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Audrey Cho
Audrey.Cho@chicagounbound.edu

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A Review of Corporate Governance in Morocco and Tunisia

Audrey Cho '19

Table of Contents

Introduction 2

I. Corporate Governance 3
- **a. The Importance of Corporate Governance** 3
- **b. The Importance of Corporate Governance in Morocco and Tunisia** 4
- **c. The G20/OECD Principles of Corporate Governance** 5
  - ***i. The Board of Directors*** 6
  - ***ii. Disclosure and Transparency*** 8
  - ***iii. Shareholder Rights*** 9

II. Corporate Governance in Morocco and Tunisia 10
- **a. The Board of Directors** 11
  - ***i. Board Independence*** 11
  - ***ii. Diversity*** 12
- **b. Disclosure and Transparency** 13
- **c. Shareholder Rights** 14

III. The Future of Corporate Governance in Morocco and Tunisia 15
- **a. Morocco** 16
- **b. Tunisia** 16

IV. Conclusion 17

Introduction

In 2006, two years before the U.S. stock market crashed[1] and triggered a global financial crisis,[2] the Saudi Stock Exchange crashed.[3] The crash affected the entire Middle East and North Africa ("MENA") region, making clear that MENA investors were not adequately informed about their shares, and that the information that companies presented about their financial and non-financial figures were incomplete, not subject to enough regulatory scrutiny.[4] These insufficiencies prompted a desire to improve "information flow to the investing public"[5] in the Middle East and North Africa, marking the beginning of a corporate governance reform in the region. However, MENA is hardly today's global leader in corporate governance. Thus, this paper surveys the current state of corporate governance in two MENA countries—Morocco and Tunisia—and raises challenges to the future of corporate governance in these two nations.

Part I explains the importance of corporate governance, and particularly for Morocco and Tunisia. It provides the OECD Principles of Corporate Governance, an international benchmark to assess a country's corporate governance practices. It identifies three key areas of corporate governance principles—the board of directors, transparency and disclosure, and shareholder rights. Part II reviews the current state of corporate governance in Morocco and Tunisia. Part III discusses the potential changes to the political, economic, and legal systems of Morocco and

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[1] On September 29, 2008, the Dow fell 777.68 points (7.7%), the biggest drop in intra-day trading the U.S. had ever seen up to that point. *See* Liz Moyer and Robert Hum, *Dow's Nearly 1,6000-Point Plunge Marks its Biggest One-Day Point Drop Ever*, CNBC (Feb. 5, 2018), https://www.cnbc.com/2018/02/05/dows-nearly-1600-point-plunge-marks-its-biggest-one-day-point-drop-ever.html.

[2] The global financial crisis also saw the MENA region face challenges to its financial markets, crude oil markets, investments, tourism, and non-oil exports during the 2008 crisis. *See* Nader Habibi, *The Impact of the Global Economic Crisis on Arab Countries: A Year-End Assessment*, CROWN CENTER FOR MIDDLE EAST STUDIES, BRANDEIS UNIVERSITY (Dec. 2009).

[3] For more information about the crash, a report funded by the Saudi Capital Market Authority is available. *See* Josh Lerner, Ann Leamon, Steve Dew, *The CMA and the Saudi Stock Market Crash of 2006*, CMA (2017), https://cma.org.sa/en/Market/Documents/CMA_Crash2006_en.pdf.

[4] *See* Alissa Koldertsova, *The Second Corporate Governance Wave in the Middle East and North Africa*, OECD, 221-222 (2011).

[5] *Id*.

Tunisia in the upcoming years that may affect the future of corporate governance in these two countries. Part IV concludes.

I. Corporate Governance

a. The Importance of Corporate Governance

Corporate governance dictates the way in which a company is run. It refers to a set of rules that dictate the relationship between a company's management, board of directors, shareholders, and stakeholders. It provides the structure through which a company's objectives are set, the means of attaining those objectives, and the monitoring of performance.[6] Because corporate governance provides a legal and contractual mechanism for accountability, transparency, and adequate disclosure,[7] its proper implementation not only serves as checks on the board and management, but also fosters confidence in a company's board and trust between the various internal and external participants of a company.[8] This in turn enhances the reputation of a company as a secure business to invest in, helping the firm attract long-term investments.[9] In fact, studies have shown that companies with good corporate governance are assessed at a higher valuation than those that do not.[10] Another empirical study has found that countries that implement good corporate governance measures "generally experienced robust growth of corporate sectors and [a] higher ability to attract capital than those that have not."[11] As such, corporate governance can directly contribute to the economic stability, success, and longevity of a company, as well as a country.

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[6] G20/ OECD PRINCIPLES OF CORPORATE GOVERNANCE (2015) (herein referred to as "Principles").
[7] *See* Abdussalam Mahmoud Abu-Tapanjeh, *Corporate Governance from the Islamic Perspective: A Comparative Analysis with OECD Principles*, CRITICAL PERSPECTIVES ON ACCOUNTING (2009).
[8] *See* Principles, *supra* note 6, at 7.
[9] *Id.*; *see also* G. J. Rossouw, *Business Ethics and Corporate Governance in Africa*, BUSINESS & SOCIETY (Mar. 2005).
[10] Abdussalam *supra* note 7, at 559.
[11] *Id*.

b. The Importance of Corporate Governance in Morocco and Tunisia

Emerging market countries that want and need to prove themselves to the investing public should focus on establishing and enforcing strong corporate governance principles.[12] For MENA countries such as Morocco and Tunisia that have faced major political changes in the past decade and face threats to national security in the present day, this point is particularly salient.[13] In the face of such changes, Morocco and Tunisia need to prioritize corporate governance in order to signal to investors that their countries are stable enough to invest in, with strong mechanisms that will protect their investments from mismanagement or corruption.

The importance of corporate governance for Morocco and Tunisia is best understood against the backdrop of recent political changes. In December 2010, a distraught fruit-seller set himself on fire in protest against Tunisia's corrupt police and government.[14] This tragic yet memorable display of frustration against corruption resonated with not only Tunisians, but also with the rest of the Arab region. Soon, protests broke out across the rest of the Middle East and Africa, ousting Tunisia's President Ben Ali[15] and turning Morocco into a constitutional monarchy.[16] The Arab Spring resulted in democratic elections for Tunisia and in a constitutional monarchy for Morocco, which gave more power to the elected prime minister.[17] However, it also

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[12] *See* Ahmed A. Sarhan and Collins G. Ntim, *Firm- and Country-Level Antecedents of Corporate Governance Compliance and Disclosure*, MANAGERIAL AUDITING J. (2018).

[13] For example, in Tunisia, the U.S. Department of State increased its travel advisory level from 1 to 2 in early 2019. Tunisia country faces terrorism threats in various regions, including along the border it shares with Libya. Moreover, in 2015, terrorists attacked the Bardo National Museum which sits adjacent to its Parliament, killing more than 30 people. Chris Stephen, Kareem Shaheen, Mark Tran, *Tunis Museum Attack: 20 People Killed After Hostage Drama at Tourist Site*, GUARDIAN (Mar. 18, 2015), https://www.theguardian.com/world/2015/mar/18/eight-people-killed-in-attack-on-tunisia-bardo-museum.

[14] *The Arab Spring: A Year Of Revolution*, NATIONAL PUBLIC RADIO (Dec. 17, 2011), https://www.npr.org/2011/12/17/143897126/the-arab-spring-a-year-of-revolution.

[15] Dave Gilbert, *Ben Ali: First Leader Toppled in Arab Spring*, CNN (Jan. 4, 2012), https://www.cnn.com/2012/01/04/world/africa/ben-ali-profile/index.html.

[16] James N. Sater, *Morocco's "Arab" Spring*, MIDDLE EAST INSTITUTE (Oct. 1, 2011), https://www.mei.edu/publications/moroccos-arab-spring.

[17] *King Declares Morocco a Constitutional Monarchy*, CBS NEWS (June 17, 2011), https://www.cbsnews.com/news/king-declares-morocco-a-constitutional-monarchy/.

shook the confidence of investors. The Arab Spring resulted "in large losses for virtually all MENA markets in 2011," "even more than the international financial crisis."[18] Moreover, corruption remains a problem in the MENA region,[19] which is an added "obstacle for businesses investing in"[20] MENA countries.

Despite these problems, Morocco and Tunisia have a chance to be financial leaders in the MENA region. Africa "presents the single largest growth opportunity in the world and is a new frontier for many international businesses."[21] Furthermore, Morocco maintains a strategic geographic position that is conducive to it becoming a powerful and "major gateway" to the rest of the MENA market.[22] In order to realize its full potential, MENA needs to win the confidence of international and domestic investors. It needs to signal that its markets are unfazed by political turmoil and stable enough to retain investments. To shake off the reputation of "corruption and unethical business practices that scar Africa's business image," strong corporate governance is necessary to institute the very "market discipline and transparency"[23] that investors need to see.

c. The G20/OECD Principles of Corporate Governance

The Organization for Economic Cooperation and Development ("OECD") Principles of Corporate Governance is a nonbinding set of principles that has served as an international

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[18] The Role of MENA Stock Exchanges in Corporate Governance, OECD (2012).
[19] Combating corruption remains a priority for both these countries. *See* Morocco Corruption Report, GAN BUSINESS ANTI-CORRUPTION PORTAL (Oct. 2016), https://www.business-anti-corruption.com/country-profiles/morocco/; *Anti-Corruption Digest Morocco*, ECONOMIC CRIME AND COOPERATION DIVISION, COUNCIL OF EUROPE (Mar. 2019), https://www.coe.int/en/web/corruption/anti-corruption-digest/morocco; *Hundred Protest Rampant Corruption, Bribery in Morocco*, MIDDLE EAST MONITOR (Oct. 15, 2018), https://www.middleeastmonitor.com/20181015-hundreds-protest-rampant-corruption-bribery-in-morocco/; Tunisia Corruption Report, GAN BUSINESS ANTI-CORRUPTION PORTAL (July 2017), https://www.business-anti-corruption.com/country-profiles/tunisia/; *Anti-Corruption Digest Tunisia*, ECONOMIC CRIME AND COOPERATION DIVISION, COUNCIL OF EUROPE (Mar. 2019), https://www.coe.int/en/web/corruption/anti-corruption-digest/tunisia.
[20] Tunisia Corruption Report *supra* note 19.
[21] Overseas Business Risk – Morocco, UNITED KINGDOM FOREIGN & COMMONWEALTH OFFICE, (Apr. 24, 2017), https://www.gov.uk/government/publications/overseas-business-risk-morocco/overseas-business-risk-morocco.
[22] *Id*.
[23] Rossouw *supra* note 9, at 95.

benchmark to assess a country's and/or company's corporate governance quality since 1999. In 2015, the OECD disseminated an updated review of its Principles in conjunction with the G20, a partnership that aimed to give the Principles a wider, more "global reach."[24] As such, whether a country's corporate governance code or a company's corporate governance standards conforms with these Principles is a helpful measure to evaluate performance. This paper summarizes the Principles' key areas of concern, and uses the Principles as a benchmark to assess Morocco's and Tunisia's corporate governance codes and practices.

Among others, the OECD focuses on corporate governance issues such as: (1) the board of directors, such as its independence and diversity; (2) disclosure and transparency to shareholders and stakeholders; and (3) shareholder rights, particularly the treatment of minority shareholders and their rights.[25] These three areas are universally examined by scholars when judging the quality of corporate governance; the OECD is not singular in this regard.[26]

i. The Board of Directors

The board of directors represents the shareholders of the company as their fiduciary. It guides corporate strategy, establishes policies that "monitor[s] managerial performance," and balances the various interests of a corporation.[27]

1. Independence

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[24] Principles *supra* note 6, at 7.

[25] The OECD Principles are technically comprised of six principles, but many of these can be merged into the categories above. The six principles are: (1) Ensuring the basis for an effective corporate governance framework (enforcement); (2) The rights and equitable treatment of shareholders and key ownership functions; (3) Institutional investors, stock markets, and other intermediaries; (4) The role of stakeholders in corporate governance; (5) Disclosure and transparency; and (6) The responsibilities of the board. Other areas of corporate governance exist (though arguably within these principles and categories), such as executive compensation and audits.

[26] For example, the European Bank for Reconstruction and Development ("EBRD") divides corporate governance into five broad sections that roughly correspond with the categories above: (1) Structure and Functioning of the Board; (2) Transparency and Disclosure of Company Information; (3) Internal Control; (4) Rights of Shareholders; (5) Stakeholders and Institutions. *See* Corporate Governance Sector Assessment, EBRD, https://www.ebrd.com/what-we-do/sectors/legal-reform/corporate-governance/sector-assessment.html.

[27] Principles, *supra* note 6 at 45; *see also* James Chen, *Board of Directors*, INVESTOPEDIA (Feb. 11, 2019), https://www.investopedia.com/terms/b/boardofdirectors.asp.

A board must be independent and objective to make the best decisions for and on behalf of its shareholders. While there are varying definitions of board independence,[28] it means that directors are making decisions unfettered by any links or loyalty to anyone other than the shareholders, such as the controlling shareholder or management.[29] Independence leads to better and more objective management oversight, thus stronger protection of shareholder interests.

To achieve this goal, the OECD recommends separating the role of the chief executive and the chairman of the board.[30] According to the OECD, this distinction can help "achieve an appropriate balance of power, increase accountability and improve the board's capacity for decision making independent of management."[31] Further, the OECD recommends that a "sufficient number of board members" be "independent of management"[32] or of a "dominant shareholder."[33] While the OECD does not define what suffices as a "sufficient number," it refers to countries that have required a "significant part, in some instances a majority," of the board to be independent.[34]

2. Diversity

A more recently highlighted, yet equally critical criteria for board composition is the diversity of the board. The direct effects of board diversity on a firm's financial bottom line has

[28] For example, in the U.S., independence refers to a "state of mind." The New York Stock Exchange rule on independence only requires that a director not have served the company recently. However, in the U.K., its corporate governance code "assumes that directors lose their independence after nine years of service, on the theory that they become too defensive of the status quo or too close to management to effectively fulfill their oversight role after that." Stephen Foley, *A Surprising Definition of Board Independence*, FINANCIAL TIMES (Apr. 29, 2017), https://www.ft.com/content/d2c71dc6-2b27-11e7-9ec8-168383da43b7. The OECD gives discretion to countries to determine their own criteria for board independence, but suggests using a combination of establishing necessary "negative" criteria that would disqualify an individual as independent with "positive" examples that show what qualities may count as independent. Principles, *supra* note 6, at 51-52.

[29] *See* Principles, *supra* note 6, at 50 (stating that "[b]oard independence… usually requires that a sufficient number of board members will need to be independent of management.").

[30] *Id*. at 51.

[31] *Id*.

[32] *Id*. at 50.

[33] *Id*. at 51.

[34] *Id*. at 40.

been inconclusive.[35] Some studies find a positive correlation while others do not; the conclusion depends much on which financial criteria, country, and diverse quality is examined, as well as which scientific method is utilized.[36] Nevertheless, board diversity is important. It brings "diversity of thought to board discussion,"[37] increases the "pool of talent and [provides the board with a] broader mix of leadership skills,"[38] and finally, sends a symbolic message to shareholders and stakeholders.[39]

In fact, both the OECD and the European Bank for Reconstruction and Development ("EBRD"), an international investment bank that undertakes periodic assessments of corporate governance practices of the transition economies that it invests in,[40] discusses board diversity as an important yet often overlooked criteria of good corporate governance. For example, the OECD encourages boards to "consider if they collectively possess the right mix of background and competences" that will "avoid groupthink and bring a diversity of thought to board discussion."[41] To accomplish this, the OECD recommends countries establish "voluntary targets, disclosure requirements, boardroom quotas, and private initiatives" in order to "enhance gender diversity on boards and in senior management."[42] Likewise, the EBRD consistently examines gender diversity on the board of the ten largest listed companies of a country it assesses.[43]

ii. Disclosure and Transparency

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[35] Deborah L. Rhode and Amanda K. Packel, *Diversity on Corporate Boards: How Much Difference Does Difference Make?*, 39 DEL. J. CORP. L. 377, 284-392 (2014).
[36] *See Id*.
[37] Principles, *supra* note 6, at 53.
[38] Rhode and Packel, *supra* note 35, at 401.
[39] *Id*.
[40] *History of the EBRD*, EBRD, https://www.ebrd.com/who-we-are/history-of-the-ebrd.html.
[41] Principles, *supra* note 6, at 53.
[42] *Id*.
[43] Of the 34 EBRD corporate governance assessments that exist, this author has reviewed 15. Each of the 15 reports include a section examining gender diversity on boards. The author has reviewed country assessments of Armenia, Azerbaijan, Croatia, Egypt, Greece, Jordan, Kosovo, Mongolia, Morocco, Poland, Russia, Tajikistan, Tunisia, Turkey, Ukraine. *See* Corporate Governance Sector Assessment, *supra* note 26.

Disclosure to shareholders about financial information indicating performance, and non-financial information indicating ownership and governance,[44] is important to allow shareholders to exercise their rights on an informed, timely basis.[45] It also helps monitor management and board behavior by keeping shareholders updated of material information. As such, proper disclosure regimes can help attract new investors seeking to invest in a company they can trust, while simultaneously reassuring existing investors that there is no unethical behavior or behind-the-scenes measures taken without the shareholder's knowledge. Thus, the OECD Principles recommend that companies should timely disclose "all material developments that arise between regular reports" even if this is not required by the law, and to report information to all shareholders at the same time "to ensure their equitable treatment."[46] This includes the disclosure of non-financial information, which may include the identity of major shareholders, the executive compensation structure, the frequency and contents of discussion of board/shareholder meetings, the firm's articles of association, and information about directors, such as their qualification and share ownership. Simply put, from the corporate governance standpoint, the more disclosure, the better.

iii. Shareholder Rights

Shareholder rights refer to the ways in which shareholders can effect change through their vote. The actual—as opposed to nominal—power of shareholders to influence the direction and future of a firm is important for two main reasons. First, the threat of shareholder activism hinders management or the board from misusing company assets. Second, it attracts new

[44] Principles, *supra* note 6, at 37.
[45] *See Id*.
[46] *Id*.

investors as they will be reassured that they will have some power to dictate the way their investment is managed, whether through calling shareholder meetings or voting.

The OECD enumerates six basic rights that shareholders should have. Of the six, this paper will focus on three: (1) the right to "obtain relevant and material information on the corporation on a timely and regular basis"[47]; (2) the right to "participate and vote in general shareholder meetings"; and (3) the right to "elect and remove members of the board."[48] The OECD believes "the right to participate in general shareholder meetings is a *fundamental* shareholder right" and thus, shareholders should be able to "participate effectively" in general shareholders meetings ("GSM").[49] This means allowing shareholders to place items on the agenda and ask the board questions and propose resolutions—though possibly subject to "reasonable" restrictions such as only allowing shareholders with a certain market value or percentage of shares/voting rights so meetings remain efficient.[50] Finally, the OECD requires that voting not be "unduly difficult or expensive," and criticizes companies that have placed prohibitions on proxy voting, charging fees for voting, or requiring personal attendance at GSMs as a prerequisite to voting.[51]

II. Corporate Governance in Morocco and Tunisia

In 2008, Morocco and Tunisia instituted their own national corporate governance codes, modeled after the OECD Principles. However, the state of corporate governance in these countries leaves room for improvement. The biggest problem is that since compliance to the Codes are voluntary and not legally required, there is no single regulatory body in either country

[47] This is discussed above in the Disclosure and Transparency section.
[48] The three other rights include the right to secure methods of ownership registration, to convey or transfer shares, and to share in the profits of the corporation. Principles *supra* note 6, at 20.
[49] Principles *supra* note 6, at 20 (emphasis added).
[50] See Principles *supra* note 6, at 21.
[51] *Id*. at 20.

that supervises whether companies comply with the Code.[52] Thus, in Tunisia, none of the ten largest listed companies discloses whether it is acting consistently with the Code.[53] In Morocco, the EBRD reports that companies do not seem to take the Code's recommendations to heart.[54]

The corporate governance codes and practices of Morocco and Tunisia are summarized below, largely derived from the EBRD assessments of Morocco in 2016 and Tunisia 2017.

a. The Board of Directors

i. Board Independence

In Morocco, the Code defines board independence as independence from "enterprise management" and "shareholders and partners" that enable "independence of judgment."[55] The Code recommends organizing under the two-tier system, which separates the chief executive and chairman positions, instead of the one-tier system in that combines the two functions. This structural barrier is thought to contribute to board independence, particularly from management. However, according to the EBRD, companies organize under the one-tier system.[56] This furthers the risk of management influence on the board. While the law does require half of a one-tier structured board to be non-executive directors, the EBRD warns that due to the concentration of ownership in Moroccan companies, it is not guaranteed that these non-executive directors will be independent.[57] Finally, none of the ten largest listed companies disclose having independent board members.[58]

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[52] *See* MOROCCO COUNTRY REPORT, EBRD, (June 2016) (noting that "listed companies are not required to disclose their compliance with the national [code]."); TUNISIA COUNTRY REPORT, EBRD, (Dec. 2017) (noting "it appears there is no body monitoring companies' compliance with the provisions of the Corporate Governance Guide).
[53] TUNISIA COUNTRY REPORT, *supra* note 52, at 16.
[54] MOROCCO COUNTRY REPORT, *supra* note 52, at 5.
[55] MOROCCAN CODE OF GOOD CORPORATE GOVERNANCE PRACTICES (March 2008) (herein referred to as "Morocco Code").
[56] MOROCCO COUNTRY REPORT, *supra* note 52, at 7.
[57] *Id*. at 8.
[58] *Id*. at 5.

The Tunisian Code gives better guidance about board independence. First, the Code does specify that at least one third of the board should be independent. Second, independence is defined with more detail: an independent director is someone with "no direct or indirect relationship with the corporation… with its group's companies or with its executive management."[59] Third, the Code provides a list of what independent directors should *not* be, such as an employee of the company or have family ties with a corporate officer.[60] However, in practice, Tunisia does not necessarily fare better than Morocco. For example, only two of the ten largest listed companies disclose having independent board members; and both are banks, which are required to have at least two independent directors by law.[61]

ii. Diversity

Board diversity is encouraged by both codes. Morocco's Code recommends the board be "made up of members… who impart a diversity (in terms of training, professional experience, male-female balance, age, nationality, etc.),"[62] but does not specify a percentage of the board that should be independent or give more instruction on which diverse criteria should be prioritized. Tunisia's Code is more detailed in specifying the various areas in which board members should be experienced in—finances, accounting, management, directorships, etc.[63] Furthermore, it recommends directors be of different ages, experiences, profiles, and expertise.[64] Still, it does not specify which quality to prioritize.

Moreover, gender diversity is severely lacking. The EBRD has found that in Morocco, of the ten largest listed companies, only nine disclose its board composition. Of this nine, only four

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[59] CODE OF BEST PRACTICE OF CORPORATE GOVERNANCE (2008) (herein referred to as "Tunisia Code").
[60] *Id*. at § 2.1.2.
[61] TUNISIA COUNTRY REPORT *supra* note 52, at 8.
[62] MOROCCO CODE *supra* note 55, at § 3.4.1.
[63] TUNISIA CODE, *supra* note 59, at § 2.1.7.
[64] *Id*. at note 3.

companies have one female director each. Therefore, there are four women out of the 67 directors among nine companies, which means 5.09% of the directors sitting on Morocco's top ten listed companies are women.[65] Tunisia fares slightly better. All ten companies largest listed companies disclose their board composition. There are six females on six boards of the ten, meaning there are six women out of 84 directors among the ten companies. Thus, 7.61% of the directors sitting on Tunisia's top ten listed companies are women.[66] The desire to expand board diversity is evident in both codes, but the realities fall short of such desires.

b. Disclosure and Transparency

Morocco and Tunisia need more transparency in their corporate governance practices. In Morocco, companies comply with financial disclosure requirements, and disclose audited financial statements and annual reports. However, the disclosure of non-financial information is limited. Although the Code encourages disclosure of non-financial material such as the qualification of directors, board meetings and activities, and governing documents, in reality, the EBRD has found that companies do not disclosure such information. This is likely because there is no *legal* requirement to disclose this information, as compliance to the code is voluntary. As such, of the ten largest listed companies in Morocco, none discloses the board's qualifications and activities, minutes of the general shareholder meetings, or its articles of association.[67]

Tunisia also suffers from disclosure deficiencies, particularly of non-financial information. Although all ten of the largest listed companies provide the names of their directors, they do not provide information about their qualification.[68] Further, none of the companies

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[65] MOROCCO COUNTRY REPORT *supra* note 52, at 8.
[66] TUNISIA COUNTRY REPORT *supra* note 52, at 9.
[67] MOROCCO COUNTRY REPORT *supra* note 52, at 7 and 9.
[68] TUNISIA COUNTRY REPORT *supra* note 52, at 10.

disclose GSM minutes or their articles of association online,[69] despite the Code urging that they do so. The EBRD criticizes the disclosure regime in Tunisia as "generally poor," and not giving "stakeholders… a comprehensive view of the company's organisation and structure."[70]

Disclosure is particularly important for MENA countries, as they have been scarred by a reputation of "corruption and unethical business practices."[71] To remedy this, transparency must be prioritized to signal to investors that they will be routinely informed about what the company is doing with their money.

c. Shareholder Rights

Unlike the U.S. or U.K. in which the principal-agent agency problem[72] presents much of the basis of corporate governance issues, the MENA region suffers from a different shareholder rights problem. Many MENA businesses—particularly successful ones that are big-name market players or listed on stock exchanges—are family owned enterprises or state-owned entities.[73] This means that many of the shareholders themselves are part of management with skin in the game.[74] As such, the shareholder rights issue to address in MENA is how to protect minority shareholders.[75] One measure, discussed above, is to provide more transparency to shareholders through a tighter disclosure regime. Another is to give them more expansive rights and powers.

Morocco and Tunisia fare similarly regarding shareholder rights. In Morocco, the Code attempts to afford greater voting rights to shareholders. It recommends companies allow proxy voting and give shareholders the right to participate in GSMs regardless of how many shares

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[69] *Id*. at 5.
[70] *Id*. at 5 and 6.
[71] Rossouw *supra* note 9, at 95.
[72] The principal-agency problem refers to the problem when the interests of the agent (management or board) may diverge with, and thus not best represent, the principal (shareholders).
[73] See Alissa Amico, *Corporate Governance Enforcement in the Middle East and North Africa: Evidence and Priorities*, OECD (2014).
[74] *Id*. at 38.
[75] *Id*.

they own.[76] It also recommends that the board attend GSMs to answer shareholders' questions.[77] In practice, however, there is no realistic way for minority voters to overcome the entrenched majority or controlling shareholders. While proxy voting is allowed, there is no cumulative voting or disproportional voting rights. This means that minority shareholders have no way of pooling their votes together to vote against a board member or amendment that is management favored or majority/controlling shareholder favored. Next, shareholders with 10% of the share capital may call GSMs, and shareholders with 5% can add items to the GSM and nominate board members.[78] However, because compliance with the Code is voluntary, and because the board is only recommended to attend GSMs to answer shareholder questions, it is possible that the board may not show up at all. The EBRD calls his a "serious impediment for shareholders."[79]

Likewise, the rights granted to shareholders in Tunisia are also restrictive. For example, while proxy voting is also permitted, the Tunisian Code urges companies to adopt the one-share-one vote rule.[80] Companies do adopt this voting regime, which again arguably eliminates any real chance minority shareholders have at overtaking the majority or larger shareholders through cumulative voting tactics.

III. The Future of Corporate Governance in Morocco and Tunisia

Nonetheless, credit should be given to Morocco and Tunisia for their efforts to enhance corporate governance oversight in their respective countries. However, the realities of political fragility, corruption, and societal unrest render the future of corporate governance in Morocco, and especially Tunisia, uncertain.

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[76] MOROCCO CODE *supra* note 55, at § 1.7 and § 1.10.
[77] MOROCCO COUNTRY REPORT *supra* note 52, at 13.
[78] *Id*.
[79] *Id*.
[80] TUNISIA CODE, *supra* note 59, at § 1.1.

a. Morocco

Unlike many of its neighbors, Morocco was able to "avoid large-scale turmoil"[81] during the Arab Spring, as King Mohammed VI quickly conceded some powers to parliament by establishing a constitutional monarchy. For example, the 2016 reforms of laws governing freedom of expression included an end to prison time for defamation of certain individuals,[82] as well as an end to the government's ability "to seize or suspend publications on the basis of political content without a court order."[83] However, distrust of the government for corruption continue, and criticism of the regime for the lack of progress has recently resurfaced.[84] Nevertheless, Morocco remains relatively stable compared to much of its MENA neighbors such as Libya and Syria—largely due to the "semi-authoritarian"[85] regime of the king.

b. Tunisia

Tunisia faces major challenges in the upcoming year. First, this fall, Tunisia will hold presidential and parliamentary elections, rendering its political future uncertain.[86] Moreover, distrust of the political system has increased; 81% of Tunisians believe politicians are not paying attention to their needs.[87] Second, Tunisia's economy is fragile. The unemployment rate is at 15%, the rate of inflation has doubled since 2011 to 7.4%, and tourism revenue, its third-largest contributor to the economy, has dropped from $3.9 billion in 2009 to $1.7billion.[88] Third, its

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[81] Heba Saleh, *Rabat Pushes Modernity as Morocco's Political Reforms Stall*, FINANCIAL TIMES (Nov. 3, 2017), https://www.ft.com/content/6f37f55a-5c23-11e7-b553-e2df1b0c3220.
[82] *The Red Lines Stay Red: Morocco's Reforms of its Speech Laws*, HUMAN RIGHTS WATCH (2017), https://www.hrw.org/report/2017/05/04/red-lines-stay-red/moroccos-reforms-its-speech-laws
[83] *Id*.
[84] *See Morocco Court Upholds Hirak Movement Protesters' Sentences*, BBC (Apr. 6, 2019), https://www.bbc.com/news/world-africa-47835558.
[85] Saleh *supra* note 124.
[86] *Tunisia to Hold National Elections in October and November*, AL JAZEERA (Mar. 7, 2019), https://www.aljazeera.com/news/2019/03/tunisia-hold-autumn-parliamentary-presidential-elections-190307053029108.html.
[87] Sharan Grewal, *Tunisian Democracy at a* Crossroads, BROOKINGS INSTITUTION (Feb. 2019).
[88] *Id*. at 2.

democracy may be backsliding. A 2019 Brookings study recorded the population's growing disillusionment with democracy, and found that in 2018, only 46% of Tunisians agreed that "democracy was preferable to other forms of government,[89] as opposed to the 70% in 2013. Instances of backsliding that increase citizens' distrust of the political system include the following examples: in 2016, the Prime Minister tried prominent businessmen in military court as a "war on corruption," though many believed he did this in retaliation as they "had been funding [his] rivals"[90]; there have been more than 100 cases of torture since 2013;[91] the government has repeatedly tried to shut down a LGBT rights group, with the lawsuit continuing in court even today.[92] Lastly, the future of Tunisia's legal system remains tenuous. The Constitutional Court, established in 2014 by the Constitution, has yet to see its 12 members approved.[93] The Brookings study recommends the Constitutional Court be firmly established before the 2019 elections to prevent an incumbent takeover and provide a "crucial check on a future president who seeks to consolidate power."[94] In sum, the political, economic, social, and legal structure of Tunisia may undergo major changes in the next few years, rendering the country's commitment to corporate governance uncertain. In turn, this uncertainty makes strong corporate governance practices more necessary than ever.

IV. Conclusion

The corporate governance codes of Morocco and Tunisia attempt to impose tighter monitoring controls and wider disclosure burdens on companies. However, the Codes do not

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[89] *Id*.
[90] *Id*. at 6.
[91] *Id*. at 7.
[92] Saeed Kamali Dehghan, *Tunisia Invokes Sharia Law in Bid to Shut Down LGBT Rights Group*, GUARDIAN (Apr. 30, 2019), https://www.theguardian.com/global-development/2019/apr/30/tunisia-invokes-sharia-law-in-bid-to-shut-down-lgbt-rights-group.
[93] Grewal *supra* note 131, at 7.
[94] *Id*.

necessarily succeed. As both Codes are not legal mechanisms—that is, a company can choose to comply with the Code and display their compliance, but they do not have to—companies choose the option not to. In the end, corporate governance practices can only be successful through proper and effective enforcement. While the stock exchanges,[95] bank regulators,[96] and securities commissions of these countries attempt to regulate, in their own way and jurisdiction, corporate governance practices, there needs to be a clearer demarcation of responsibility and jurisdiction between the different public authorities that are charged with enforcing corporate governance.[97] To overcome the MENA region's current, past, and future cultural, political, and religious impediments to corporate governance, top-down enforcement from these regulators needs to be improved, and regulators need to make compliance with the Code or Code-recommended practices to be mandatory.

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[95] The respective stock exchanges—Morocco's Casablanca Stock Exchange and Tunisia's Bourse de Tunis—each have the power to publicly de-list and impose sanctions on companies under its jurisdiction for corporate governance deficiencies. *See* The Role of MENA Stock Exchanges in Corporate Governance *supra* note 18.
[96] Banks generally have more stringent governance requirements.
[97] *See* Principles *supra* note 6, at 15.