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Public Anticorruption in Morocco and Tunisia: A Comparative Study

I. Introduction

In December 2010, Mohamed Bouazizi, an obscure Tunisian street vendor set himself on fire as a sign of public protest.¹ This seemingly insignificant incident in a small town in Tunisia would lead to the Arab Spring and the overthrow of the Tunisian government.² Bouazizi's act of self-immolation was not meant to spark public protests that spread across North Africa and the Middle East and overthrew governments. It was merely his response to public corruption, which the academic literature and this paper defines as "the abuse of public office for private gain."³ For years, corrupt government officials and police officers in Bouazizi's home town of Sidi Bouzid regularly forced him to pay bribes.⁴ When Bouazizi refused, they seized or destroyed his goods. After racking up considerable debt to offset his losses from the bribes and confiscated goods, Bouazizi's goods were confiscated by police asking for a bribe for a final time.⁵ After petitioning the local government to return his items and receiving no answer, Bouazizi believed that it was impossible to make a living in Tunisia and self-immolation was his only possible response.⁶

¹ Peter Beaumont, *Mohammed Bouazizi: The Dutiful Son Whose Death Changed Tunisia's Fate*, THE GUARDIAN (January 20, 2011), available at <https://www.theguardian.com/world/2011/jan/20/tunisian-fruit-seller-mohammed-bouazizi>.

² Marc Fisher, *In Tunisia, Act of One Fruit Vendor Sparks Wave of Revolution Through Arab World*, THE WASHINGTON POST (March 26, 2011), available at https://www.washingtonpost.com/world/in-tunisia-act-of-one-fruit-vendor-sparks-wave-of-revolution-through-arab-world/2011/03/16/AFjfsueB_story.html.

³ Corruption Action Plan Working Group, "Helping Countries Combat Corruption: The Role of the World Bank," Poverty Reduction and Economic Management Network, World Bank, 8, September 1997, available at <http://www.worldbank.org/publicsector/anticorrupt/corruptn/corrptn.pdf>.

⁴ Lin Noueihed, *Peddler's Martyrdom Launched a Tunisia's Revolution*, REUTERS (January 19 2011), available at <https://af.reuters.com/article/libyaNews/idAFLDE70G18J20110119>.

⁵ *Id.*

⁶ *Id.*

Dealing with public corruption is a part of life for many in North Africa. And, this type of rampant corruption leads to two significant negative effects that threaten to cripple the developing countries in the region. The most obvious negative effect of corruption is economic loss. A World Bank study found that some North African countries lose the equivalent of two percent of GDP per year because of corruption.⁷ This economic loss occurs because public procurements are awarded to undeserving businesses through a system of *masta*—an Arabic word meaning patronage or a special influence through connections⁸—or bribery, foreign investors are deterred from investing in these countries with high levels of public corruption,⁹ and many economic transactions result in money being siphoned to the state.¹⁰ Although the economic consequences from public corruption can be severe, the most pernicious effect of corruption is the erosion of trust between the public and the government. When citizens are forced to pay bribes for government services, to avail themselves of a biased judicial system, or to cede job or government contract to well-connected individuals, their faith in government institutions wanes. This may result in a dramatic regime change like Tunisia or

⁷ Sarah Yerkens, *Corruption, Not Terrorism, is Tunisia's Biggest Threat*, CARNEGIE EUROPE (December 8, 2017) (“A World Bank study estimated that in the decade before the revolution, Tunisia lost on average an amount equivalent to about 2 percent of its GDP per year due to corruption.”); See Bob Rijkers, Caroline Freund, & Antonio Nucifora, *All in the Family: State Capture in Tunisia*, The World Bank, March 2014; See also, *Corruption, Tax Evasion, Criminal Activity Cost Tunisia \$1.16 Billion Per Year*, GLOBAL FINANCIAL INTEGRITY, Jan. 15, 2011, <https://www.gfintegrity.org/press-release/corruption-tax-evasion-criminal-activity-cost-tunisia-us1-16-billion-per-year-2000-2008/>

⁸ See generally, Andy Barnett, Bruce Yandle, & George Naufal, *Regulation, Trust, and Cronyism in Middle Eastern Societies: The Simple Economics of “Wasta”*, 44 J. OF SOCIO-ECONOMICS 41 (2013).

⁹ The reason for this is two-fold. First, companies are concerned about the high cost of doing business in countries where officials expect to receive bribes or kickbacks. Second, and perhaps more importantly, companies are wary of foreign regulators, such as U.S. regulators through the Foreign Corrupt Practices Act or U.K. regulators through the UK Bribery Act, using the domestic laws of those countries to prosecute businesses that pay bribes abroad.

¹⁰ Sarah Yerkens, *Corruption, Not Terrorism, is Tunisia's Biggest Threat*, CARNEGIE EUROPE (December 8, 2017) (“In a corrupt economy, every economic transaction has a corruption tax—an amount of money that is being siphoned away from the state.”).

it may lead to protests in the street calling for reform like in Morocco.¹¹ Either way, public corruption clearly has a corrosive effect on people's belief in their government.

Of the North African countries only two, Morocco and Tunisia, recognized public corruption as a major problem and made efforts in the past ten years to address it. Both countries have enacted recent reforms that are worthy of greater study including asset declaration laws, whistleblower protections, and new commissions to investigate and report on public corruption. These reforms have been recognized by independent observers and as a result Morocco and Tunisia have both seen positive results in Transparency International's Corruption Perception Index, which ranks countries from least to most corrupt.¹² Since 2014, Morocco has risen eighteen spots and Tunisia has risen four spots on the annual rankings.¹³ In 2018, Morocco and Tunisia were tied as the 73rd least corrupt countries in the world.¹⁴ However, although many of their reforms have been similar, Morocco's and Tunisia's anticorruption regimes are different in a number of crucial respects, mostly relating to their different forms of government.¹⁵ This paper will explore the differences and similarities between the current anticorruption efforts in Morocco and Tunisia.

Section II will examine how public corruption manifests itself, the root causes of public corruption, and the history of public corruption and the government's response in each country. It will then discuss the current state of public corruption in Morocco and Tunisia. Section III will

¹¹ Eric Andrew-Gee, Making Sense of Tunisia, *The New Republic* (January 16, 2011) (arguing along with Harvard professor William Granara that the corruption of the ruling family in Tunisia was largely responsible for the revolution.).

¹² *Corruption Perceptions Index: Overview*, TRANSPARENCY INTERNATIONAL, available at <https://www.transparency.org/research/cpi>.

¹³ CORRUPTION PERCEPTIONS INDEX 2018, TRANSPARENCY INTERNATIONAL (2018), available at <https://www.transparency.org/cpi2018>; CORRUPTION PERCEPTIONS INDEX 2014, TRANSPARENCY INTERNATIONAL (2014), available at <https://www.transparency.org/cpi2014>.

¹⁴ CORRUPTION PERCEPTIONS INDEX 2018, TRANSPARENCY INTERNATIONAL (2018).

¹⁵ Tunisia's government is best described as a parliamentary democracy, while Morocco's government is best described as a constitutional monarchy in which the monarch still retains a significant amount of constitutional and political power.

analyze the similarities and differences between the current anticorruption regimes and hypothesize on why these similarities and differences have developed.

II. Political Corruption and the Government's Response in Morocco and Tunisia

Public corruption remains a problem in North Africa.¹⁶ Of the six countries that comprise the region, Transparency International's Corruption Perception Index¹⁷ ranks only two in the top half of the least corrupt nations in the world, while two other North African countries are in the bottom ten percent.¹⁸ The two North African countries in the top half of the Corruption Perception Index, Tunisia and Morocco, have adopted reforms in the last ten years to address corruption.¹⁹ This section will look at the both countries in turn, focusing on the types of public corruption that appear in each country, how public corruption and public graft have historically impacted the country, and then exploring the recent reforms that have led Morocco and Tunisia to be considered the least corrupt in the region.

A. Morocco

a. The Manifestations of Public Corruption in Morocco

Public corruption takes on many different forms in Morocco. It manifests itself in the form of the expectation of bribes for public licenses, a lack of independence within the judiciary, and a

¹⁶ This paper will define North Africa as including the countries of Algeria, Egypt, Libya, Morocco, Sudan, and Tunisia.

¹⁷ The Corruption Perception Index "ranks 180 countries and territories by their perceived levels of public sector corruption according to experts and businesspeople." Transparency International, Corruption Perceptions Index 2018, *available at* <https://www.transparency.org/cpi2018>

¹⁸ Tunisia and Morocco are in the top half of the least corrupt countries in the world. They are tied for 73rd in the world. Meanwhile, Libya and Sudan rank are the two most corrupt countries in the region. Libya ranks 170 out of 180 countries on the corruption perception index, while Sudan ranks 172. Transparency International, Corruption Perceptions Index 2018, *available at* <https://www.transparency.org/cpi2018>.

¹⁹ Transparency International, Corruption Perceptions Index 2018, *available at* <https://www.transparency.org/cpi2018>.

significant allocation of state resources to those within the king's orbit.²⁰ Although the manifestations of public corruption are varied and at times difficult to fully capture in discreet categories, the underlying reasons for public corruption's foothold in Morocco are fairly straightforward.

There are three basic reasons for public corruption in Morocco. The first reason for the prevalence of public corruption in the kingdom is that a culture of impunity and economic benefaction for individuals and families in positions of power and close to the monarch continues to thrive.²¹ These well-connected officials have reportedly received numerous illicit benefits from the government including receiving state-owned land parcels for less than ten percent of its actual value.²²

Another driver of public corruption in Morocco comes from the Morocco's intermingling of the political and economic spheres.²³ This is likely the result of the rentier economy, which is an economic system where a state receives a portion of its revenues from natural resources that best characterized the Moroccan economy until the late-1990s when the economy began to liberalize and diversify.²⁴ Although the economy has begun to liberalize, an important aspect of the rentier economy still remains. The monarch and those connected to the palace still maintain significant influence in Morocco's economy.²⁵ Since Morocco gained independence from France, the "monarch

²⁰ Morocco Corruption Report, GAN INTEGRITY, *available at* <https://www.business-anti-corruption.com/country-profiles/morocco/>.

²¹ Abderrahim Chalfaouat, Corruption is Crippling Morocco's Nascent Democracy, Middle East Monitor (August 5, 2016), *available at* <https://www.middleeastmonitor.com/20160805-corruption-is-crippling-moroccos-nascent-democracy/>.

²² Id.

²³ Denoëux, *Corruption in Morocco: Old Forces, New Dynamics and a Way Forward* at 138.

²⁴ Myriam Catusse, *Morocco's Political Economy*, HAL 2 (January 10, 2011), *available at* https://halshs.archives-ouvertes.fr/file/index/docid/553994/filename/CATUSSE_Moroccoa_s_political_economy.pdf.

²⁵ Guilain P. Denoëux, *Corruption in Morocco: Old Forces, New Dynamics and a Way Forward*, 14 Middle East Policy Council 134, 136 (Winter 2007).

has been the country's main entrepreneur as well as its largest landowner.²⁶ The monarch's involvement in economic life has not diminished in recent years. The royal family is still the primary shareholder in Morocco's largest corporation.²⁷ And, commentators insist that "the dominant perception in the kingdom is that there is more wheeling and dealing than ever before by the monarchy itself."²⁸ Because the largest economic actors in Morocco also exert the most political power, the threat of public corruption or unlawful favoritism toward the royal family's companies is constant.

Finally, there is a large and pervasive parallel economy that encourages corruption throughout the public sector.²⁹ One study estimated the size of the parallel economy from 1999–2015 to be equivalent to 42.9% of Morocco's 2015 GDP.³⁰ To maintain a parallel economy of this size, public corruption such as bribes to police, judicial officials, and government administrators is required.³¹ The drug trade, which is largely centered around the growth and exportation of cannabis in the northern regions of the country and some estimates claim is responsible for \$10 billion dollars in revenue every year, has been described by the United Nations: Office on Drugs and Crime as having a "strong corruption leverage" in Morocco.³² Thus, the drug trade and other industries in the parallel economy contribute to the culture of public corruption in Morocco.

Having discussed the forces at play that lead to corruption, it is necessary to get an idea of the types of corruption that are prevalent in Morocco before moving on to a discussion of how

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Denoex, *Corruption in Morocco: Old Forces, New Dynamics and a Way Forward* at 139.

³⁰ Bourhaba Othmane & Hamimida Mama, An Estimation of the Informal Economy in Morocco, 8 *International Journal of Economics and Finance* 140, 144 (2016).

³¹ Denoex, *Corruption in Morocco: Old Forces, New Dynamics and a Way Forward* at 139.

³² Mehdi Ali, Wolfgang Schiefer, & Camilla Lai, *Morocco: Country Profile on Drugs and Crime*, United Nations Office on Drugs and Crime, 16 (2003).

Morocco has attempted to combat public corruption. There are four general types of public corruption in Morocco. The first category involves corruption in the justice system. This type of corruption involves both a “lack of independence” and a system of bribery in the judiciary and rampant corruption in the police sector.³³ In terms of the judiciary, many Moroccan’s view judges as not professional and beholden to the monarch or the current government.³⁴ And, two-thirds of Moroccan households have paid bribes to a court.³⁵ Turning to the police sector, forty percent of households reported that they paid a bribe in 2015, and police rarely face legal or professional consequences for these acts of corruption.³⁶ Corruption in the justice system is especially prevalent, in the northern regions of the country, where the parallel economy from the drug trade is robust.³⁷

Second, land, tax, and customs officials often ask for bribes or kickbacks. Third, public procurements are greatly afflicted by bribery and patronage. According to the Business Anti-Corruption Portal’s Morocco Corruption Report, twenty percent of companies “expect to give gifts to officials in return for a construction permit and thirty percent of companies “expect to give gifts to tax officials.”³⁸ The 2015–2016 Global Competitiveness Report on Morocco found that businesses often provide bribes to government officials to receive public licenses.³⁹ But, patronage might be an even bigger issue as companies controlled by the monarch or the elite are often awarded government contracts regardless of the quality of the bid.⁴⁰

³³ Morocco Corruption Report, GAN Business Anticorruption Portal, *available at* <https://www.business-anti-corruption.com/country-profiles/morocco/>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ THE GLOBAL COMPETITIVENESS REPORT 2015–2016, MOROCCO, WORLD ECONOMIC FORUM, *available at* <http://reports.weforum.org/global-competitiveness-report-2015-2016/>.

⁴⁰ *Id.*

Finally, there is a system of economic patronage that favors those businesses, families, and individuals that have close ties to the monarchy or other government officials.⁴¹ One area where this had traditionally been most prevalent was in the Moroccan military, where the military budget was obscured from parliamentary review and only needed the approval of the monarch.⁴² Under this system, it was not uncommon for career military leaders who were favored by the king to amass large fortunes.⁴³

These four basic types of corruption are what the Moroccan government has tried to curb—at least nominally—in the past two decades. But, because the three underlying factors leading to corruption in Morocco remain prevalent and virtually unchanged by the reform efforts, the results of the Moroccan reforms have been largely underwhelming.

b. Historical Development of Public Anticorruption Law in Morocco

Morocco's history of anticorruption policy falls into four distinct time-periods with a gradual progression toward reform occurring as the kingdom advances through each period. The first period of anticorruption is prior 1998 when there simply was no public effort to fight corruption in Morocco. This was in spite of the numerous anticorruption laws that were implemented throughout this period. Today, Morocco cites to a number of the laws passed during this period to demonstrate compliance with the United Nations Convention Against Corruption including a 1963 law

⁴¹ Blanca Camps-Febrer, *Layers of Security: The Security Sector and Power Struggle in Morocco*, 12 CONTEMP. ARAB AFF. 107 (2019).

⁴² *Id.*

⁴³ In a diplomatic cable sent from the United States Ambassador to Morocco Thomas T. Riley to the Secretary of State's Office and leaked by WikiLeaks, Ambassador Riley states that the single biggest challenge the Moroccan military faces is internal corruption. He then details "credible reports" of commanders using their positions to extract bribes from military contractors and live a "lavish" lifestyle from the profits off of those bribes. See Thomas T. Riley, "Morocco's Military: Adequate, Modernizing, but Facing Big Challenges" (August 4, 2008), available at <https://web.archive.org/web/20111216055417/http://www.dazzlepod.com/cable/08RABAT727/>. Blanca Camps-Febrer, *Layers of Security: The Security Sector and Power Struggle in Morocco*, 12 CONTEMP. ARAB AFF. 107 (2019).

prohibiting the bribery of domestic and foreign public officials and a 1958 law requiring the immediate suspension of public officials that have been convicted of bribery.⁴⁴ Despite these anticorruption laws on the books, these provisions were rarely enforced and public corruption ran rampant during these periods. Commentators insist that before 1995 “the word corruption was deliberately avoided in public debates” and a mere mention of corruption in the public sphere would have been considered “taboo.”⁴⁵ Around 1995, this trend began to gradually change as non-governmental organizations, such as Maroc 2020 and Transparency International, began to push for reform and brought a conversation about corruption to the public sphere.⁴⁶ However, it was not until 1999 that the Moroccan government showed a willingness to speak about and attempt to address the issue.

The second period of anticorruption was ushered in by the Socialist Prime Minister, Abderrahmane El Youssoufi, who became Prime Minister in 1998.⁴⁷ During this period, anticorruption became a political issue that was discussed openly, but the government did little work to actively prevent corruption or seriously punish those involved with it.⁴⁸ After El Youssoufi’s Socialist Party lost seats in the 2002 election, King Mohammed VI appointed Driss Jettou, a palace

⁴⁴ COUNTRY REVIEW REPORT FOR MOROCCO 2015, UNITED NATIONS OFFICE ON DRUGS AND CRIME, 15, 38 (2015).

⁴⁵ Guilain Denoeux, *The Politics of Morocco’s “Fight Against Corruption”*, MIDDLE EAST POLICY 165, 167 (2000); Mohammed Berraou, *The Limits of Anti-Corruption Policies in Morocco*, MOROCCAN INSTITUTE FOR POLICY ANALYSIS (March 7, 2019), available at <https://mipa.institute/6551> (“Until the second half of the 1990s, speaking of corruption had been a taboo in official Morocco.”).

⁴⁶ *Id.*

⁴⁷ Nazar al-Aly, *Politics-Morocco: Corrupt Officials Receive Heavy Sentences*, INTER PRESS SERVICE (April 30, 2001), available at <http://www.ipsnews.net/2001/04/politics-morocco-corrupt-officials-receive-heavy-sentences/>.

⁴⁸ Mohammed Berraou, *The Limits of Anti-Corruption Policies in Morocco*, MOROCCAN INSTITUTE FOR POLICY ANALYSIS (March 7, 2019) “However, El Youssoufi did not announce any offensive strategy in the fight against corruption, although his era witnessed the birth of the National Charter for good governance and the launch of a national plan to promote transparency and integrity in public administration.”)

loyalist with no party affiliation.⁴⁹ Even though Morocco signed and ratified the United Nations Convention Against Corruption during the Jettou government, it is universally believed that Morocco's anticorruption policies took significant steps backwards during this period. Jettou, as a loyalist to the crown and the appointee of the king, was able to delay the implementation of many of the anticorruption policies that El Youssoufi had pushed to implement.⁵⁰ This led to a significant backslide in the Morocco's Corruption Perception Index ranking.⁵¹

The third period of anticorruption began with the Abbas El Fassi government.⁵² In the 2007 elections, El Fassi's Istiqlal Party added four seats in parliament to amass a plurality, and King Mohammed VI asked El Fassi to form a government.⁵³ One of El Fassi's primary focuses immediately after the election was curbing corruption.⁵⁴ Immediately after forming the government, parliament announced through the Official Bulletin, an official periodical that publishes public and legal notices in Morocco, that Morocco would make a considerable effort to conform its anticorruption efforts to the United Nations Convention Against Corruption.⁵⁵ To meet this ambitious goal the El Fassi government activated the Court of Accounts to oversee corruption regarding public funds.⁵⁶ The Court of Accounts proved to be a valuable asset in fighting corruption

⁴⁹ *Id.*

⁵⁰ *Morocco's Poor Show*, *The Economist* (September 11, 2007), available at <https://www.economist.com/news/2007/09/11/moroccos-poor-show>.

⁵¹ Mohammed Berraou, *The Limits of Anti-Corruption Policies in Morocco*. (“[T]hroughout the period of the Jettou government (2002–2007), the Moroccan ranking has been steadily declining. Notwithstanding the fact that this period marked Morocco's signature of the International Convention against Corruption (2003) and its ratification on 9 May 2007.”).

⁵² *Id.*

⁵³ *Morocco Nationalists Win Election*, BBC (September 10, 2007), available at <http://news.bbc.co.uk/2/hi/africa/6982843.stm>.

⁵⁴ *Id.*

⁵⁵ Mohammed Berraou, *The Limits of Anti-Corruption Policies in Morocco*.

⁵⁶ *Id.* (“This phase has also witnessed a major event: the activation of the role of the Moroccan Supreme Audit Institution (also known as the Court of Accounts) in addressing mismanagement and misuse of public funds.”).

in Morocco. It was able to investigate, report, and impose civil fines on public officials and organizations that violated Moroccan bribery and anticorruption law.⁵⁷ The Court of Accounts also had the power to refer criminal cases to Moroccan prosecutors, and it did this fairly successfully during the El Fassi government.⁵⁸

Despite the success of the Court of Accounts, Morocco's Corruption Perception Index remained relatively the same.⁵⁹ There was a need for more significant changes. This leads us to the modern period of anti-corruption in the Morocco.

c. Current State of Public Anticorruption Law in Morocco

Since the ratification of the 2011 Constitution, Morocco has made its most significant efforts to address the public corruption issues that have long plagued the kingdom. But, most outside observers and commentators are still dissatisfied with Morocco's progress insisting that once again the kingdom's anticorruption rhetoric and policies do not align with its execution. The critics point out that the King and those in the palace's orbit continue to delay the implementation of anticorruption apparatuses and those apparatuses that have been implemented continuously fail to effectively carry out the law. Despite these critiques there may be reason to believe that Morocco's anticorruption enforcement is beginning to become more aligned with the country's anticorruption rhetoric and the anticorruption laws that have been passed. This is a phenomenon that was difficult to envision twenty-five years ago when the word corruption was not uttered in the public sphere out of fear of retribution.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* (“Although Morocco has not improved its global ranking, the main shift in the country's strategy in the fight against corruption has been the practical activation of the Court of Accounts...”).

During the Arab Spring, Moroccans took to the street to petition the government for more rights, economic and educational reforms and more effectively implemented anticorruption measures. Unlike other Arab nations, the Moroccan protesters did not not openly advocate for the overthrow of the regime. The Moroccan monarchy still enjoys significant approval from the public. King Mohammed VI acted quickly immediately proposing constitutional reforms that ostensibly ceded some of the power the monarch retained to the democratically elected parliament.

Since the implementation of the 2011 Constitution, there have been a three major legal reforms. First, Morocco adopted important whistleblower protection legislation in 2011.⁶⁰ This law brought Morocco in line with the international community on the best practices for protecting whistleblowers.⁶¹ Second, Morocco addressed issues surrounding public procurements in 2014 when it passed new legislation that led to the implementation of internationally recognized best practices in the public procurement sector.⁶² The reform led to the development of a national procurement training strategy, a central procurement policymaking body, and an online system to help simplify the procurement process.⁶³ The legislation also established an independent body to review any company grievances surrounding the issuing of public procurements.⁶⁴

Third, Morocco enacted an access to information law in 2018.⁶⁵ The law, which is similar to the Freedom of Information Act in the United States, allows Moroccans to petition the government

⁶⁰ *Morocco: Whistleblowing Overview*, Transparency International, 3 (2016) (describing Morocco's Whistleblower protection law passed in 2011 to comply with the United Nations Convention on Corruption) *available at* https://www.transparency.org/whatwedo/publication/morocco_whistleblowing_overview.

⁶¹ *Id.*

⁶² *Morocco Corruption Report*, BUSINESS ANTI-CORRUPTION PORTAL, *available at* <https://www.business-anti-corruption.com/country-profiles/morocco/>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Morocco's parliament adopted an access to information law in February 2018. *Freedom in the World 2019: Morocco*, FREEDOM HOUSE (2019), *available at* <https://freedomhouse.org/report/freedom-world/2019/morocco>.

to receive access to certain government documents.⁶⁶ Passing this law ensured that Morocco was in greater compliance with the United Nations Convention Against Corruption, which requires its signatories to guarantee their citizens the right to access information from their government.⁶⁷

In addition to these major reforms, the monarch seems to have become a vocal proponent of anticorruption policies and good governance. In 2017, King Mohammed VI spoke fervently in favor of government accountability insisting that it was past time for corrupt individuals to be thrown out of office and positions of leadership.⁶⁸ He followed up this throne day speech by dismissing a number of high ranking officials.⁶⁹ However, it remains to be seen whether these acts are a sign of the monarchs new approach to corruption or merely actions that serve as a show for the people of Morocco and the international community.

B. Tunisia

a. The Manifestations of the Public Corruption Law in Tunisia

Similar to Morocco, Tunisia's public corruption manifests itself in a multitude of ways. But, unlike Morocco, where the primary drivers of corruption have remained relatively consistent over the past twenty years, Tunisia's corruption was initially driven by the mafia-style Ben Ali government.⁷⁰ His regime ran rampant with corruption, but the corruption was incredibly concentrated. Only those within the Ben Ali inner circle profited significantly off of the public

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Said Tamsami, *Morocco: Time For Accountability Has Arrived*, *Eurasia Review* (October 28, 2017), available at <https://www.eurasiareview.com/28102017-morocco-time-for-accountability-has-arrived-oped/>.

⁶⁹ *Id.*

⁷⁰ Colin Freeman, *Tunisian President Zine el-Abidine Ben Ali and His Family's 'Mafia Rule'*, *THE TELEGRAPH* (January 16, 2011), available at <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/tunisia/8261982/Tunisian-President-Zine-el-Abidine-Ben-Ali-and-his-familys-Mafia-rule.html>.

corruption.⁷¹ Although there was a significant amount of corruption during this period, it was so centralized and well-organized that many Tunisians did not experience corruption on a daily basis.

However, since Ben Ali fled the country in 2011, corruption has, in the words of head of the Tunisia's National Anti-Corruption Authority, Chawki Tabib, "democratized."⁷² It is no longer a mafia-style rule, instead there is wide-spread petty corruption without a central figure at the head. Tunisians are reporting that since democratizing, they are experiencing more corruption in their day-to-day life.⁷³ Without the Ben Ali family serving as the strong central force to keep lower officials in line, petty officials seem to have taken it upon themselves to extract bribes and other forms of payment from individuals and businesses that they exercise jurisdiction over. This type of petty corruption may not create the serious issues that affect the core of government, like the corruption in the Ben Ali regime did, but rampant petty corruption leads to a perverse chipping away of people's trust in government.

Having discussed the reasons for corruption during the Ben Ali era and after the democratic revolution, it is necessary to look at the types of corruption that currently plague Tunisia. First, like Morocco, bribery in customs administration, land administration, and tax administration run rampant in Tunisia.⁷⁴ One in ten businesses report that they expect to pay bribes to either land administration officials or customs administrations officials to get basic government tasks accomplished.⁷⁵ Although bribery does not appear to be a major issue within the tax administration, businesses and individuals report that a culture of favoritism has developed in this government

⁷¹ *Id.*

⁷² *Tunisia's Fight Against Corruption: An Interview with Chawki Tabib*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (May 11, 2017), *available at* <https://carnegieendowment.org/sada/69939>.

⁷³ *Id.*

⁷⁴ *Tunisia Corruption Report*, BUSINESS ANTI-CORRUPTION PORTAL, *available at* <https://www.business-anti-corruption.com/country-profiles/tunisia/>.

⁷⁵ *Id.*

agency. This leads to instances where some businesses or individuals feel empowered to skirt the tax rules, while the less connected can often feel like they are being targeted by tax officials.⁷⁶

Second, basic public services have become increasingly corrupt since Tunisia ousted Ben Ali and instituted a democracy.⁷⁷ According to the Bertelsmann Transformation Index, an analytical collaboration between over 300 academic institutions across the world to detect the strengths and weaknesses of political systems throughout the globe, this increase in corruption in public services has resulted in significantly more Tunisians reporting that they expect to pay bribes when using or requesting public services.⁷⁸ Additionally, the corruption in the public service sector is also felt in government hiring. The Bertelsmann Transformation Index reported that many of the civil servants implemented shortly after the 2011 revolution were unqualified for the jobs they received and benefited from political patronage.⁷⁹

Finally, the police have long been considered one of the most corrupt institutions in Tunisia.⁸⁰ Twenty-five percent of the country believes that the police are corrupt, but only a handful of individuals reported paying a bribe.⁸¹ However, unlike Morocco, Tunisia enjoys relatively little judicial corruption. Only twelve percent of the country views the judiciary as corrupt. Additionally, foreign companies have often been successful at seeking redress through the Tunisian legal system when necessary.⁸²

⁷⁶ *Id.*

⁷⁷ *Transformation Index – Tunisia 2018*, Bertelsmann Stiftung, available at <https://www.bti-project.org/en/reports/country-reports/detail/itc/tun/ity/2018/itr/mena/>.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Tunisia Corruption Report, BUSINESS ANTI-CORRUPTION PORTAL, *available at* <https://www.business-anti-corruption.com/country-profiles/tunisia/>.

⁸¹ *Id.*

⁸² *Id.*

After this discussion of the primary drivers of corruption in Tunisia and the way that corruption manifests in the country, the next section will briefly discuss the historical development of public anticorruption in Tunisia.

b. Historical Development of Public Anticorruption in Tunisia

Unlike Morocco's history of anticorruption, where a few prime ministers and parliaments have been able to implement gradual anticorruption reforms to chip away at a culture of corruption, Tunisia's modern anticorruption approach has only two distinct time periods: the period under the Ben Ali dictatorship and the democratically elected governments that followed after the fall of the Ben Ali regime. Under Ben Ali, Tunisia was described by some commentators as a "kleptocracy," a government run by those whose primary aim is personal enrichment to the detriment of the governed.⁸³ During this period, Ben Ali's family and those close to him amassed significant fortunes through a system of bribes, kickbacks, and patronage. Although the government was incredibly corrupt, the centralized nature of the corruption made it so fewer Tunisians actually felt the corruption on a day-to-day basis.⁸⁴

Although there was rampant corruption during the Ben Ali era, Tunisia attempted to show to the international community that it was conforming to international norms regarding corruption. Tunisia signed the United Nations Convention Against Corruption in 2004 and ratified the

⁸³ Yasmine Ryan, *Anatomy of a Kleptocracy: State Capture in Tunisia*, TRUTHOUT (March 28, 2014) available at <https://truthout.org/articles/anatomy-of-a-kleptocracy-state-capture-in-tunisia/>; Sarah Yerkes & Marwan Muasher, *Tunisia's Corruption Contagion: A Transition at Risk*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (October 25, 2017) available at <https://carnegieendowment.org/2017/10/25/tunisia-s-corruption-contagion-transition-at-risk-pub-73522>.

⁸⁴ *Transformation Index – Tunisia 2018*, Bertelsmann Stiftung, available at <https://www.bti-project.org/en/reports/country-reports/detail/itc/tun/ity/2018/itr/mena/>.

document in 2008.⁸⁵ However, despite signing and ratifying the Convention, there was very little or no effort domestically to enact asset declaration, access to information, or whistleblower protections that were either recommended or required by the document. It was not until after the fall of the Ben Ali regime that Tunisia made significant legislative efforts to rid the country of corruption.

c. Current State of Public Corruption and Public Anticorruption Law in Tunisia

When Tunisians were polled about why they protested against the Ben Ali regime during the Arab Spring, more than 60% responded that it was “to protest against corruption.”⁸⁶ This was by far the most popular answer over other possible responses such as demanding greater political freedom (20.2%), opposing an authoritarian regime (25.3%), or economic problems (47.8%).⁸⁷ Thus, it was no surprise to see immediate legislative changes addressing corruption immediately after Ben Ali fled. The first day after Ben Ali’s ouster, the transitional government established the Commission of Inquiry into Misappropriation and Corruption.⁸⁸ The agency was meant to quickly reform the most corrupt parts of the Ben Ali regime. Since the Commission of Inquiry into Misappropriation and Corruption was established in 2011, Tunisia has implemented five additional important pieces of anticorruption legislation.

First, less than a year after democracy was established in Tunisia, the government established the National Anti-Corruption Authority, which was a government agency designed to promote

⁸⁵ TUNISIA: IMPLEMENTATION REVIEW GROUP: EXECUTIVE SUMMARY, CONFERENCE OF THE STATES PARTIES TO THE UNITED NATIONS CONVENTION AGAINST CORRUPTION, 2 (November 2015).

⁸⁶ Roger Sapsford, Gerasimos Tsourapas, Pamela Abbott, Andrea Teti, *Corruption, Trust, Inclusion and Cohesion in North Africa and the Middle East*, 14 *Applied Research in Quality of Life* 1, 21 (2019) available at <https://link.springer.com/article/10.1007/s11482-017-9578-8>.

⁸⁷ *Id.*

⁸⁸ Sarah Yerkes & Marwan Muasher, *Tunisia’s Corruption Contagion: A Transition at Risk*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, available at <https://carnegieendowment.org/2017/10/25/tunisia-s-corruption-contagion-transition-at-risk-pub-73522>.

anticorruption work and gather data on corruption.⁸⁹ The agency is still responsible for the majority of the government’s anticorruption work in the country. Second, in 2013, the legislature passed legislation to reexamine and remedy past instances of corruption.⁹⁰ It accomplished this by forming the Truth and Dignity Body to investigate economic and human rights crimes that occurred under the Tunisian government from 1995 to 2013.⁹¹

From 2016 to 2018, Tunisia passed the final three significant pieces of legislation for this period. All three of these laws sought to bring Tunisia’s statutory law into congruence with the requirements of the United Nations Convention Against Corruption.⁹² In 2016, parliament passed the first of these laws with the passage of an access to information law. A year later parliament passed a bill granting protection to whistleblowers and witnesses at criminal trials.⁹³ Finally, in July 2018, the government passed an expansive Illegal Enrichment Law requiring certain public employees including the president, judges, and ministers to publicly declare all of the property they own.⁹⁴

Despite these reform efforts, Tunisians still perceive their government as corrupt. Over sixty percent of Tunisians believe that the government is performing “fairly badly” or “very badly” in its efforts to curb corruption.⁹⁵ In fact, many Tunisians believe that there is more corruption now than

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² United Nations Convention Against Corruption, UNITED NATIONS OFFICE ON DRUGS AND CRIME (2004), *available at* https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

⁹³ *Id.*

⁹⁴ Tarek Amara, *Tunisia Approves Illegal Enrichment Law to Strengthen Anti-Corruption Fight*, REUTERS, July 17, 2018, <https://www.reuters.com/article/us-tunisia-corruption-law/tunisia-approves-illegal-enrichment-law-to-strengthen-anti-corruption-fight-idUSKBN1K72QJ>

⁹⁵ *Perceptions of Corruption in Tunisia*, AFRO BAROMETER (October 1, 2018), *available at* <http://afrobarometer.org/media-briefings/perceptions-corruption-tunisia-0>.

there was before Ben Ali was ousted from power.⁹⁶ Some commentators believe that this spike in the perception of corruption is likely due to the phenomenon of democratizing corruption.⁹⁷ No longer is only a small inner circle connected to the dictator of the country reaping the benefits from corruption. Instead, the illicit benefits of corruption are open to everyone in Tunisia.⁹⁸ This has led to more forms of petty corruption that plague Tunisians in their day-to-day lives. According to some commentators in Tunisia, corruption is simply becoming part of the everyday culture.⁹⁹

This feeling of rampant corruption was exacerbated in 2017, when Tunisia's parliament passed a law granting amnesty to the former dictator Ben Ali.¹⁰⁰ Critics of the law point out that it is a display of legislative corruption and cronyism as it was the only law of the term proposed by President Beji Caid Essebsi, who had been a senior official under Ben Ali.¹⁰¹ Therefore, even though the post-Ben Ali period has seen significant legislative efforts to crack down against corruption, many in Tunisia remain unsatisfied with the government's anticorruption efforts.

III. Analysis of the Current Anticorruption Regime in Tunisia and Morocco

Anticorruption efforts in Morocco and Tunisia are similar in a number of respect. Both countries have implemented similar legal regimes to combat corruption, both face similar internal and external pressures to crack down on corruption, and both have struggled to muster the political will to create true and lasting reform. These similarities are largely a product of being in a similar

⁹⁶ *Id.*

⁹⁷ *Tunisia's Fight Against Corruption: An Interview with Chawki Tabib*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (May 11, 2017).

⁹⁸ Sarah Yerkes & Marwan Muasher, *Tunisia's Corruption Contagion: A Transition at Risk*.

⁹⁹ *Id.*

¹⁰⁰ Simon Speakman Cordall, *'Amnesty of the Corrupt': Tunisia's Move to Heal Old Wounds Branded a Sham*, THE GUARDIAN (October 27, 1991) available at <https://www.theguardian.com/global-development/2017/oct/27/tunisia-reconciliation-act-dismissed-amnesty-of-the-corrupt>.

¹⁰¹ Heba Saleh, *Amnesty for Ben Ali-Era Corruption in Tunisia Condemned*, FINANCIAL TIMES (September 14, 2017) available at <https://www.ft.com/content/b90f3226-995c-11e7-a652-cde3f882dd7b>.

region and facing similar problems. Perhaps more enlightening than looking at the similarities between the two countries is the examination of the differences between the two anticorruption regimes. There are two primary differences between the two anticorruption regimes. These differences include the speed at which reform is implemented and the exemption or non-exemption of the head of state from the anticorruption laws. These differences are largely a product of the different systems of government in Morocco and Tunisia and shed light on how a country's government structure can have a profound effect on anticorruption policy.

A. Discussion and Analysis of the Similarities Between Morocco's and Tunisia's Anticorruption Regimes

The most obvious similarity between the anticorruption efforts in Morocco and Tunisia is that both countries have enacted similar (and sometimes identical) policies to combat corruption. Although there are a few differences between the countries' anticorruption policies such as an asset declaration law in Tunisia that employs a broader definition of public official than the same law in Morocco, these differences remain relatively minor.¹⁰² The similarities, on the other hand, are readily apparent. Both countries have recently enacted asset declaration laws,¹⁰³ access to information

¹⁰² ASSET DECLARATION IN MOROCCO: ILLICIT ENRICHMENT AND CONFLICTS OF INTEREST OF PUBLIC OFFICIALS, TRANSPARENCY INTERNATIONAL, 5–6 (May 17, 2016) *available at* https://www.transparency.org/whatwedo/publication/asset_declarations_in_morocco_illicit_enrichment_and_conflicts_on_interest; *Tunisia Passes Law Against "Illicit Enrichment"*, ORGANIZED CRIME AND CORRUPTION REPORTING PROJECT (July 18, 2018).

¹⁰³ Although Morocco has required asset disclosures since the passage of Law No. 25 in 1992, the early versions of this asset disclosure requirement were not very stringent and rarely subject to official review. It was not until the ratification of the 2011 Constitution, which enshrined an asset declaration law in Article 158 of the Constitution, that Morocco put forward an asset declaration law that meets international standards. ASSET DECLARATION IN MOROCCO: ILLICIT ENRICHMENT AND CONFLICTS OF INTEREST OF PUBLIC OFFICIALS, TRANSPARENCY INTERNATIONAL, 5–6 (May 17, 2016) *available at* https://www.transparency.org/whatwedo/publication/asset_declarations_in_morocco_illicit_enrichment_and_conflicts_on_interest; *Tunisia Passes Law Against "Illicit Enrichment"*, ORGANIZED CRIME AND CORRUPTION REPORTING PROJECT (July 18, 2018) ("In an effort to tackle widespread corruption, Tunisia approved on Tuesday a law against illegal enrichment which will force

laws,¹⁰⁴ and seemingly strong whistleblower protection laws.¹⁰⁵ Additionally, both countries have created a similar set of ostensibly independent bodies to review and investigate public corruption. In Tunisia, this is the National Anti-Corruption Authority (INLUCC), which was established in 2012 to investigate and report on public corruption.¹⁰⁶ In Morocco, the National Commission for Integrity and Anti-Corruption (NCIAC) serves an almost identical function.¹⁰⁷

These similarities in anticorruption policy and anticorruption institutions are no mere coincidence. They stem from two sources. First, both Morocco and Tunisia signed and ratified the United Nations Convention against Corruption, and many of the anticorruption efforts enacted recently have been in an effort to better comply with this Convention. Specifically, both Morocco's and Tunisia's whistleblower protection acts and asset declaration laws are meant to conform to the recommendations and requirements of the Convention.

In addition to the influence of the United Nations Convention against Corruption, both Tunisia and Morocco have been influenced by non-governmental organizations, which generally follow and advocate for similar best practices. In Morocco, non-governmental organizations such as

officials and institutions to declare their property.”) *available at* <https://www.occrp.org/en/daily/8343-tunisia-passes-law-against-illicit-enrichment>.

¹⁰⁴ Tunisia's parliament passed the “Right to Access Information Law” (Law No. 2016-22) in March 2016. *Tunisia: Citizens Testing Right-to-Information Law*, HUMAN RIGHTS WATCH (February 15, 2019), *available at* <https://www.hrw.org/news/2019/02/15/tunisia-citizens-testing-right-information-law>; Morocco's parliament adopted an access to information law in February 2018. *Freedom in the World 2019: Morocco*, FREEDOM HOUSE (2019), *available at* <https://freedomhouse.org/report/freedom-world/2019/morocco>.

¹⁰⁵ *Whistleblowers Get Greater Protection in Tunisia*, MIDDLE EAST MONITOR (February 23, 2017) (describing Tunisia's new Whistleblower protection act adopted on February 22, 2017) *available at* <https://www.middleeastmonitor.com/20170223-whistleblowers-get-greater-protection-in-tunisia/>; *Morocco: Whistleblowing Overview*, Transparency International, 3 (2016) (describing Morocco's Whistleblower protection law passed in 2011 to comply with the United Nations Convention on Corruption) *available at* https://www.transparency.org/whatwedo/publication/morocco_whistleblowing_overview.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

Maroc 2020 and Transparency Maroc were credited with bringing corruption issues to the forefront of the national conversation in the late 1990s.¹⁰⁸ Now, non-governmental organizations are playing a pivotal role in exerting influence over law makers and administrative officials in Tunisia and Morocco, which leads to the implementation of similar policies. In Tunisia, non-governmental organizations such as I Watch and Transparency International have served a pivotal role in helping to draft laws that comply with the Convention against Corruption and monitoring the implementation of these laws.¹⁰⁹ Similarly in Morocco, Transparency International, Maroc 2020, and Transparency Maroc monitor anticorruption efforts in Morocco.

Second, both Morocco and Tunisia have similar internal and external motivations for wanting to adopt anticorruption policies that conform with international norms and appear strong against corruption. The internal rationale for adopting strong anticorruption policies is that corruption is a primary issue of concern for the citizens of both countries and can prove to be destabilizing to the government.¹¹⁰ Immediately after the Arab Spring, protesters across North Africa and the Middle East said that their number one reason for protesting against their respective governments was because of public corruption.¹¹¹ Therefore, to avoid civil unrest and domestic backlash, both Tunisia and Morocco have decided to make a concentrated effort to demonstrate an effort to combat corruption.

The external rationale for adopting these policies and acceding to international pressure to implement stronger anticorruption laws and institutions is economic in nature. Tunisia's and

¹⁰⁸ Denoeux, *The Politics of Morocco's "Fight Against Corruption"* at 5.

¹⁰⁹ *Civic Freedom Monitor: Tunisia*, The International Center for Not-for-Profit Law, December 12, 2018, available at <http://www.icnl.org/research/monitor/Tunisia.html>.

¹¹⁰ Roger Sapsford, Gerasimos Tsourapas, Pamela Abbott, Andrea Teti, *Corruption, Trust, Inclusion and Cohesion in North Africa and the Middle East*, 14 *Applied Research in Quality of Life* 1, 21 (2019) available at <https://link.springer.com/article/10.1007/s11482-017-9578-8>.

¹¹¹ *Id.*

Morocco's economies are increasingly reliant on foreign investment and their connection with Europe.¹¹² Because of their geographical position on the continent, both are vying to be Europe's primary entry point in to Africa.¹¹³ To attract foreign investment, both Morocco and Tunisia understand that they have to project an anticorruption image to the international business community. Thus, both have been conscious of their rankings in anticorruption perception lists, such as Transparency International's Corruption Perception Index, and both have made it a priority to have their rankings climb in the coming years.¹¹⁴

The final similarity is a common detriment to Morocco's and Tunisia's anticorruption regimes that both countries must attempt to mitigate. In the last ten years, both countries have demonstrated what commentators have called "a lack of political will" when implementing their anticorruption policies.¹¹⁵ This lack of political will stems from partisan politics, which has shown a propensity to take precedence over anticorruption reform and justice.¹¹⁶ In Morocco, the Court of Accounts, which audits the financial holdings of each political party, has been frequently attacked by politicians and political parties for its rulings and oversight reports.¹¹⁷ In one particularly inflammatory incident, the former leader of the Istiqlal Party compared the judges on the Court of Accounts to "terrorists."¹¹⁸ These partisan attacks on apolitical, anticorruption institutions and judges can ultimately undermine public trust in anticorruption efforts.

¹¹² *World Investment Report 2018*, UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, available at <https://unctad.org/en/pages/PressRelease.aspx?OriginalVersionID=461>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Mohammed Berraou, *The Limits of Anti-Corruption Policies in Morocco*, MOROCCAN INSTITUTE FOR POLICY ANALYSIS (March 7, 2019), available at <https://mipa.institute/6551>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

Tunisia's political will to fight corruption has also been weakened by partisan politics. In addition to the partisan reactions to National Anticorruption Authority decisions, Tunisia has faced a number of partisan disputes over presidential pardons for close allies convicted of corruption and parliamentary grants of amnesty to Ben Ali and a number of his subordinates.¹¹⁹ These efforts to excuse past violations of corruption demonstrated to many that in Tunisia partisan politics matters more to Tunisia's political class than actual anticorruption reform.

The lack of political will is a serious concern for Tunisian leaders. In a 2017 interview, Chawki Tabib, the head of the National Anticorruption Authority, insisted that what Tunisia needs at the moment is "political will" to root out corruption and become "one of the 50 most transparent countries within the world" according to Transparency International's Corruption Perception Index.¹²⁰ This sentiment has been echoed by others that serve on the National Anticorruption Authority. Mohamed Ayadi, a member of the National Anticorruption Authority, insists that many of the problems with Tunisia's anticorruption systems are simply due to a lack of collective effort.¹²¹

Thus, Tunisia's and Morocco's anticorruption policies and institutions have struggled to rise above partisan politics. In order for both countries to reach their goals of appearing more transparent, both will need to refocus on anticorruption efforts, which may require politicians to stop turning anticorruption issues into partisan political issues when it is to their party's advantage.

¹¹⁹ Hanen Jebli, *Tunisian President Under Fire for Alleged Abuse of Power*, AL-MOITOR (January 25, 2019) available at <https://www.al-monitor.com/pulse/originals/2019/01/tunisia-presidential-pardon-borhane-bsais-corruption-ngos.html>.

¹²⁰ *Tunisia's Fight Against Corruption: An Interview with Chawki Tabib*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (May 11, 2017), available at <https://carnegieendowment.org/sada/69939>.

¹²¹ *In Tunis, Fight Against Corruption "is Selective." INLUCC is Trying to Change That.*, ALBAWABA BUSINESS (October 2, 2018) ("The fight against corruption requires a collective effort, [Ayadi] indicated.").

B. Discussion and Analysis of the Differences Between Morocco's and Tunisia's Anticorruption Regimes

There are two major differences that play a crucial role in understanding the practical and theoretical differences between Morocco's and Tunisia's anticorruption efforts. These differences are largely due to different government structures. In Morocco, the monarch plays a significant role in the way that the anticorruption regime operates. As the biggest driver of corruption in the country, the king is constantly undermining the reform efforts of his more liberal prime ministers by slowing down the implementation of new reform initiatives. But, because the king is considered completely above the law, he is able to speak out against corruption and selectively give out harsh punishments for certain violators of anticorruption law. On the other hand, in Tunisia, the largest corrupting force, the Ben Ali dictatorship, was ousted almost nine years ago. But, living in a new democracy, even without this significant corrupting force, has led to significant challenges for Tunisia. This subsection will explore these differences and attempt to explain why they have occurred.

The most obvious difference between the anticorruption efforts in Tunisia and Morocco is the speed which anticorruption efforts are implemented. In Morocco, anticorruption initiatives are implemented slowly and the monarch is often responsible for slowing the roll out of these new initiatives. This occurred with the National Commission for Integrity and Anti-Corruption, an independent body created by the 2011 Constitution to “initiate, coordinate, supervise, and assure the implementation” of anticorruption policies.¹²² It was not until December 2018, more than seven years after the ratification of the constitution, that King Mohammed VI appointed someone to lead

¹²² Morocco Const. 2011, art. 167.

the Commission.¹²³ During the interim period, the Commission remained, in the words of one commentator, “practically frozen.”¹²⁴ In comparison, Tunisia’s reforms are often sweeping and immediately implemented. There is no powerful moderating force like the monarchy in Morocco to slow these reforms. For instance, the 2018 asset declaration law, which was passed in July, was immediately implemented.¹²⁵ The National Commission for Integrity and Anti-Corruption began accepting declaration forms later that year, and sent demand notices to any public official who had not submitted a declaration form by February 2019.¹²⁶

The difference in speed at which reforms are implemented can have profound practical effects. First, a gradual roll out, the pace of which is controlled by the king, can lead to ineffective enforcement as it places corrupt actors on notice well in advance of the laws and institutions going into effect. But, slow roll outs have significant upside. It means that projects and reform initiatives are judged on a longer continuum, and it ensures multiple positive reactions from the commentators and outside observers. For example, when the King of Morocco finally appointed a leader of the National Commission for Integrity and Anticorruption, a headline from a regional online and print publication read, “King Mohammed VI Leads Fight Against Corruption.”¹²⁷ The article conveniently ignored that it was the monarch’s delay that “practically froze[]” the Commission for seven years.¹²⁸

¹²³ Hatem al-Batyawi, *Morocco’s King Appoints New Ombudsman, Head of Anti-Corruption Authority*, ASHARQ AL-AWSAT (December 14, 2018) available at <https://aawsat.com/english/home/article/1504376/morocco%E2%80%99s-king-appoints-new-ombudsman-head-anti-corruption-authority>.

¹²⁴ Mohammed Berraou, *The Limits of Anti-Corruption Policies in Morocco*, MOROCCAN INSTITUTE FOR POLICY ANALYSIS (March 7, 2019), available at <https://mipa.institute/6551>.

¹²⁵ Ahmed Nadhif, *New Transparency Law Enters into Force in Tunisia*, AL-MONITOR (October 30, 2018) available at <https://www.al-monitor.com/pulse/originals/2018/10/tunisia-corruption-law-assets-declaration-officials.html>.

¹²⁶ *Id.*

¹²⁷ *King Mohammed VI Leads Fight Against Corruption*, THE NORTH AFRICA POST (December 14, 2018) available at <http://northafricapost.com/26773-king-mohammed-vi-leads-fight-against-corruption.html>.

¹²⁸ Mohammed Berraou, *The Limits of Anti-Corruption Policies in Morocco*.

In contrast, Tunisia has had to pay the price of bad news coverage for its swift implementation of anticorruption policies. The asset declaration law which was passed in July 2018 and immediately implemented has been judged harshly by many in the Tunisian media.¹²⁹ News articles in January reported that only one-third of the expected asset declarations had been made.¹³⁰ This led a number of commentators to criticize the program and government calling both ineffective.¹³¹

Thus, the delayed implementation of anticorruption policies in Morocco gives the world the impression that Morocco is steadily moving to an ever more effective anticorruption regime. Meanwhile, Tunisia's swift implementation may catch and punish more corrupt actors than Morocco's, but at the price of looking like it is moving in fits and starts toward a better anticorruption regime.

The final difference between the two anticorruption regimes is that the monarch remains above the law in Morocco, while the anticorruption laws in Tunisia reaches every public official. In Morocco, the king is above the law in both statutory, social, and constitutional way. Statutorily, the king exempt from complying with almost every anticorruption law, including the asset declaration law.¹³² The king also has additional statutory protections that place the king above the law. For instance, it remains illegal to speak ill of the monarch, even under the expanded speech protections

¹²⁹ Ahmed Nadhif, *New Transparency Law Enters into Force in Tunisia*, AL-MONITOR (October 30, 2018) available at <https://www.al-monitor.com/pulse/originals/2018/10/tunisia-corruption-law-assets-declaration-officials.html>.

¹³⁰ Camille LaFrance, *Fight Against Corruption in Tunisia: Two Thirds of Asset Declarations Not Made*, Jeune Afrique (January 10, 2019) available at <https://www.jeuneafrique.com/700728/politique/lutte-contre-la-corruption-en-tunisie-deux-tiers-des-declarations-de-patrimoine-non-effectuees/>.

¹³¹ *Id.*

¹³² Countries at the Crossroads—Morocco, FREEDOM HOUSE (2012), available at <https://freedomhouse.org/report/countries-crossroads/2006/morocco>.

under the 2011 Constitution.¹³³ These speech laws preventing dissent against the monarch have been enforced in the last ten years for things as trite as political cartoons posted on Facebook.¹³⁴ With laws like this being enforced in the kingdom, it is unrealistic to think that true charges of corruption could be brought against the monarch. Thus, these statutory protections grant the king impunity from any charges of anticorruption.

Equally important to the king's impunity from corruption law is the king's place in Moroccan society. Since the 1990s, in addition to being the head of state, the Moroccan monarchs have claimed to be the religious leader of Morocco.¹³⁵ A recent study found that the majority of Moroccans view the monarch as having actual religious authority. The idea of levying charges of corruption against not only the permanent head of state, but the spiritual leader of Morocco, is highly improbable.

However, the king's impunity does not stop with the statutory or social. Even if the statutory law were amended and the monarch's social status as the permanent head of state and spiritual leader were somehow revoked, his powers under the Moroccan constitution would still make it difficult, if not impossible, to bring corruption charges against him. Not only does he appoint the head of the anticorruption body,¹³⁶ but he also has a heavy role in judicial appointments at all levels including the constitutional duty to appoint six of the twelve justices on the Constitutional Court including the Chief Justice who represents the tiebreaking vote.¹³⁷ These powers grant the king an

¹³³ *Id.*

¹³⁴ *Morocco: Busted for Posting Caricatures of the King on Facebook*, GLOBAL VOICES ADVOX February 8, 2012, available at <https://advox.globalvoices.org/2012/02/08/morocco-busted-for-posting-caricatures-of-the-king-on-facebook-2/>.

¹³⁵ *Id.*

¹³⁶ Hatem al-Batyawi, *Morocco's King Appoints New Ombudsman, Head of Anti-Corruption Authority*, ASHARQ AL-AWSAT (December 14, 2018), available at <https://aawsat.com/english/home/article/1504376/morocco%E2%80%99s-king-appoints-new-ombudsman-head-anti-corruption-authority>.

¹³⁷ *Id.*

added layer of security against the possibility that Morocco's anticorruption laws could be turned against him.

By contrast in Tunisia, every public official is subject to the anticorruption laws. Under the asset declaration law in Tunisia, every government official including the Prime Minister and the President must declare his or her assets.¹³⁸ From a cultural or social perspective, Tunisia does not have a permanent head of state or a national religious figure in the same way Morocco views its monarch. Additionally, the Tunisian constitution does not grant broad appointment powers to the Prime Minister or the President. Instead, most of the appointment powers granted in the constitution are diluted because the appointees have to be recommended by a different body¹³⁹ or, in the case of Constitutional Council, the presidential appointments do not amount to a majority of the council.¹⁴⁰ Thus, the threat of a judicial system that could not rule fairly on corruption charges against top officials is muted.

The fact that the monarch is exempted, both statutorily, culturally, and constitutionally from Morocco's anticorruption law and all of Tunisia's public officials are subject to the anticorruption laws implemented by the legislature is a crucial difference in two respects. First, as discussed above, the monarch is the largest driver of public corruption in Morocco, yet he is exempted from the anticorruption laws enforced in the country. Although Morocco has recently demonstrated a diligence in attacking smaller acts of corruption and removed some ministers believed to be involved in corruption from office, the fact remains that the largest and most corrupting force, the monarchy, is left without a check. Tunisia's anticorruption regime on the other hand attempts to grapple with

¹³⁸ *Tunisian Ministers Have to Declare Property Under Anti-Corruption Law*, MIDDLE EAST EYE, July 17, 2018, available at <https://www.middleeasteye.net/news/tunisian-ministers-have-declare-property-under-anti-corruption-law>.

¹³⁹ Morocco Constitution 2011, Art. 66 ("Judges are appointed by Presidential decree on the recommendation of the Higher Magistracy Council.")

¹⁴⁰ Morocco Constitution 2011, Art. 75.

top-level corruption in the country as no public official is exempt from its corruption laws. Thus, it appears as though this difference will lead to more significant corruption reform in Tunisia, where corruption at the highest levels is actually being addressed.

Second, as a system where the king is completely insulated from the any anticorruption mechanism, the Moroccan system allows the monarch to openly and vigorously condemn corruption in all its forms. He can encourage and advocate for stringent punishments for those who violate the laws of good government without any fear that his words will one day be turned on him. King Mohammed VI did just that in a 2017 public address where he insisted that Morocco would adopt a “zero tolerance” policy toward corruption in order to promote “public trust and investors’ confidence.”¹⁴¹ These strong statements against corruption tend to create the desired effect. They give the impression to the Moroccan public and investors abroad that Morocco is cracking down on corruption. The results bear themselves out in the Transparency International’s Corruption Perception Index, where Morocco has seen dramatic improvements in how the world perceives the country, despite Morocco’s failure to wrestle with the most significant corruption.¹⁴²

In Tunisia, no public official enjoys this type of freedom. Public officials know that they could be out of power by the end of the next election cycle, so they are forced to be more measured in their rhetoric and actions against corruption. Any public stance they take or any legislation they pass on anticorruption could be used against them when they are out of power. This is likely another reason why, despite being unpopular among the Tunisian electorate, the amnesty bills for Ben Ali and a number of officials in the Ben Ali regime successfully passed through the Tunisian

¹⁴¹ *King Mohammed VI Leads Fight Against Corruption*, THE NORTH AFRICA POST (December 14, 2018), available at <http://northafricapost.com/26773-king-mohammed-vi-leads-fight-against-corruption.html>.

¹⁴² *Id.*

Parliament.¹⁴³ Public officials, many of whom have committed past corruption violations, cannot simply adopt a zero policy because it could be quickly turned against them.

Therefore, having a monarch that is above the law, both formally and practically, can be a benefit because it permits the leader of the country to project a tough-on-corruption stance to the people and the international community. But, it is unlikely that this system will lead to true and lasting anticorruption reform, especially when the leader exempt from anticorruption laws is a significant driver of corruption.

IV. Conclusion

When examining anticorruption regimes in North Africa, Morocco and Tunisia represent the lone bright spots in the region. Both have implemented similar pieces of anticorruption and good governance legislation in an effort to comply with United Nations Convention Against Corruption. Both countries are intent on complying with the UN Convention to boost foreign direct investment and demonstrate to the electorate that the government takes corruption seriously. However, both countries have experienced their fair share of struggles when it comes to mustering up the political will to fully implement their anticorruption agendas.

Even more interesting than the similarities between the two anticorruption regimes are the differences, which largely have to do with the different government systems the two countries have. Morocco's constitutional monarchy with a powerful king makes it difficult for Morocco to quickly implement anticorruption reform efforts unless the king is fully supportive of the efforts. On the other hand, Tunisia's democracy makes implementation swift because there is no moderating force

¹⁴³ *Thousands Protest Tunisia's Corruption Amnesty Bill*, AL JAZEERA, May 13, 2017, available at <https://www.aljazeera.com/news/2017/05/thousands-protest-tunisia-corruption-amnesty-bill-170513184723310.html>.

like the steady hand of the king. However, because Tunisia is a democracy, where no individual is above the law and politicians can be out of power after the next election cycle, Tunisia's politicians have been unwilling to match the anticorruption fervor of their electorate that want to implement zero-tolerance policies on corrupt politicians. In Morocco, the fact that the king is above the law and in no fear of being prosecuted means that he is free to appear as hardline on corruption as possible.