

COUNTRIES AT THE CROSSROADS

COUNTRIES AT THE CROSSROADS 2011: MOROCCO

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INTRODUCTION

Morocco gained independence in 1956 after more than 40 years as a French protectorate (though Spain had controlled the northern third of the country as well as the Western Sahara). King Mohamed V reigned until his death in 1961, at which point his son, Hassan II, began three decades of authoritarian rule, followed by a significant political liberalization during the 1990s. From the 1960s through the 1980s, King Hassan's reign featured large-scale human rights abuses, including unlawful incarceration of regime critics, torture, and the enforced disappearance of many political opponents. In essence, while King Hassan preferred to rely on divide-and-rule, cooptation and intimidation tactics, he did not hesitate to harshly repress those who refused to play by his rules and remain within the "red lines" he set.

In October 1975, Morocco annexed the Western Sahara, a territory south of the kingdom. During an initial war between Morocco and Sahrawi nationalists, led by the Polisario Front, many Sahrawis moved to refugee camps in Algeria. Those who remained behind in the annexed territory have been demanding independence ever since and several have been jailed for that reason.

Hassan II's son, Mohamed VI, inherited the throne upon his father's death in July 1999. Initially, he expanded the process of political liberalization he had inherited. He dismissed some of the stalwarts of his father's oppressive regime, allowed the return of exiled political dissidents, established an organization to investigate official human rights abuses from 1956 to 1999, and reached out to constituencies (such as former political prisoners) and regions (such as northern Morocco) that had suffered or been neglected during his father's reign. In the past decade, however, political development has been slow and Morocco today remains a monarchy in which power is still concentrated in the palace. From 2006 through 2010, the country's progress toward democratic governance was partial and uneven. Limited advances took place in some areas, including electoral professionalism and transparency, but significant setbacks (predominantly in the area of media freedom) and stagnation (particularly with regard to judicial independence and the fight against corruption) characterized others. The slow pace of political change stood in stark contrast to rapid social and economic transformations, remarkable improvements in the country's infrastructure, and advances in the fight against poverty and social exclusion.

Thus, for all the talk about Morocco being engaged in a "democratization process," few meaningful steps have taken place in recent years to support such claims. The king has prioritized socioeconomic development over political reform, likely on the basis of a series of considerations that include: the reluctance of the monarchy to divest itself of key prerogatives in core decision-making areas; the need to accommodate powerful constituencies opposed to genuine democratization; skepticism toward the capacity of political parties and representative institutions to manage greater levels of competition; fear that illiberal forces would benefit

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COUNTRIES AT THE CROSSROADS

disproportionately from political opening; and a belief that the public will judge the monarchy primarily on its ability to spur growth, create jobs, and reduce poverty. Evidence from this report's period of coverage, January 2006 to December 2010, suggests that the monarchy remains ambivalent, at best, toward reform that would reduce its expansive powers.

Morocco's largely stalled reform process was thrust back into the spotlight, however, with the wave of prodemocracy protests that swept the Arab world after the overthrow of Tunisian President Ben Ali on January 14, 2011. On February 20, 2011, thousands of Moroccans across the country took part in antigovernment protests called by a youth group, the February 20th Movement for Change, that organized itself on Facebook. The demonstrations brought together a wide range of actors from liberal youth and independents to leftists and members of the banned Islamist Justice and Charity movement. Unlike their counterparts in Tunisia, Egypt, Yemen, Libya, and Syria, the Moroccan protesters did not target the king or demand a change of regime. Instead, they called for a genuine constitutional monarchy, the disbanding of parliament, as well as the dismissal of Prime Minister Abbas El-Fassi, his many relatives in senior government positions, and the entire cabinet. In response, on March 9 King Mohamed announced his decision to form a constitutional reform committee, the members of which he handpicked. Though the king promised that the new constitution would enhance the prerogatives of the prime minister and parliament, strengthen political parties, increase the independence of the judiciary, and devolve more power to the local level, the proposed changes were vague and fell far short of the protesters' demands. Critics charged that the new constitution was not designed as part of a truly participatory process and that under it the essence of power remains firmly in the king's hands. Still, the text, put up for a vote on July 1, passed with nearly 98 percent approval, as activists continued to press for deeper, more substantive political reforms that would truly empower representative institutions and decisively move Morocco toward a constitutional monarchy in which the king reigns but does not rule.

ACCOUNTABILITY AND PUBLIC VOICE

Morocco's parliament, which consists of the directly elected 325-seat lower house, the Chamber of Representatives, and the indirectly elected 270-seat Chamber of Counselors, is subordinate to the executive's will. According to the constitution, the king can dissolve parliament, call for or postpone elections, and rule by decree. The popular credibility of parliament has declined markedly in recent years because of the widespread and accurate perception that that institution is ineffective in the face the monarchy's dominance of the policymaking process. The Chamber of Counselors, which enjoys very significant constitutional prerogatives, including the ability to dismiss the cabinet, is frequently criticized as an inefficient and ineffectual institution that perpetuates clientelism and blocks anticorruption efforts.

There are several key weaknesses in the electoral process, most of which relate to the overwhelming power of the executive. Decisions are made behind closed doors, among the monarchy's technocrats and advisers, not through representative institutions or political parties, which have little policy influence and are beholden to the country's dominant political and economic interests. The constitution designates the monarchy as the embodiment of the nation and this supremacy pervades the electoral system.

Elections to the Chamber of Representatives were held in September 2002 and again in September 2007. Morocco also conducted voting for local and regional councils in June 2009.

COUNTRIES AT THE CROSSROADS

Elections are generally administered professionally and international observers and foreign journalists have deemed them relatively free and fair.¹ While there have been recurrent complaints of vote buying and individuals voting multiple times, there is generally no official interference in the electoral process and few reports of intimidation at the polls or irregularities during the vote count. Vote buying is rampant in local and Chamber of Counselors elections.² The small size of the electoral colleges that elect members of the upper chamber compounds the problem, as candidates can secure a seat by buying the votes of relatively few college members.

The September 2007 lower house elections produced a highly fragmented chamber, with 26 parties winning seats. The right-of-center Istiqlal party secured 52 seats, slightly ahead of the Islamist Party of Justice and Development (PJD) with 46, the Berber-dominated Popular Movement (41 seats) and the liberal, right-of-center National Rally of Independents (39 seats). The Socialist Union of Popular Forces (USFP), which had been dominant in parliament since 1997, came in fifth with 38 seats.

The electoral system contributes to the balkanization of political life. For example, in a country of approximately 30 million people, 33 parties participated in the September 2007 Chamber of Representatives elections, and 26 won representation. This fragmentation helps the palace play segments of the body politic against one another.

There is widespread cynicism toward parties and parliamentary politics. Turnout for the lower house elections decreased from 52 percent in 2002 to a record low of 37 percent in September 2007. Even more significantly, 19 percent of voters in 2007 cast blank or spoiled ballots, seemingly a manifestation of the deep alienation from, and anger toward, a political system that is widely regarded as disconnected from the day-to-day preoccupations of most Moroccans.³

Parties often lack clear platforms, are deficient in internal democracy, and are unable to build substantive relationships with the public, particularly the youth. The public generally regards political parties as vehicles of personal ambition and wealth accumulation rather than policy change. Parties also are discredited by the tendency of individuals to switch parties after elections for opportunistic reasons.⁴

There has been no recent progress toward greater separation of power and until his March 2011 speech the king ignored mounting calls for constitutional reforms to empower representative institutions. In July 2007, he argued that Morocco's "model" of an active monarchy is inconsistent with the separation of executive, legislative, and judicial powers. The king is both head of state and de facto head of government and, according to the constitution, "Commander of the Faithful." He appoints and can dismiss the prime minister, other ministers, ambassadors, governors, and heads of public agencies. He presides over the Council of Ministers, which gathers when his schedule can accommodate such a meeting, and can also decide at will to reshuffle his cabinet, as he did in January 2010.⁵

The prime minister has no independent authority and his ability to shape policy is less than that of key royal advisers.⁶ The two prime ministers since 2006, Driss Jettou and Abbas El-Fassi, repeatedly were simply informed of important government decisions reached without their knowledge by the royal cabinet. In important ministries, including the Ministry of Interior, royal advisers serving as deputy ministers exercise more influence than the ministers to whom they nominally report. Meanwhile, at the local and regional levels, governors, not local councils and mayors, make all key decisions.⁷

The 2005 political party law, promulgated by royal decree in February 2006, prohibits parties that do not accept Islam or the monarchical regime, or that do not recognize Morocco's

COUNTRIES AT THE CROSSROADS

territorial integrity. Thus, parties that embrace separation of religion and state, or that contest Moroccan sovereignty over Western Sahara, can be declared illegal. Article 50 of the law empowers the minister of interior and the president of the Administrative Tribunal of Rabat to suspend parties they think interfere with public order. Article 4 prohibits parties founded on religion or narrow linguistic, ethnic, or regional bases, and is generally understood as intended to prevent the legalization of Islamist groups such as the Justice and Charity movement or parties with a militant Berber agenda.

Civil society is vibrant and relatively free, particularly by comparison with other Arab countries. Advocacy groups are more assertive and effective than political parties in pressing for change and raising sensitive questions, though they operate within well-known restrictions and their policy influence is very limited. Engagement between the government and nongovernmental organizations (NGOs) has declined in the past several years. NGOs are highly dependent on funding from the state or palace-affiliated foundations, which makes them vulnerable to direct or indirect pressure. That is increasingly true since the 2005 launch of the National Initiative for Human Development (INDH), which disproportionately benefits NGOs close to the regime.

The discriminatory application of NGO regulations impedes civil society activity. According to the law on associations, modified in 2002, in order to be allowed to operate an association only needs a receipt proving it has submitted the necessary registration documents. In practice, however, the authorities may not issue that receipt, in which case the association is illegal and can be shut down at any time. Associations that do not adhere to well-known limits concerning the monarchy, Islam, or the controversial disputed territory in Western Sahara are denied the legal right to exist. Other impediments to free associational activity include the many documents needed to register an association and the ability of the authorities to grant or deny the coveted status of “public utility association,” which confers many advantages in areas ranging from fundraising to tax exemptions and the right to receive donations. The authorities recently have become more liberal toward foreign funding—many sources of external assistance are available, and it is relatively easy to access to them without governmental interference.

Moroccan media now routinely address topics that were still considered taboo less than a decade ago. Media criticism of the government is frank, in sharp contrast with most other Arab states, and the state plays a decreasing role in shaping public opinion through its domination of broadcast news and ownership of approximately 30 percent of print media. There has been a sharp deterioration in Morocco’s media environment over the last few years, however, and attacks on the online and traditional press have become increasingly common. In their efforts to restrict media freedom, the authorities have invoked restrictive press code clauses and used exorbitant fines, libel cases, and advertising boycotts (especially by companies that fall under the ONA Group, in which the royal family holds a dominant share).

According to the press code, journalistic freedom is contingent upon it being exercised according to “the deontology of the profession,” a clause subject to arbitrary interpretation. The code provides for prison terms for the “malicious” dissemination of “false information” deemed “harmful to public order.” Statements considered “offensive” to the royal family, the monarchy, Islam, or state security can result in heavy fines or prison terms. The law is intentionally vague, allowing courts significant flexibility to rule in favor of official interests.

Officials frequently suspend publications critical of the authorities, and self-censorship is rampant under the threat of government closure, excessive fines, and advertising boycotts. Libel complaints initiated by the government or private citizens increased steadily from 2006 onward,

COUNTRIES AT THE CROSSROADS

resulting in heavy fines that created enormous pressure on publishers to respect the government's limits.

A few examples illustrate the pattern of media suppression. Since its creation in the late 1990s, the weekly *Le Journal Hebdomadaire* had been relentless in its criticism of the monarchy, its exposure of corruption in the military, and its defiance of Morocco's political and economic establishment. In April 2006, however, the Rabat Court of Appeals upheld record damages against the magazine in a defamation suit initiated by the head of a Belgian think tank, whose recently-published report on the Western Sahara *Le Journal* had condemned as lacking independence from the Moroccan government. Many believed that the authorities were complicit in the suit, and that the scope of the approximately \$380,000 fine (the largest ever for a press defamation suit) was politically motivated. In January 2007, Aboubakr Jamaï, the weekly's founder and managing editor, stepped down as publisher and later left the country to avoid governmental seizure of his assets and closure of *Le Journal*. When he returned in 2009, the suit was upheld and the magazine was forced to shut down due to bankruptcy.

In 2007, the leading Arabic-language weekly, *Nichane*, was suspended for three months (and its director and one of its journalists sentenced to three-year suspended jail terms) for reporting on Moroccans' sense of humor about religion, politics, and sex. That same year, for an article in which he had questioned the utility of free elections in a country in which the king is all-powerful, Ahmed Benchemsi, editor of *Nichane* and the weekly *Tel Quel*, was detained for two days. *Tel Quel* and *Nichane* were seized and a trial was initiated against Benchemsi for "failure to show due respect" to the king.⁸ On August 1, 2009, the authorities seized and destroyed 100,000 copies of *Tel Quel* and *Nichane* after they published an opinion poll regarding the performance of King Mohamed VI. Although the results indicated approval ratings of 91 percent, government spokesman Khalid Naciri justified the ban by stating that "the monarchy cannot be the object of debate, even through a poll." Benchemsi again was charged with failing to demonstrate due respect to the king and was promptly interrogated by the security forces. In October 2010, *Nichane* was forced to file for bankruptcy and shut down, largely as a result of a sustained ONA advertising boycott.

In May 2008, the Moroccan government suspended Al-Jazeera's broadcasting license, forcing it to suspend its nightly Maghreb news bulletin. The authorities cited technical and legal reasons but the closure came right after Al-Jazeera aired criticism of the late King Hassan II. In July 2008, a Rabat court fined Al-Jazeera's Morocco bureau chief Hassan Rachidi and suspended his press accreditation for "malicious dissemination of false news" after Rachidi reported that protesters had died during clashes with security forces in Sidi Ifni and that the police and security forces were responsible.

There is no official policy or legislation regulating the internet, but occasionally the government does block sites that it considers overly critical and it monitor blogs and personal web pages to minimize dissent. In February 2008, a Casablanca court sentenced Fouad Mourtada to three years in prison for creating an unauthorized Facebook profile of King Mohamed VI's brother.⁹ On September 8, 2008, a court in Agadir fined and sentenced a blogger, Muhammad Erraji, to two years in jail for criticizing the king's habit of doling out gifts while visiting regions of Morocco, pointing out that such practices encourage dependency.¹⁰ In September 2008, Yassine Bellasal received a suspended sentence of a year in jail and a fine for spraying spoof graffiti of the national motto ("God, the Nation, and the King"). His crime was replacing "the king" with his favorite soccer club, FC Barcelona, thus allegedly offending the monarch.¹¹

COUNTRIES AT THE CROSSROADS

CIVIL LIBERTIES

There have been no reports in recent years of extrajudicial killings by the government or its agents, but there were a few reports of politically-motivated temporary disappearances, the overwhelming majority of which affected radical Islamists and Sahrawis. There are frequent reports of abuse and torture by members of the security agencies, with Sahrawi human rights and independence activists and radical Islamists comprising the vast majority of victims.¹² Interviews the author conducted with Moroccan human-rights activists, media coverage between 2006 and 2010, and international human rights organizations' reports suggest that the security forces and police do not always respect the rights of those in custody, particularly during pretrial detention,¹³ though some evidence points to a decrease in the number and severity of such abuse.¹⁴

Pretrial detention is a widespread practice that affects up to 40 percent of all those in jail.¹⁵ It is common for individuals to spend months, and sometimes up to three years, in pretrial detention. This is particularly problematic for youths under the age of 20, who represent up to half of pretrial detainees.

Prison conditions in Morocco are very poor. Facilities are overcrowded and in a state of disrepair. Malnutrition, lack of access to basic health services, sexual assault, and violence in them are common.¹⁶ In 2009, the government-subsidized NGO Moroccan Observatory for Prisons (OMP) reported that prison capacity was sufficient for only about half the incarcerated population, with average occupancy standing at 133 percent and reaching nearly 200 percent in some cases. Programs to reintegrate former inmates into society are inadequate, though the government has increased attention and devoted more resources to this problem in recent years.

The ability to obtain redress when state institutions violate citizens' rights is undermined by the lack of both appropriate mechanisms and judicial independence. Sahrawi human rights and pro-independence activists are particularly vulnerable.¹⁷ Law enforcement officials guilty of excessive use of force commonly enjoy impunity.

Nonetheless, the state has continued to try to make amends for human rights violations that occurred before the ascent of King Mohamed VI to the throne in 1999. The Equity and Reconciliation Commission (IER), which King Mohamed VI established in 2004, reviewed cases of enforced disappearances, arbitrary detention, and torture during the 1970s and 1980.¹⁸ It shed light on state responsibility in these abuses and recommended important legal and institutional reforms to prevent the recurrence of similar violations in the future, but did not identify or prosecute offenders. After the IER's mandate ended in November 2005, King Mohamed VI tasked the official Consultative Council on Human Rights (CCDH) to follow up on the commission's recommendations, particularly with regard to paying reparations to thousands of victims.

In January 2010, Amnesty International assessed the work of the IER and follow-up efforts by the CCDH.¹⁹ By the end of 2009, the CCDH had reportedly compensated 17,000 victims or their living relatives. A smaller number of victims were provided medical and employment services. Amnesty International nonetheless expressed concern at the slow implementation of the IER's recommendations and voiced disappointment that perpetrators of human rights violations were not identified publicly or held accountable. The vast majority of recommendations had not been implemented and many victims had not received adequate compensation. Amnesty also criticized the absence of appeals mechanisms for victims, delays in

COUNTRIES AT THE CROSSROADS

assistance, and the lack of transparency in the entire process. It noted that the IER had paid insufficient attention to the violations against Sahrawis, who by and large were excluded from the reparations program.

The state is generally effective in protecting citizens from crime and terrorism. Terrorism has been an issue since the May 2003 Casablanca bombings, and the threat of future attacks created a security environment conducive to abuse of civil liberties and political rights. An antiterror law (Law No. 03-03) passed two weeks after the bombings created room for excesses, including through its broad definition of terrorism and its increase of the period of pretrial detention in terrorism cases. Under that law, plainclothes officers are able to conduct arrests without identifying themselves, and there have been reports that detainees have been taken to secret jails, harshly interrogated, and forced to sign false confessions.²⁰

Recent editions of the U.S. Department of State's *Trafficking in Persons* report identify Morocco as a "source, destination, and transit country for men, women, and children who are subjected to trafficking in persons, specifically forced labor and forced prostitution."²¹ In the past few years, the government has increased efforts to prevent and prosecute human trafficking, including with awareness-raising campaigns among magistrates and police. However, the legislative framework to deter trafficking and punish offenders is lacking, particularly with regard to children who are sexually exploited or forced to work as maids or laborers.²²

Morocco has been hailed as one of the most progressive Middle Eastern states in the area of women's rights and recent legal reforms indeed have enhanced women's status in the country. A new family code passed in February 2004 raised the minimum age for marriage from 15 to 18, granted women the right to initiate divorce, made husbands and wives fully equal under the law, increased custodial rights for women following divorce, and enabled women to pass citizenship to their children regardless of the father's nationality. However, implementation of these far-reaching changes has been slow and inconsistent. The law provides broad interpretative latitude to judges, many of whom consider the reforms inconsistent with Islam and tradition. Family court facilities have yet to be upgraded and the number of judges assigned to family court cases is grossly insufficient. Women's access to justice is limited, particularly in rural and suburban areas with high poverty and illiteracy, where women lack full awareness of the code and the rights it establishes. Domestic violence and abuse of women tend to be worst in those areas, and authorities often ignore women's complaints or even punish victims for reporting violence. It was not until 2008 that the government amended the penal code to criminalize violence against women and developed an action plan to set up new shelters for battered women.

The overwhelming majority of Morocco's population is Arab, Berber, or (most often) mixed Arab-Berber. There is a small Jewish community of between 3,000 and 5,000 people, and about 100,000 foreign nationals (mostly French and Spanish) reside in the kingdom. The country's official language is Arabic, but many Moroccans speak Berber. The Berbers' North African presence reaches back four millennia. Many Berbers were Arabized linguistically and culturally in the seventh century, and the community mixed with the Arabs through intermarriage. Of the entire Maghreb region, Morocco has the largest number of people (estimates vary between 55 percent and 65 percent of the population) of Berber descent and who speak one of three main Berber dialects. Smaller groups, found mainly in the deep south, include the Haratin, the Zenaga, and the Tuareg.

After independence, the government promoted the country's Arab identity to the exclusion of its Berber component. However, in the past three decades, under pressure from Berber militants and international human rights organizations, authorities have been more willing

COUNTRIES AT THE CROSSROADS

to acknowledge the country's multidimensional cultural identity. They have recognized Berber as a national language and allowed Berber-language radio and TV broadcasts, teaching of Berber in schools, and the promotion of Berber culture. Berber cultural associations and political parties (especially the People's Movement and the National Popular Movement) regularly and peacefully represent the Berber community's demands and grievances, though the 2005 political party law was invoked in 2007, when the government declared illegal the Amazigh Democratic Party. Although some Berbers think the law constrains their ability to advance their own cultural, economic, and political agendas, Berber parties play a significant role in parliament and coalition building and the palace cannot easily disregard the broad constituencies they represent.

An estimated 97 percent of the population is Sunni Muslim of the Maliki rite, and Islam is the state religion. The king, who holds the title of Commander of the Faithful, claims ultimate authority in matters related to religious interpretation.²³ The state has a long tradition of tolerance toward Morocco's well-established Jewish and Christian minorities, which historically have not faced restrictions on their freedom of religion as long as it is conducted within traditional channels and in accordance with local norms and expectations. However, converting Muslims is illegal, and both the person who seeks to convert and the Muslim who renounces Islam may face arrest and harassment. The state does not look kindly on overt proselytizing by foreign missionaries, who are likely to be deported for such endeavors, as occurred in early 2010. The Ministry of Religious Endowments and Islamic Affairs controls the appointment of imams in the country's mosques and monitors sermon content. Since 2004, it has redoubled its efforts to counter the spread of violent extremist ideas, and unregulated mosques have been closed down.

The law regulating public assembly was expanded in 2002 but remains ambiguous. It states that public gatherings do not need prior authorization, but it also requires that local authorities are notified and issue a receipt. At least 24 hours must elapse between receipt issuance and the gathering. Thus, authorities can prevent public gatherings they disapprove of by withholding or delaying receipts. Public demonstrations are subject to a similar process, with the added caveat that only political parties, unions, professional syndicates, and other legally-registered associations can demonstrate. Authorities generally respect citizens' right to peaceful protest, and protests are common. Occasionally, however, security forces forcibly disperse demonstrators, even when they are nonviolent and nonthreatening. Excessive use of force by the security forces is particularly common in Western Sahara. Sahrawi human rights and pro-independence activists have been imprisoned merely for participating in demonstrations calling for self-determination.²⁴

Less than 6 percent of the labor force is unionized.²⁵ The constitution and the 2003 Labor Code grant workers and civil servants the right to join (or withdraw from) trade unions and the right to bargain collectively²⁶, but in practice the right of workers to organize and negotiate with employers is often restricted. Forming a trade union remains difficult and workers tend to refrain from doing so, fearing job loss. Provisions in the labor code prohibit public servants, members of the judiciary, and domestic and agricultural workers from forming trade unions. Workers generally are able to advocate for improved working conditions or policy changes, but the government grants the right to strike only to certain unions, and employers can seek criminal prosecution of strikers who hold a sit-in or damage property. Trade unions complain that the government has used Article 288 (which enables criminal punishment for those who resort to fraud or violence to set off a strike) in order to suppress strikes and prosecute workers who engage in them.²⁷

COUNTRIES AT THE CROSSROADS

RULE OF LAW

In August 2009, King Mohammed VI announced plans for a series of reforms to strengthen the judiciary and improve the public's confidence in the legal system. The proposed reforms included enhancing the independence and efficiency of the judiciary, modernizing the legal system's regulatory framework, and establishing anticorruption mechanisms. Despite these promises, there has been no significant headway toward improving the judiciary and public confidence in the institution remains very low.

The constitution does not recognize the judiciary as an independent branch of government. Article 82 of the constitution refers to it as an "authority" (*autorité*), not as a "power" (*pouvoir*). Underscoring the king's authority over the judiciary, Article 83 states that "sentences shall be passed and executed in the king's name." General jurisdiction courts include district-level courts, first instance courts, appeals courts and, at the top of the judicial pyramid (but below the king), the Supreme Court. Specialized jurisdiction courts include administrative courts and commercial courts.

The king heads the Supreme Judicial Council (CSM), which shares administrative authority over the judiciary with the Ministry of Justice (MOJ). All magistrates are appointed by royal decree, upon recommendations by the CSM. Under Article 84 of the constitution, the CSM is responsible for the appointment, discipline, promotion, and transfer of judges. However, excessive MOJ influence over the CSM's composition and proceedings facilitates executive branch interference in judicial matters. Moreover, Article 10 of Law No. 1-74-338, adopted in 1974, nominally regulates the organization of the judiciary, which is inconsistent with the powers that Article 84 of the constitution vests in the CSM and with the actual influence of the MOJ over judicial affairs.

The judiciary is subject to political pressure from the monarchy, the military, and political and economic elites, and is deeply penetrated by individuals engaged in illicit practices. Laws are often implemented selectively, in ways that reflect the relative clout of the parties involved or the size of the bribes they can afford to pay.²⁸ Meanwhile, judicial capacity is undermined by inadequate facilities and a lack of proper training for judges, who sometimes base their rulings on laws that are no longer in place.²⁹

Despite disjointed and ad hoc efforts by senior MOJ officials to discipline judicial fraud, and the dozens of cases of demotion, reassignment, and forced early retirement since 2006, judicial corruption remains pervasive.³⁰ The problem is fueled, in part, by low salaries for clerks, lawyers, and judges, all of whom are known to trade preferential treatment for bribes. Telephone justice, in which politically-connected individuals can call judges for favors or to affect verdicts, is another common citizen complaint. Judicial corruption is particularly severe in northern Morocco, where drug lords smuggling cannabis to Europe rely on the complicity of prosecutors and members of the judiciary. Two scandals illustrated this problem. The "Rkiya affair," in early 2007, involved judges acknowledging on tape receiving money in exchange for rendering certain verdicts. Six months earlier, during the August 2006 "Tetouan scandal," seven lawyers had sent to a weekly paper a "Letter to History" denouncing the corruption that prevails in Tetouan's judicial circles. They had identified numerous instances of wrongdoing by city magistrates during judicial cases involving drug lords, and had highlighted evidence of systematic complicity between those accused and those supposed to prosecute them. Most importantly, the Tetouan scandal demonstrated that, instead of being protected, judges or lawyers who come forward to

COUNTRIES AT THE CROSSROADS

denounce corruption in their ranks are likely to be targeted for retaliation. Barely a week after the Letter to History was published, magistrates in Tetouan went on the offensive and initiated judicial proceedings against its authors, conveniently placing themselves in the position of being both judge and litigant. Ultimately, all seven lawyers were dismissed and disbarred following a process marred by serious irregularities.

Defendants generally enjoy the presumption of innocence in law and practice, and have the right to counsel, but violations of those rights continue to occur, particularly with regard to pro-independence Sahrawi activists, supporters of self-determination for the Western Sahara, and those suspected of extremist activity. Amnesty International and other human rights groups allege that defendants in cases related to security issues or the Western Sahara question frequently do not receive fair trials.³¹

Civilian authorities control the security forces and the military, intelligence, and internal security services do not intervene in any meaningful way in the political process. Nonetheless, senior members of the armed forces can invoke provisions in the law to deter charges of corruption against them or to force punitive damages on those who make such accusations. Security forces are not held sufficiently accountable for human rights abuses, particularly with regard to cases involving the Western Sahara and Islamic extremists.

The military is rife with corruption, and allegations of illegal practices in its ranks are systematically suppressed. The military budget is opaque and not subject to parliamentary debate or approval. Senior military officers have taken advantage of their positions to amass huge fortunes.³²

Citizens have the right to own property. Laws related to property ownership are specific enough, but enforcement relies in large part on the judiciary, which is not independent and generally rules in favor of those close to the palace. The legal framework for intellectual property is inadequate, and relevant laws are not enforced. There are some state protections from land seizure, though expropriation is possible. The previously discussed lack of independence, integrity, and capacity of the judicial system significantly constrains the extent to which property rights are enforced consistently and in a timely manner.³³

ANTICORRUPTION AND TRANSPARENCY

For all the government's rhetorical emphasis on fighting corruption, and despite the flurry of legal and institutional reforms that have been initiated in this area in the past several years, corruption remains endemic, systemic, and institutionalized. It is ubiquitous in all its manifestations: petty and grand; in business transactions and political life; in the private sector and government; and at the national and local levels. Moroccan entrepreneurs and foreign investors describe corruption as the primary deterrent to investment in the kingdom. Corruption's toll on economic growth and job creation cannot be overstated, nor can the extent to which it has eroded public confidence in state institutions, the political elite, and the political system in general.

Morocco's economy is driven primarily by clientelism and patronage. Most state-owned enterprises were privatized in the 1990s, but palace-connected economic actors have tended to benefit disproportionately from that process. The monarchy's increased involvement in the country's private sector, and the deepened influence of prominent businessmen close to the palace, have exacerbated longstanding transparency problems over the past few years. Moroccan

COUNTRIES AT THE CROSSROADS

society is a web of patronage networks in which, at each level, a patron seeks to maintain his position of influence through the distribution of favors to clients below him; the latter, in return, support their patron, who for his part endeavors to retain the backing of a patron above him. Atop this system sits the king, who acts as Morocco's "patron-in-chief."³⁴ Prosecution for corrupt practices is relatively uncommon, particularly for those close to the palace, and information on prosecutions, convictions, and sentences is difficult to obtain.

According to Transparency International's Corruption Perception Index, the extent of corruption in the kingdom has not changed significantly since 2007. In 2010, despite marginal improvements in its overall score due to the passing of promising legislation that has yet to be enforced, Morocco ranked 85 out of 178 countries, which is far below where it was in 2000.³⁵

Senior members of the armed forces and security agencies and prominent entrepreneurs close to the monarchy frequently benefit from unfair advantage in business transactions and from official tolerance for illicit enrichment. Many use political connections to deny others the opportunity to compete with them on a level playing field, and they are rarely held accountable for engaging in corruption which, as noted above, is particularly prevalent in the military.

Regulations for transparent and competitive procurement processes are in place, and there has been some progress in this area in the past decade. However, there remains considerable room for improvement. Military contracts are not subject to standard procurement procedures in practice, a major problem in light of the size of these contracts and the opportunities they present for corruption.³⁶ Another concern is "delegated management," the delivery of a specific public service (e.g., the provision of water or electricity, or garbage collection) by a private firm, contracted by a public entity. The contracts involved usually represent very lucrative markets and, consequently, longstanding sources of corruption. Proper bidding procedures are frequently disregarded, as happens, for instance, when the governor or president of the municipal council decides to award a concession without granting all interested economic operators an opportunity to bid.³⁷

Economic transactions involving the palace are not subject to the same scrutiny as others, and people are hesitant to expose irregularities or questionable dealings that involve the monarchy or individuals closely tied to it. Opportunities for appeal in the case of unlawful practices are dramatically reduced if the monarchy is involved and royal interests will likely prevail, particularly if the stakes are high. The mere involvement of the palace in a given contract or market may be sufficient to keep would-be competitors at bay because of the hesitation to appear to be challenging the king, in addition to the knowledge that those who have dared to do so in the past have sometimes paid a heavy price for their audacity.³⁸

Morocco's sizable informal economy is another source of corruption. The production and export of cannabis in the north is estimated to generate revenue well above \$10 billion, a significant portion of which is laundered.³⁹ Drug-trafficking and drug-smuggling networks often bribe or intimidate judges, police, customs officers, and public prosecutors to obtain a favorable outcome or evade prosecution.

Morocco upgraded its legal and regulatory framework over the past few years to a point that the latter is now sufficient to fight corruption. For instance, most corruption-related offenses are covered satisfactorily by Morocco's penal code, which sanctions embezzlement of public funds, the collusion between private and public interests, conflicts of interest, the solicitation and acceptance of bribes, the use of public office for private gain, and influence peddling. In May 2007, the country ratified the United Nations Convention against Corruption (UNCAC).

COUNTRIES AT THE CROSSROADS

In March 2007, the kingdom passed comprehensive anti-money laundering legislation that specified penalties including jail sentences, and required Moroccan banks to upgrade their internal control systems. Moroccan authorities increased efforts to sensitize financial institutions to money-laundering issues, though these entities have a long way to go before they fully comply with the new legislation.

In the summer of 2007, the Moroccan parliament adopted legislation requiring decision makers, including judges, senior civil servants, MPs, and local officials, to disclose their assets and net worth, along with those of their spouses and minor children, at the beginning of their tenure, at regular intervals thereafter, and upon leaving office. Reports indicate that most officials have yet to comply with these new requirements, but they represent a step forward in the struggle to deter illegal official behavior.

In January 2007, the cabinet, presided over by the king, adopted a decree to create a Central Agency for the Prevention of Corruption (ICPC). The ICPC was formally established in May 2007, though the king did not appoint its members until December 2008. The organization was charged with developing a corruption-prevention policy, monitoring government practices, increasing awareness of corruption, and receiving complaints. Civil society had long advocated for—and the newly-ratified UNCAC required—a specialized anticorruption organization, but the ICPC is handicapped by a number of core weaknesses. The prime minister must approve its activities, including the publication of its annual report, it has no investigative and prosecutorial powers, and it is underfunded. In early 2011, the ICPC was still developing an action plan and an anticorruption strategy, but had not achieved substantive progress.

The Court of Accounts (COA), Morocco's primary audit body, supervises the implementation of the budget. It reviews the expenditures of all ministries, public or semi-public agencies, and any other institution that uses public funds in order to ensure that these expenditures are consistent with budget authorizations. The constitution grants the COA sufficient autonomy and authority to carry out that mandate: the court operates independently of all three branches of government and sets its own annual program, and its members enjoy the same protections as magistrates. Public entity administrators are required to provide the COA with all the information it requests in the course of investigating their financial operations. However, while the constitution states that the COA "shall take action, when necessary, against violations of the rules governing ... the agencies placed under its control," in practice the COA cannot perform that function. Nine regional audit courts were created in 2003 but are not yet operational. The constitution tasks them with monitoring local governments, but they lack the resources, authority, and experience to conduct that work.

The COA'S 2006 and 2008 reports detailed the COA's audits and included evidence of illicit practices across various branches of government.⁴⁰ The Ministry of Health, the National Investment and Development Fund, and several mayors were singled out for particular criticism. The reports also highlighted flawed procurement processes and evidence of irregularities and mismanagement at the public agency that manages Morocco's airports. Many commentators celebrated the 2008 report as a significant step toward greater transparency, as previous COA reports had not been publicly accessible, but the judicial authorities did not follow up on the report's findings.

Significant gaps remain in Morocco's anticorruption framework. Whistleblowers lack adequate protection from reprisals, there is no freedom of information law, and the framework for preventing conflict of interests is inadequate. Still, as noted earlier, the main problem confronting Morocco's main anticorruption problem is not an ineffective legal framework, but

COUNTRIES AT THE CROSSROADS

the absence of enforcement mechanisms and insufficient political will among senior power-holders. Evidence of malfeasance and irregularities reported to the ICPC or unearthed by the COA are rarely followed up on by institutions, including the judiciary, charged with doing so.

The greatest source of hope in the anticorruption struggle is the readiness of civil society and the press to expose graft, step up pressure on the authorities to address the problem, and participate in the design and implementation of measures to combat it. Transparency Maroc (Transparency International's local chapter) has a solid track record in all those areas and the independent press has made substantive contributions through its analyses and commentary. The press has paid a heavy price for its coverage of corruption, but its members have not been subdued and have become better able to unravel complex financial scams, especially in such sectors as banking, real estate, tourism, and housing. Despite Morocco's crackdown on press freedoms, the outcry against corruption has never been greater.

RECOMMENDATIONS

- Implement the recommendations that the IER made in its final January 2006 report with regard to enhancing judicial independence and strengthening judicial capacity. As called for by the IER, the CSM should be made more independent from the MOJ; its exclusive authority over the appointment of judges should be consolidated; penalties for outside interference in judicial affairs should be made harsher; court infrastructure should be improved; judges, other justice sector professionals, and security sector officials should be properly trained.
- Address the constitutional and legal restrictions regarding freedom of expression. Provisions in the press code that punish statements deemed harmful to the monarchy, Islam, or territorial integrity should be eliminated or reduced in their scope. Provisions intended to punish declarations deemed to have been an "offense" to Moroccan or foreign officials should be removed.
- Adopt a proactive policy to prevent mistreatment of detainees, particularly in the Western Sahara. Priority steps include more effective oversight mechanisms, the systematic investigation of reports of abuses, the prosecution of offenders, and relevant training for law enforcement officials.
- Amend anti-terrorism legislation to strengthen safeguards for human rights and civil liberties in the application of the law.
- Amend the penal code to criminalize the use of funds generated by corruption and adopt whistleblower protection legislation.

¹ See for instance National Democratic Institute (NDI), *Final Report on the Moroccan Legislative Elections, September 7, 2007* (Washington, DC: NDI, May 15, 2008).

² See for instance the coverage of those elections in the independent newsweekly *Tel Quel* (Casablanca).

³ See for instance Michael McFaul and Tamara Cofman Wittes, "The Limits of Limited Reforms," *Journal of Democracy*, Vol. 19, No. 1 (January 2008).

⁴ Moroccans refer to this practice as "electoral nomadism" or "political transhumance."

⁵ As a result, the cabinet did not meet a single time during the first half of 2008.

COUNTRIES AT THE CROSSROADS

⁶ Revealingly, when shortly after his nomination in September 2007 the then Prime Minister-designate Abbas El-Fassi was asked about his program of government, he simply replied that he intended to implement “the king’s program.” In October 2007, when negotiations over the allocation of cabinet portfolios reached an impasse, the late royal adviser Abdelaziz Meziane Belfqih took over the negotiations and determined the final make-up of the cabinet.

⁷ Article 102 of the Moroccan constitution underscores the preeminence of governors: “In the provinces, prefectures and regions, governors shall represent the State and see to it that the law is enforced. They shall be responsible for the implementation of Government decisions and, to this end, for the management of [the] local departments [field offices] of Government agencies.”

⁸ Benchemsi’s case was part of a series of trials initiated under Article 41 of the press law, which criminalizes “disrespect” for the king and other members of the royal family.

⁹ The king pardoned Mourtaoua on March 18 after an international outcry over the earlier decision.

¹⁰ An appeals court overturned the verdict.

¹¹ An appeals court overturned the conviction on September 18.

¹² See Amnesty International, *Rights Trampled: Protests, Violence and Repression in Western Sahara* (London: Amnesty International Publications, 2010).

¹³ Amnesty International, *Rights Trampled*; Amnesty International, *Broken Promises: The Equity and Reconciliation Commission and Its Follow Up* (London: Amnesty International Publications, 2010); Human Rights Watch, *World Report 2011* (Human Rights Watch, 2011), <http://www.hrw.org/en/world-report-2011>, accessed July 7, 2011.

¹⁴ See for instance “Rapport Annuel de l’Association Marocaine des Droits Humains [AMDH] sur les Violations des Droits Humains au Maroc en 2009,” AMDH.

¹⁵ Observatoire Marocain des Prisons, *Rapport Annuel: 2007–2008* (Rabat: 2009).

¹⁶ Ibid.

¹⁷ Amnesty International, *Rights Trampled*; Human Rights Watch, *World Report 2011*.

¹⁸ For a listing of useful sources on the IER and its conclusions, see “Truth Commission: Morocco,” United States Institute of Peace, <http://www.usip.org/publications/truth-commission-morocco>, accessed June 16, 2011.

¹⁹ Amnesty International, *Broken Promises*.

²⁰ See for instance “Morocco/Western Sahara: Dissidents in Prison, Unfair Trials,” Human Rights Watch, January 24, 2011, <http://www.hrw.org/en/news/2011/01/24/moroccowestern-sahara-dissidents-prison-unfair-trials>.

²¹ U.S. Department of State, *Trafficking in Persons Report 2010* (U.S. Department of State, 2010), p. 241, <http://www.state.gov/g/tip/rls/tiprpt/2010/>.

²² Ibid., 241.

²³ For daring to challenge King Hassan II’s authority as the country’s religious leader, Sheikh Abdesslam Yassine, the leader of the Justice and Charity Movement, spent eleven years under house arrest between 1989 and 2000.

²⁴ Amnesty International, *Rights Trampled*.

²⁵ “Morocco,” La Poste Export Solutions, <http://www.laposte-export-solutions.co.uk/uk/markets/country-profiles/morocco/labour-market>, accessed June 17, 2011.

²⁶ “Morocco: Labor Rights Report,” U.S. Department of Labor, Bureau of International Labor Affairs, July 2004, <http://docs.google.com/viewer?a=v&q=cache:N6xGzNDecCwJ:www.dol.gov/ilab/media/reports/usfta/mlrr.pdf+US+Department+of+Labor,+Bureau+of+International+Labor+Affairs,+Morocco+Labor+Rights+Report+July+2004&hl=en&gl=us&pid=bl&srcid=ADGEESiDJSUI8JmCjy5rnmlPEclgcUt1vN6hu7UhRzSptJTQmq87seGmAnNdFumPIoWGuZkRTjW9m449TB5oPM8nBww-zxZXFk4qmTVItiVsfxAaZmh9XMqSfiA91vO92DF-1B45UWWw&sig=AHIEtbQ8gOiPnVnXC8xAncCk-TganZxkA&pli=1>.

²⁷ “Annual Survey of violations of Trade Union Rights: Morocco – 2011,” ITUC, <http://survey.ituc-csi.org/Morocco.html?lang=en>, accessed July 7, 2011; “2010 Human Rights Practices: Morocco,” U.S. Department of State, April 8, 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm>.

²⁸ “Morocco Rule of Law Assessment,” Moroccan American Community Center, September 16, 2010, <http://www.morocboard.com/news/34/1202>; Transparency International, *Etude du Systeme National D’Integrite: Maroc 2009* (Transparency International, 2009).

²⁹ “2010 Human Rights Practices: Morocco,” U.S. Department of State, April 8, 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm>.

³⁰ United States Agency for International Development (USAID), *Morocco Rule of Law Assessment* (USAID, September 2010), http://pdf.usaid.gov/pdf_docs/PNADT305.pdf.

³¹ See for instance the press releases by Amnesty International regarding the Western Sahara in 2008 and 2009.

COUNTRIES AT THE CROSSROADS

³² The military is charged with policing Morocco's territorial waters. Senior officers have used that mandate to acquire controlling interests in companies involved in the export of fish to Spain.

³³ See for instance Morocco's ratings on the Heritage Foundation's *Index of Economic Freedom*: "Morocco," 2011 Index of Economic Freedom, <http://www.heritage.org/Index/country/Morocco>, accessed June 17, 2011.

³⁴ Ever since independence, the monarchy has been the country's main entrepreneur and its largest landowner. The royal family is the primary shareholder in Morocco's largest private conglomerate, ONA-SNI, which controls the distribution of a broad array of goods and equipment in the kingdom, and dominates agribusiness, financial services, and mining. Through ONA-SNI, its networks of subsidiaries, and other interconnected companies and financial holdings, the monarchy is heavily implicated in all key sectors of the economy.

³⁵ "Corruption Perceptions Index 2010 Results," Transparency International, http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results, accessed July 7, 2011.

³⁶ Dr. Ahmed El Midaoui, "Public-Private Partnerships and the new challenges for SAIs" (PowerPoint presentation given by Kingdom of Morocco, Cour des Comptes, at XIV PWG Meeting, October 16–19, 2007); Mr. Abdelaziz Talbi, "Corporate Governance of State-Owned Enterprises (SOEs) in Morocco" (PowerPoint presentation given by Morocco's Ministry of Economy and Finance to OECD in Paris, March 2–3, 2010), <http://www.oecd.org/dataoecd/31/27/44771161.pdf>.

³⁷ Dr. Ahmed El Midaoui, "Public-Private Partnerships and the new challenges for SAIs"; Mr. Abdelaziz Talbi, "Corporate Governance of State-Owned Enterprises (SOEs) in Morocco"; OECD, *Enhancing Integrity in Public Procurement* (OECD, July 2009), <http://www.oecd.org/dataoecd/28/23/44288257.pdf>.

³⁸ "MOROCCO: Challenge to the King," *Time*, January 26, 1959, <http://www.time.com/time/magazine/article/0,9171,892086,00.html>.

³⁹ "2008 International Narcotics Control Strategy Report for Morocco," U.S. Diplomatic Mission to Morocco, February 27, 2009, <http://morocco.usembassy.gov/policy/key-reports/2008-international-narcotics-control-strategy-report-for-morocco.html>.

⁴⁰ See Royaume du Maroc, *Rapport Annuel de la Cour des Comptes* (Cour des Comptes, 2006 and 2008).