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Morocco: Civil Society Report

by Transparency Maroc

An input to the UNCAC Implementation Review Mechanism: First year of review of UNCAC Chapters III and IV

-Executive Summary-

This is the executive summary of a Transparency Maroc report¹ that reviews Morocco's implementation and enforcement of selected articles in UN Convention against Corruption (UNCAC) Chapters III (Criminalization and Law Enforcement) and IV (International Cooperation). The report is intended as a contribution to the UNCAC peer review process of Morocco covering those two chapters.

The UNCAC articles that receive particular attention in the report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), whistleblower protection (Article 33), and mutual legal assistance (Article 46).

The UNCAC was published in the Official Gazette of January 17th, 2008. Since its ratification, there have been many government statements of their will to fight against corruption² and several laws and regulations have been developed. A law on money laundering was enacted in 2007 and modified in January 2011. A law on the protection of witnesses, victims and whistleblowers of serious crimes, including corruption, bribery, misappropriation of public funds and money laundering, has been voted recently.

The main problem lies in law enforcement. The law is poorly or not enforced in several areas: so many corruption cases are not prosecuted or drag on in court. A second equally important problem is the lack of judicial independence. Justice reform is a priority. It must be deep and accompanied by a change in mentality.

Assessment of the review process

Conduct of process

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

¹ The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its authors are Michele Zirari and Saad Filali Mknassi, Transparency Maroc. The final report will be used for continuing the dialogue and engagement with the stakeholders including the government beyond the first round country review process.

² Many royal speeches addressed the issue, as in 2008: "Therefore, everyone has to show proof of vigilance and seriousness, use the force of law, the authority of an independent justice and use monitoring and accountability mechanisms in order to end impunity and take action against scams and frauds This is even more necessary against graft, bribery, corruption, abuse of power and tax evasion." March 9th, 2011 speech announcing: "The consolidation of mechanisms of public life moralization and the need to link the exercise of authority and responsibility or public mandates to the necessity of control and accountability." In March 2011, the Minister of Justice Mohamed Taieb Naciri sent a letter to Attorneys General asking them to "ensure the acceleration of the provisions related to records of squandering public assets and corruption that are before their courts."

Table 1 Transparency and CSO participation in the review process

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

Availability of information

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

Implementation and enforcement of UNCAC

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

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

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

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

Recommendations for priority actions

1. Achieve real reform of the judiciary system as a whole to ensure its independence and efficiency
2. Ensure proper enforcement of existing laws
3. Reorganize the Central Agency for the Prevention of Corruption and provide it with powers allowing it to play a real role in prevention and possibly gathering data on corruption cases
4. Develop a law on access to information and enforce it to promote greater transparency and accountability.

5. Promptly enact a law effectively providing for the protection of witnesses, victims and whistleblowers of corruption, bribery, misappropriation of public funds and money laundering
6. Review laws related to secrecy and confidentiality of public servants in their functions (particularly Article 18 of the General Status of Public Service) in order to allow public access to information and whistle blowing
7. Ensure systematic follow up of corruption cases, particularly those detailed by the Court of Audit in its annual report.

The full Transparency Maroc review report can be found at
<http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>