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Ideals without Illusions: Corruption and the Future of a Democratic North Africa

Juliet Sorensen*

I. INTRODUCTION

A. Corruption as a Precondition to the Fulfillment of the Right to Democracy

¶1 Is there a universal human right to democracy? Constitutions and international human rights documents answer an unequivocal "yes." The U.S. Constitution lays out its system of representative government in Article I. Article 21 of The Universal Declaration of Human Rights provides that "everyone has the right to take part in the government of his country, directly or through freely chosen representatives."[1] Even the Cairo Declaration on Human Rights in Islam, signed by the member states of the Organization of the Islamic Conference in 1990, provides in Article 19 for equal protection under the law "without distinction between the ruler and the ruled" and the universal right to resort to justice.[2]

¶2 Representative government, hallmarked by competing parties, periodic elections, and extensive participation, is considered the foundation of democracy.[3] Inherent in the right to democracy is that representative government be free from corruption. In political science literature, corruption is commonly defined as "behavior which deviates from the formal duties of a public role because of . . . pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence, including bribery and embezzlement."[4]

¶3 Public international law and U.S. jurisprudence alike have emphasized that the absence of corruption is essential to democracy. As stated in its Preamble, the 2003 United Nations Convention against Corruption was enacted because of "problems and threats posed by corruption to . . . undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law."[5] The U.S. Supreme Court in *Buckley v. Valeo* stated that "[t]o the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined."[6] An election is meaningless if the outcome is fixed; a trial does not dispense justice if the judge is bribed; an official who acts to line his own pockets

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[1] Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810, at art. 12 (1948).

[2] Cairo Declaration on Human Rights in Islam, U.N. GAOR, 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18, art. 18 (Aug. 5, 1990).

[3] GUY S. GOODWIN-GILL, FREE AND FAIR ELECTIONS (2006).

[4] Joseph S. Nye, *Corruption and Political Development: A Cost-Benefit Analysis*, 61 AM. POL. SCI. REV. 417, 417-27 (1967).

[5] U.N. Convention Against Corruption, Oct. 31, 2003, U.N. Doc. A/58/422, *entered into force* Dec. 14, 2005, *available at* http://www.unhcr.org/refworld/docid/4374b9524.html.

[6] Buckley v. Valeo, 424 U.S. 1, 26-27 (1976).

does not act in the best interests of the community she serves. In other words, a functioning democracy is undermined by a lack of public integrity.

¶4 The absence of corruption alone does not engender democracy, but true democracy cannot exist where corruption thrives. This has been shown by quantitative analyses of corruption's effect on society. For example, a study of corruption in South Korea found that political corruption is the most relevant determinant of the public's trust in a country's political system.[7] Similarly, an examination of corruption in Latin America concluded that, in addition to the effect of public corruption itself, the perception of corruption has a separate and equally devastating effect, generating a "culture of distrust" towards public institutions.[8]

¶5 Social science research has also shown that democratic systems tend to reduce corruption. A 2007 study of embezzlement in areas of Indonesia where local elections were taking place indicated that voting served as a public "audit," by which the public evaluated elected officials and held them accountable.[9]

¶6 A 2002 international study on the root causes of corruption concluded that political competition reduces corruption because freedom of information and association limit the opportunities for corrupt actions.[10] The adversarial nature of a multi-party system also chills corruption: a competitive electoral process can incentivize politicians to reveal the untrustworthy behavior of their opponents and also to be trustworthy themselves.[11] In other words, corruption "breaks the link between collective decision making and people's powers to influence collective decisions through speaking and voting, the very link that defines democracy."[12]

B. Corruption as a Motivating Force in the Arab Spring

¶7 In the Arab Spring of 2011, corruption was high on the list of grievances presented by protesters, and rightfully so: countries in the Middle East and North Africa (MENA) region have been dogged by corruption for years. In the Maghreb in particular, concerns about the quality of governance, including the protection of rights, the rule of law, and corruption have long been voiced in tandem with calls for democracy.[13] The 2011 Corruption Perceptions Index of the international anti-corruption organization, Transparency International, rates countries on a scale of 0 (highly corrupt) to 10 (highly clean), and the MENA scores are poor: a look at North Africa from west to east shows scores of 3.4 (Morocco), 2.9 (Algeria), 3.8 (Tunisia), 2 (Libya), and 2.9 (Egypt).[14] A 2011 report by the advocacy group, Global Financial Integrity, noted that four of

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[7] Kim, J.Y. *"Bowling Together" isn't a Cure-All: The Relationship between Social Capital and Political Trust in South Korea,* Int'l Pol. Sci. Review 26, 2, 193-213 (Apr. 2005).

[8] Natalie Melgar, Maximo Rossi & Tom Smith, *The Perception of Corruption*, 22 INT'L J. PUB. OP. RESEARCH 120, 120 (2009).

[9] Benjamin A. Olken, *Monitoring Corruption: Evidence from a Field Experiment in Indonesia*, 115 J. POLIT. ECON. 200, 200-49 (2007).

[10] Gabriella R. Montinola & Robert W. Jackman, *Sources of Corruption: A Cross-Country Study*, 32 BRIT. J. POL. SCI. 147, 151 (2002).

[11] Susan Rose-Ackerman, *Trust, Honesty, and Corruption: Reflection on the State-Building Process*, YALE LAW SCHOOL LEGAL SCHOLARSHIP REPOSITORY, at 13 (2001), *available at* http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1013&context=lepp_papers.

[12] Mark E. Warren, *What Does Corruption Mean in a Democracy?*, 48 AM. J. POL. SCI. 328, 328 (2004).

[13] *See* Karen MacGregor, *From Africa: From Democracy to Development*, INT'L B. ASS'N., http://www.ibanet.org/Article/Detail.aspx?ArticleUid=79b66132-65ad-4e4e-aa9f-c407e672b2f2 (last visited Apr. 12, 2012).

[14] *Corruption Perceptions Index 2011*, TRANSPARENCY INT'L, http://cpi.transparency.org/cpi2011/results/ (last visited Apr. 12, 2012). For an explanation of the methodology employed to create the Corruption Perceptions Index,

the top 10 countries in the world for illicit financial flows—including monies for bribery and tax evasion—were Gulf nations.[15]

¶8 If the right to democracy is premised on an absence of political corruption, then the Arab Spring countries must successfully combat their cultures of corruption in order to realize that right. In this article, I first address the progress that three countries affected by the Arab Spring—Egypt, Tunisia, and Morocco—have made toward democracy over the course of 2011. I then point out specific instances in all three countries of how corruption has hampered that process. I conclude by discussing Hong Kong and Botswana, two democracies that have successfully minimized corruption in regions where it proliferates, as examples of locations that have realized both freedom from corruption and the right to democracy.

II. DISCUSSION

A. Little by Little, the Camel Climbs into the Pot:[16] Moving Toward Democracy While Addressing Corruption in Tunisia, Egypt, and Morocco

¶9 As of January 2012, the legacy of the 2011 Arab Spring remains unsettled. Just as John F. Kennedy was described as an "idealist without illusions,"[17] so the people of North Africa have recognized that the success of the Arab Spring will be judged not by the articulation of lofty democratic ideals in Tahrir Square or the streets of Tunis, but rather by whether those ideals are translated into lasting, concrete democratic reforms. Tunisia and Egypt, as well as Libya, have rejoiced in the exit of despots, but those despots have yet to be replaced by democratically elected leadership. Similarly, Tunisia, Egypt, and Morocco have all had peaceful parliamentary elections, but it remains to be seen whether the parliaments in these countries will exercise a meaningful role in governance. Finally, Tunisia, Egypt, and Morocco have all taken steps to provide redress for entrenched corruption that has existed for too long at all levels of government. However, the redress must result in an overall decrease of corruption in order for democracy to be achieved in each of these countries.

1. Tunisia

¶10 On January 14, 2011, after ruling Tunisia for more than 23 years, Zine el-Abidine Ben Ali abdicated the presidency and fled to Saudi Arabia in the face of countrywide demonstrations. Corruption, unemployment, and political oppression were the primary motivating factors for the demonstrations.[18] On October 23, 2011, Tunisia held elections for a constituent assembly that were pronounced by outside observers to be free and fair.[19] The plurality of seats, approximately fifty percent, were won by Ennahda, a moderate Islamist party whose leader had been persecuted

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see *What is the Corruption Perceptions Index?*, TRANSPARENCY INT'L, http://cpi.transparency.org/cpi2011/in_detail/#myAnchor3 (last visited Apr. 12, 2012).

[15] Dev Kar & Karly Curcio, *Illicit Financial Flows from Developing Countries, 2000 – 2009*, GLOBAL FIN. INTEGRITY (Jan. 2011), http://iff-update.gfintegrity.org/index.html (last visited Apr. 12, 2012).

[16] Moroccan proverb (origin unknown).

[17] THEODORE C. SORENSEN, KENNEDY 22 (1965).

[18] Rym Ayadi, Silvia Colombo, Maria Cristina Paciello & Nathalie Tocci, *The Tunisian Revolution: An Opportunity for Democratic Transition*, INSTITUTO AFFARI INTERNAZIONALI (Jan. 24, 2011), http://www.iai.it/pdf/mediterraneo/MedPro/MedPro-commentary_01.pdf

[19] Alexis Arieff, *Political Transition in Tunisia*, CONG. RESEARCH SERV., RS 21666 at 5, (Dec. 2011), http://www.fas.org/sgp/crs/row/RS21666.pdf.

by the Ben Ali regime for years,[20] and the remainder of seats was won by various secular parties. The constituent assembly temporarily governs the country while drafting a new constitution, a process that is ongoing as this article goes to press.[21]

¶11 After Ben Ali's flight, the interim government moved quickly to prosecute Ben Ali and his wife, Leila Trabelsi, on charges of corruption. In June 2011, a Tunisian court sentenced Ben Ali and Trabelsi in absentia to 35 years in prison for embezzlement and misuse of public money[22] and also levied a $65 million fine.[23] In addition, the new government confiscated the assets of 110 family members of Ben Ali and established a committee to recover the assets from around the globe.[24]

¶12 In spite of this progress, young Tunisians, concerned that the revolution will present yet another opportunity for corrupt officials to exploit their power, remain wary of politics and the current elite.[25] Corruption is of such concern to Tunisian youth that, in a recent focus group survey conducted by the National Democratic Institute, their primary advice for members of the constituent assembly did not concern constitutional reform or elections, but rather corruption and unemployment.[26] As a result of these concerns, voiced strongly by a Tunisian civic organization, OpenGovTN, members of the Constituent Assembly voted in January 2012 to include in the country's constitution a clause guaranteeing transparency and open government.[27]

¶13 The constituent assembly's recognition of popular demands to address corruption evidences the strength of those demands. Time will tell whether Ben Ali's ill-gotten gains can be forfeited and returned to Tunisia, and whether Tunisia's new leaders are as committed to transparency and accountability as their constituents so ardently desire.

2. Egypt

¶14 On January 25, 2011, widespread protests began against the regime of President Hosni Mubarak. On February 11, 2011, Mubarak resigned and fled Cairo.[28] Despite ongoing skepticism about the military and continuing demonstrations in Cairo, peaceful parliamentary elections began in November 2011, and were completed in January 2012.[29] The military's transition timetable includes the transfer of power to an elected president by June 2012.[30]

¶15 Since helping to usher out Mubarak, the military has ruled Egypt with many features of civilian government, including civilian tribunals for criminal defendants.[31] After the revolution,

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[20] *Id.* at 7.
[21] David D. Kirkpatrick, *Tunisia Liberals See a Vote for Change, Not Religion*, N.Y. TIMES, Oct. 25, 2011, at A14.
[22] *Tunisia's Ben Ali Sentenced to Jail In Absentia*, BBC NEWS AFRICA, June 20, 2011, *available at* http://www.bbc.co.uk/news/world-africa-13850227.
[23] *Id*.
[24] Joe Palazzolo, *Tunisia Hires Ace to Track Down Ben Ali's Assets*, WALL ST. J. L. BLOG (Oct. 24, 2011), http://blogs.wsj.com/law/2011/10/24/tunisia-hires-ace-to-track-down-ben-alis-assets.
[25] Nicholas Collins, *Voices from a Revolution: Conversations with Tunisia's Youth*, NAT'L DEM INST. 6 (2011) (explaining that youth are "concerned about individuals, political parties and civil society organizations attempting to profit from the revolution for personal gains").
[26] *Id*. at 11 ("Greater transparency and accountability from decision-makers are a priority.").
[27] Hanen Keskes, *Constituent Assembly Members Vote In Favor of Transparency*, ALL AFRICA (Jan. 7, 2012), http://allafrica.com/stories/201201070044.html; *see also* http://opengovtn.org/.
[28] Jeremy M. Sharp, CONG. RESEARCH SERV., RL33003, EGYPT IN TRANSITION 5 (2011).
[29] *Egypt's Islamist parties win elections to parliament*, BBC NEWS, Jan. 21, 2012, *available at* http://www.bbc.co.uk/news/world-middle-east-16665748.
[30] *Id*.
[31] David D. Kirkpatrick, *As Violence Continues, Egyptian General Blames Protesters*, N.Y. TIMES, Dec. 19, 2011,

several senior ministers of the Mubarak regime were convicted of corruption and sentenced to imprisonment in 2011.[32] In Mubarak's own ongoing criminal proceeding, Mubarak, his two sons, the former interior minister and senior police officers face charges ranging from corruption to involvement in the deaths of hundreds of protesters in the uprising that unseated him.[33] In February 2011, Egypt's top prosecutor notified the United States and other governments around the world that Mubarak was believed to have hidden hundreds of billions of dollars in cash, gold, and other state-owned valuables, using complex business schemes to divert the assets to offshore companies and personal accounts.[34] The 12-page document, written in Arabic and titled "Request for Judicial Assistance," is the first step in civil forfeiture proceedings to recover assets belonging to the Egyptian people and misappropriated by the Mubarak government.[35] More than 70 people submitted requests for asset recovery.[36] The document depicts Mubarak's sons as skilled businessmen who manipulated the country's financial system and laundered their illegal proceeds through off-shore front companies. It further alleges that the Mubaraks "seized public monies and partnered with businessmen, investors, importers and exporters by force to realize profit without basis other than that they are the sons of the president."[37] The document also asserts that Mubarak's sons and their partners committed embezzlement by purchasing "one of the debts of Egypt for 35% of its value and then collected the full 100% value from the Egyptian state budget."[38]

¶16 Meanwhile, the specter of corruption continues to haunt the country. Prior to Mubarak's exit, Egypt was described as "a state where wealth fuels political power and political power buys wealth."[39] WikiLeaks documents, published by *The Washington Post*, show that 2006 privatization efforts and attempts by the State Department to build a market economy under Mubarak only increased opportunities for graft: "[t]he privatization and economic opening of recent years have created new opportunities for 'vertical corruption' at upper levels of government affecting state resources."[40] The military claims that it is proceeding with deliberate speed towards a civilian democracy.[41] However, until the asset forfeiture and criminal proceedings are concluded, addressing the legacy of corruption under Mubarak will remain a priority for Egyptians and a basis for skepticism towards the new political order.

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available at http://www.nytimes.com/2011/12/20/world/middleeast/as-violence-continues-egypt-news-media-clash-over-its-cause.html?_r=1&pagewanted=all.

[32] *Id*. Other senior officials of the Mubarak regime have yet to be charged.

[33] Gregg Carlstrom & Evan Hill, *Scorecard: Egypt Since the Revolution*, AL JAZEERA, Jan. 24, 2012, http://www.aljazeera.com/indepth/interactive/2012/01/20121227117613598.html.

[34] James v. Grimaldi & Robert O'Harrow Jr., *Egypt Prosecutor Alleges Schemes by Mubarak Family*, WASH. POST, Apr. 9, 2011, *available at* http://www.washingtonpost.com/investigations/egypt-seeks-help-to-find-mubarak-family-assets-abroad/2011/04/07/AFCMkZ9C_story.html.

[35] *Id*.

[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] *How Did Egypt Become So Corrupt?*, AL JAZEERA, http://www.aljazeera.com/programmes/insidestory/2011/02/201128111236245847.html (last visited April 6, 2012).

[40] James V. Grimaldi & Robert Harrow, Jr., *In Egypt, Corruption Cases Had an American Root*, WASH. POST, Oct. 19, 2011, *available at* http://www.washingtonpost.com/investigations/in-egypt-corruption-had-an-american-root/2011/10/07/gIQAApWoyL_story.html.

[41] "Egypt protests: 'Friday of the last chance'," THE GUARDIAN, Nov. 25, 2011, *available at* http://www.guardian.co.uk/world/middle-east-live/2011/nov/25/egypt-protest-friday-of-the-last-chance-live-updates.

3. Morocco

¶17 A constitutional monarchy that enjoys popular support, the Kingdom of Morocco has nonetheless attempted to address concerns about corruption and the lack of meaningful parliamentary participation voiced by protesters in 2011, even before the Arab Spring. Parliamentary elections in November 2011 resulted, like Tunisia's, in a victory for the moderate Islamist party in Morocco. Under a new constitution adopted in July 2011 after a constitutional referendum, King Mohammed VI must now appoint the prime minister from the party that wins the most seats. However, the king still has ultimate decision-making authority on issues of defense, security, and religion.

¶18 In October 2010, three months before the Arab Spring, Morocco's government unveiled a two-year anti-corruption plan including over 40 new anti-graft measures, such as asset declarations for top state officials, government protection of whistle-blowers, and channels for the public to report graft and extortion by government officials.[42] These initiatives were recommended to the Kingdom by the Central Authority for the Prevention of Corruption (ICPC), a quasi-government agency established in late 2008 by the prime minister and composed of representatives from government, professional organizations, academia, and civil society.

¶19 Currently, Morocco appears to be attempting to reform internally and to lead both regionally and globally in anti-corruption initiatives. In remarks to the American Bar Association Rule of Law Initiative in February 2011, former Moroccan Ambassador to the United States Aziz Mekouar stated, "Voting is very important. Free speech is very important. But the most important thing is the rule of law."[43] In addition to hosting the fourth Conference of States Parties to the United Nations Convention against Corruption in October 2011, Morocco hosted the June 2011 Multi-Stakeholder Dialogue on Anticorruption and the Rule of Law in the Arab Region, and in December 2011, became the chair of the Arab Anticorruption and Integrity Network.[44]

¶20 The foregoing initiatives are needed because corruption has long been rampant in Morocco. According to a survey conducted by Transparency International in Morocco in 2001, the "bribe tax" is approximately five percent.[45] Even a conservative bribe tax estimate of two percent results in an overall impact of roughly $1.5 billion per year paid out in Morocco in bribes and other corrupt consideration.[46]

¶21 As Morocco gradually democratizes under King Mohammed and takes steps to stem corruption, there is widespread skepticism of the 2011 reforms. For example, the Interior

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[42] *Morocco Country Profile*, BUSINESS ANTI-CORRUPTION PORTAL, AUSTRIAN DEVELOPMENT AGENCY, http://www.business-anti-corruption.com/country-profiles/middle-east-north-africa/morocco/show-all (last visited Apr. 8, 2012).

[43] *Moroccan Anti-Corruption Efforts Highlighted During D.C. Forum*, AMERICAN BAR ASSOCIATION RULE OF LAW INITIATIVE, Feb. 2011, http://www.americanbar.org/advocacy/rule_of_law/where_we_work/middle_east/morocco/news/news_morocco_dc_anti_corruption_forum_0211.html (last visited Apr. 19, 2012).

[44] A project of the United Nations Development Program, the Arab Anti-Corruption & Integrity Network brings together governmental anti-corruption institutions from across the Arab region, in addition to non-governmental actors, organized in the form of a non-governmental group to conduct knowledge networking and capacity building. *See Arab Anti-Corruption and Integrity Network (ACINET)*, PROGRAMME ON GOVERNANCE IN THE ARAB REGION (POGAR), http://www.pogar.org/resources/ac/ (last visited Apr. 8, 2012).

[45] Bryane Michael & Abdelaziz Nouaydi, *When EU Law Meets Arabic Law: Assessment of Anti-Corruption Law in Morocco and Some Proposed Amendments* (2009), http://www.columbia.edu/~bm2508/publications/Morocco%20Paper.pdf. The bribe tax refers to the value of Moroccan companies' turn-over paid in bribes.

[46] *Id.*

Ministry said 45.4 percent of the electorate had turned out to vote in the November 2011 parliamentary elections.[47] Although the turnout was an improvement compared to the 37 percent who took part in the 2007 parliamentary election, it was less than the 51.6 percent in 2002, and less than the 52 percent turnout in elections in Tunisia the month before.[48] The pro-reform "February 20 Movement," responsible for the protests staged in Morocco throughout 2011, had called for a boycott of the vote and argued that the low turnout signified popular skepticism of the proposed reforms.[49]

¶22 Finally, reforms are necessary because the government agency charged with addressing corruption, the ICPC, is merely an advisory body, lacking even the power to conduct performance and compliance audits.[50] In July 2009, the ICPC released its first report, stating that it had received 20 credible corruption complaints.[51] According to the report, officials attributed the low number of complaints partially to the lack of legislation protecting plaintiffs and witnesses in corruption cases.[52] For Morocco to make genuine advances against corruption, legislation and enforcement thereof need to be implemented, and ICPC must be empowered to do so.

4. A Sampling of The Successful Struggles Against Corruption on Two Continents

¶23 Corruption has deep roots in the MENA countries; the question now, is whether corruption can be weeded out as the seeds of democracy are sown. History shows that this is not an impossible task, but it requires good faith and concerted effort by those in power. In this section, I examine corruption and democracy in Hong Kong and Botswana, two oases of relative transparency and robust democracy in regions where many countries enjoy neither.[53]

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[47] *Islamist PJD Party Wins Morocco Poll*, BBC NEWS, Nov. 27, 2011, *available at* http://www.bbc.co.uk/news/world-africa-15902703.

[48] The turnout rate of 52 percent reflects 54.1 percent in-country and 29.8 percent abroad. *National Constituent Assembly Election Results Announced in Tunisia*, INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (Nov. 21, 2011), http://www.ifes.org/Content/Publications/News-in-Brief/2011/Nov/National-Constituent-Assembly-Election-Results-Announced-in-Tunisia.aspx; BBC NEWS, *supra* note 47.

[49] BBC NEWS, *supra* note 47.

[50] The Decree 2-05-1228 of March 13, 2007 instituted L'*Instance Centrale de Prévention de la Corruption* (Central Agency of Prevention of Corruption) (noting that ICPC's authority includes "proposing to the government general policies related to preventing corruption, particularly involving co-operation in the fight against corruption between the public sector and the private sector, proposing measures of awareness raising among the public and organizing information campaigns aiming at preventing corruption, contributing, in co-operation with the public administration and other concerned organizations, to the development of international co-operation in the area of preventing corruption, assuring the implementation and the evaluation of measures taken in order to implement government policy in the area of preventing corruption as well as addressing recommendations to the administration, public organizations, private enterprises, and other organizations which are involved in making policies related to preventing corruption, giving advice to administrative authorities about measures which can be taken to help prevent acts of corruption in the public sector, collecting all information related to corruption and managing such information in a database, and informing the competent judicial authority about facts likely to constitute acts of corruption as defined and punished by the law.").

[51] *Résumé du rapport*, L'*INSTANCE CENTRALE DE PRÉVENTION DE LA CORRUPTION* (July 2009), http://www.icpc.ma/wps/wcm/connect/edbdbc804351091e9d64df7f15e993f5/Resume%2520Rapport%25201er%2520semestre%25202009%2520version%2520Fr%5B1%5D.pdf?MOD=AJPERES&CACHEID=edbdbc804351091e9d64df7f15e993f5.

[52] *Id.*

[53] This article looks to Hong Kong and Botswana because both places have enjoyed democratic freedoms as they have battled public corruption. Within the MENA region, while Qatar is considered by Transparency International to be the "least corrupt" country in the MENA region, scoring a 7.2 on the CPI, it differs from the Arab Spring countries discussed in this paper in that, among other reasons, it is an autocracy that does not purport to realize

a) Hong Kong

¶24 For three decades of the last century, Hong Kong enjoyed a deserved reputation for graft. In spite of Hong Kong's economic growth after World War II, low wages of career government employees resulted in those employees seeking to supplement their wages with requests for "tea money" or more.[54] Government corruption extended to the Royal Hong Kong Police itself, where officers solicited bribes from petty criminals in exchange for turning a blind eye to their wrongdoing. While the Hong Kong Police had an Anti-Corruption branch, the public perception of the office was that officers therein, following the discovery of corrupt practices, would then profit from corrupt dealings themselves.[55]

¶25 In 1974, in response to increasing public outcry over the level of corruption in the Hong Kong Police, the Independent Commission Against Corruption (ICAC) was created.[56] Unlike the old Anti-Corruption Branch of the Hong Kong Police, the new ICAC answered only to the Governor. ICAC enforcement officers were well paid and recruited from the civilian population. The new ministry also changed Hong Kong's social norms regarding corruption, organizing a public education campaign, adding anti-corruption classes to the school curriculum, and creating anti-corruption television programming.[57]

¶26 Ultimately, the ICAC tactics were effective. Using a combination of new rules and education, Hong Kong dramatically reduced corruption and changed public attitudes toward its practice.[58] In Transparency International's 2011 Corruption Perception Index, Hong Kong ranked 12, wedged between Luxembourg and Iceland. By contrast, the United States—the leader in anti-corruption legislation both nationally and in the international community—ranked 24.[59]

¶27 Hong Kong exemplifies a strong executive at the helm of the ICAC, accountable to a democratically elected leader, with wide discretion to pursue a mandate.[60]

b) Botswana

¶28 A parliamentary republic since 1966, Botswana is Africa's oldest democracy. The 2011 Corruption Perception Index rated Botswana at 6.1, number 32 in the world and the least corrupt country in sub-Saharan Africa, tied with Portugal and Taiwan and ranked between Spain and

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democratic reforms. *See* CORRUPTIONS PERCEPTIONS INDEX 2011, http://cpi.transparency.org/cpi2011/results/ (last visited Apr. 9, 2012). Moreover, it has been criticized for facilitating illegal financial flows around the world. *See Illicit Financial Flows from Developing Countries, 2000 – 2009*, *supra* note 15.

[54] MICHAEL JOHNSTON, CIVIL SOCIETY AND CORRUPTION: MOBILIZING FOR REFORM (2005).

[55] *Id.*

[56] *A Brief History*, HONG KONG INDEPENDENT COMMISSION AGAINST CORRUPTION, http://www.icac.org.hk/new_icac/eng/abou/history/main_1.html (last visited Apr. 9, 2012).

[57] MELANIE MANION, *CORRUPTION BY DESIGN:* BUILDING CLEAN GOVERNMENT IN MAINLAND CHINA AND HONG KONG (2004).

[58] *Id.*; *see also* HONG KONG INDEPENDENT COMMISSION AGAINST CORRUPTION, *supra* note 56.

[59] CORRUPTION PERCEPTIONS INDEX 2011, *supra* note 53. The United States was at the vanguard of corporate bribery legislation with the Foreign Corrupt Practices Act, enacted in 1977, and successfully led efforts at the OECD and the United Nations to implement the OECD Anti-Bribery Convention and the United Nations Convention Against Corruption, respectively. *See, e.g.*, Remarks by Karen Kornbluh, U.S. Ambassador to the OECD, *On Fighting Corruption with the OECD Anti-Bribery Convention*, TRANSPARENCY INTERNATIONAL (Dec. 9, 2009) http://usoecd.usmission.gov/remarks_fighting_corruption.html.

[60] No longer a colony of the United Kingdom, Hong Kong is a Special Administrative Region of China, with an elected Chief Executive as its head of government. MING K. CHAN, THE CHALLENGE OF HONG KONG'S REINTEGRATION WITH CHINA, HONG KONG UNIVERSITY PRESS. HONG KONG (China) (1997).

Slovenia.[61] While Botswana's success in addressing corruption is only relative to its geographic region, which is widely viewed as mired in corruption,[62] its structure and policies are nonetheless instructive for the MENA countries. Last March, Botswanan President Ian Khama described freedom from corruption and economic development as inextricably intertwined, stating that "[i]t is not an exaggeration that it is only through commitment to good governance and zero tolerance for corruption and mismanagement that we can attain sustainable development."[63]

¶29 In 1994, Botswana established the Directorate on Corruption and Economic Crime (DCEC).[64] The DCEC has powers to investigate (but not prosecute) corruption cases, and to implement preventative strategies and carry out public education on the issue.[65] Like the ICAC in Hong Kong, the DCEC reports not to the chief of police, but directly to the president, with decisions on prosecutions taken by the attorney general, a position constitutionally independent of the government.[66]

¶30 Botswana's economic growth and relatively well-paid civil service have combined to limit the extent of corruption. A Botswana Transparency International chapter was established in 2002.[67] An amendment to the Serious Crimes Act in 2000 has strengthened existing provisions on the prevention of concealment and disposition of the proceeds of crime; it is now mandatory for banks and all other commercial firms to report any suspicious business relationships and transactions involving the transfer of cash into and out of Botswana, subject to stringent penalties.[68]

¶31 Botswana's relative success in combating corruption is mirrored in other areas of the rule of law. In 2011, it was found to be first in Africa in accountability and the rule of law by the Mo Ibrahim Foundation in its annual Index of African Governance.[69] The same index ranked Botswana third in Africa in terms of overall good governance, just below the island nations of Mauritius and Cape Verde.[70]

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[61] Corruption Perceptions Index 2011, *supra* note 53.

[62] Stephanie Hanson, *"Backgrounder" series, Corruption in Sub-Saharan Africa*, COUNCIL ON FOREIGN RELATIONS (Aug. 6, 2009), *available at* http://www.cfr.org/democracy-and-human-rights/corruption-sub-saharan-africa/p19984. Botswana's politicians have been implicated in corruption allegations in recent years, including allegations of a loan by DeBeers to a former president, Quett Masire. *See* Gideon Nkala & Tshireletso Motlogelwa, *The Rise and Fall of Nchindo*, MMEGIONLINE (Feb. 12, 2010), http://www.mmegi.bw/index.php?sid=1&aid=71&dir=2010/February/Friday12. However, the country's free press, democracy, and rule of law continue to outshine its neighbors.

[63] *Botswana salutes Zambia anti-graft war,* AFRICA REVIEW (Mar. 12, 2012), *available at* http://www.africareview.com/News/Botswana+salutes+Zambia+war+against+corruption/-/979180/1369944/-/higiduz/-/index.html.

[64] *Directorate on Corruption and Economic Crime*, OFFICIAL WEB SITE OF THE GOVERNMENT OF BOTSWANA, http://www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Department-of-Corruption-and-Economic-Crime-DCEC/About-the-DCEC1/Overview-of-the-DCEC/ (last visited Apr. 6, 2012).

[65] *Id.* ("When sufficient evidence has been collected in an investigation, the file is submitted to the Directorate of Public Prosecutions for assessment and prosecution.").

[66] *Id.*

[67] *Botswana Country Profile*, UNITED NATIONS DEPARTMENT FOR ECONOMIC AND SOCIAL AFFAIRS, DIVISION FOR SUSTAINABLE DEVELOPMENT, http://www.un.org/esa/agenda21/natlinfo/wssd/botswana.pdf (last visited Apr. 8, 2012).

[68] Proceeds of Serious Crime (Amendment) Act 2000 (Sept. 29, 2000), *available at* http://www.botswanaifsc.com/docs/crime.pdf.

[69] *Latest assessment of African governance: Botswana consistently ranks in top five for governance quality*, MO IBRAHIM FOUNDATION (Oct. 10, 2011), http://www.moibrahimfoundation.org/en/media/get/20111005_Botswana.pdf.

[70] *Id.*

III. Conclusion

¶32 Tunisia, Egypt, and Morocco have all taken steps to address systemic corruption. These steps, however, must result in decreased corruption in order to satisfy the electorate that democracy and the rule of law have taken root. Moreover, given the degree of corruption throughout the Middle East and North Africa, emerging governments in this region must look beyond the Arab world for role models in addressing the issue. Hong Kong and Botswana both offer examples of democratic societies enhanced by effective government agencies with the power to investigate corruption independent of the police. Social science, international legal authority, and popular opinion view corruption as inseparable from democracy; the Arab Spring's new leadership should treat it as such.