely certify or hide the existence of illnesses, handicap, or pregnancy; or give deliberately false medical opinions about the cause of an illness, handicap or cause of death.

Article 249: **Definition of Offences.** Civil servants, candidates for civil service positions, or any person receiving any form of government remuneration, shall be guilty of corruption and imprisoned from 1-3 years as well as pay a fine of between \$35 to \$666 US dollars:

- a) if that person (either acting directly, through a third-person and unbeknown to and without the consent of his or her superiour)
- b) solicits, agrees to, offers, or promises gifts, presents, commissions, discounts, or mark-ups (whether they were actually received or not), in order to
 - i) engage in -- or refrain from -- an act related to his or her civil service job or

⁸⁷ The following represents a teleological translation of the original French text. As such, punctuation has been added which may aid the English language reader with the text. The authors of the French text have constructed the sentences using a number of predicate phrases, indirect verbs and run on sentences which would make a simple reading of the text extremely difficult. As such, the reader may not rely on this translation and should either consult the original French text or seek a literal translation of the text. For a brief explanation of the various methods of legislative, regulatory and other legal interpretation, see Marmor (2005).

⁸⁸ Article sub-titles are provided to allow the reader to scan the section quickly to look for the main idea and are not included in the original.

⁸⁹ Naturally, this introductory phrase does not appear in the original and has been added to assist the reader. The inclusion of such phrases not continue to be footnoted and the reader should consult the original text in case of doubt.

⁹⁰ The original text refers to 250 to 5,000 dirhams. As this translation will be used for a report which will age quickly, the dollar translation has been provided. As Morocco (like most countries) is now experiencing a period of inflation, the fixed fines in the Code will certainly need to be indexed to inflation.

⁹¹ The original text refers to « un acte qui, bien qu'en dehors de ses attributions personnelles, est, ou a pu être facilité par sa fonction. » I have removed the phrase “outside of [or aside from] its personal (natural) attributes” as the phrase is unclear (to me) in this context. The extensive use of numeration and letter bullet points stems from excessive use of predicate phrases in the original French.

⁹² As the context of Section 248(1) involves the exercise of public functions, it sub-section presumably does not cover frauds perpetrated in private dispute resolution.

ii) participate in an personal act aided by his or her civil service job.⁹³

Article 250: **Trafficking influence.** Any person shall be guilty of trafficking influence and will be punished from 1-5 years of prison or shall pay a fine of between \$35 to \$666 US dollars, who:

a) solicits, agrees to, offers or promises (corruption consideration),
b) solicits or receives gifts, presents, or other advantages, in order to obtain or attempt to allow himself or a third-party obtain :

- i) awards, medals, distinctions, or monetary awards,
- ii) places, functions, employment, or favours (however awarded by public authorities),
- iii) tenders, companies⁹⁴ or other profits resulting from agreements which are:
 - 1) concluded with government entities,
 - 2) with a state-controlled or regulated administrative body
- iv) or generally any favourable decision from a particular authority or administrative body (and thus abuse his or her influence either in practice or in appearance).

If the guilty party is a judge, civil servant or elected official, the **punishment shall be doubled.**⁹⁵

Article 251: **Provision for indirect corruption.** Whoever, in order to obtain an administrative act or the forbearance of an act, which is:

- i) one of the favours or advantages defined in articles 248 to 250
 - ii) obtained from actual deeds or the threat of an action,
 - iii) obtained from promises, offers, gifts or presents, or other advantages
 - iv) or given from solicitations for a corrupt transaction
- even if:

- 1) the participant did not initiate the corruption transaction
- 2) the constraint or corruption had not produced the desired result

will be punished in the same way as the person found guilty of corruption.

Article 252: **Traffic of influence offences.** In the case where corruption or the traffic of influence aimed at commission of another crime (as defined by the law), the party who is guilty of corruption or the traffic of influence shall be liable for criminal prosecution (and the ensuing punishments) **for the resulting crime.**⁹⁶

Article 253: **Reflection of sentencing.** When corruption involving a judge or a member of a jury in a criminal case results in a guilty verdict against the accused, the punishment shall be applied to the above mentioned individual(s) who participated in the act of corruption.⁹⁷

Article 254: **Personal judgements.** Any judge or administrative official who decided in favour of a party or though personal dislike against a person, shall be imprisoned for 6 months to 3 years and pay a fine of

⁹³ See 4. I have dealt with the problematic phrase by resorting to “a personal act”

⁹⁴ the receipt of a company is a problematic translation of the original – I have no answer to the this dilemma other than to flag it for the reader.

⁹⁵ Presumably the doubling of punishments only applies to Article 250, as other punishments are defined for judges, civil servants and elected officials later in the text. The net effect results in a greater punishment of the trafficking of influence than bribery, and a greater punishment for the civil servant than the private sector participant (violating equality before the law?).

⁹⁶ While the article clearly establishes the “pass-through” of criminal liability for the successor offence, the article does not make clear the applicable punishment (certainly not as clearly as Article 253 below). No provision is made for predicate offences.

⁹⁷ Morocco has not yet abolished the death penalty. The extent of such as “reflection” of invalid sentencing on judges remains to be tried in a Moroccan court. The original text refers to judges, members of juries or a “membre d'une juridiction.” In most texts, the jurisdiction is question is defined (civil, jurisdiction of a particular court, etc.). This text simply refers to a “member of the jurisdiction” and thus I have deleted this reference (as this is not a literal translation). The same applies to article 248(3) above.

between \$35 and \$133 US dollars.⁹⁸

Article 255: **Confiscation of “tainted” assets.** Items (or the value of those items) which have been transferred in a corruption transaction shall be confiscated and transferred under the control of the state treasury upon receipt of the appropriate judgement.⁹⁹

Article 256: **Lesser Offences.** In cases in which the judge applies misdemeanour or non-criminal punishment, the convicted party may lose one or more of the rights mentioned in article 40 of this code for a period lasting from 5 years to 10 years; he or she may be banned from public sector employment for 10 years or longer.

⁹⁸ The original text is asymmetric in that it mentioned unfavourable rulings resulting from antipathy but not favourable rulings stemming from sympathy.

⁹⁹ The translation of this point has required a theory of property rights (that the Treasury has the right to hold non-monetary assets) and that a court order is required for such a confiscation. The French text simply notes that the Treasury gets the items (or their value)... “by judgement.”