



Promotion of good governance, the fight against corruption and money laundering (SNAC Morocco)

Assessment of the anti-corruption framework

EXECUTIVE SUMMARY

General

1. This document contains a summary of the anti-corruption measures in place in Morocco on the date of the on-site visit of Experts to the country (30 September - 4 October 2013) or immediately thereafter (December 2013). The report describes and analyses those measures and makes recommendations as to how certain aspects of Morocco's anti-corruption system could be improved and consolidated. This report and its recommendations should be regarded as one contribution to the current and future process of reform in Morocco in the fight against corruption. The Moroccan authorities are invited to play an active part in the prevention of corruption in accordance with the specific recommendations which appear in this report.
2. Although Morocco has taken legislative and institutional measures against corruption, it is recognised that corruption does exist and is fairly widespread in Moroccan society. While it is difficult to evaluate the scale of corruption in Morocco, particularly because of the lack of reliable and coherent statistical data, it is nevertheless the case that corruption is felt by public opinion to be a worrying problem which affects the activities of certain public institutions and represents a threat to economic, social and political development. The significance of the problem seems to be acknowledged at the highest political level. With a few exceptions in specific sectors, there are not yet enough measures and instruments in place which could prevent the forms and types of corruption that are present and to conduct a periodical analysis of corruption risks, at least in the most vulnerable sectors with a view to their gradual extension, especially until such time as relevant strategic documents are adopted or revised.
3. Outside a few internal initiatives within specific public institutions, there is to date no national policy against corruption based on a medium and long-term strategy, and with clearly defined human, financial and logistical resources. A more integrated approach is needed to the prevention and combating of corruption, with a view to its application to the whole public sector, involving all the respective players, on the basis of an action plan and effective monitoring mechanisms. In this respect, the authorities are invited to ensure that the strategic framework for combating corruption in Morocco is adopted as soon as possible, then implemented and monitored appropriately and efficiently. Furthermore, greater encouragement should be given to civil society to participate in administrative decision-making processes in general, and in the efforts to prevent and combat corruption and to improve the transparency of public institutions.
4. The law already makes various forms of corruption criminal offences. Moroccan law does not just regulate legal entities' liability in the event of corruption or corruption-related money laundering. There is no legislation on the prevention of conflicts of interest.
5. The limited co-operation and coordination between the different authorities responsible for detecting, investigating and prosecuting corruption offences and the absence of a proactive approach in the investigations into corruption offences seem to be among the main obstacles in

terms of the effectiveness of efforts, as well as one of the main reasons for the low numbers of convictions for corruption.

6. The Instance Centrale de Prévention de la Corruption (ICPC)(central anti-corruption agency) has made a considerable effort, since its inception, in activities relating to the prevention of corruption. In pursuance of Article 36 of the 2011 Constitution, there is to be a national agency for probity and the prevention and combating of corruption (Instance nationale de la probité, de la prévention et de la lutte contre la corruption (INPPLC)), which should supersede the current ICPC. A draft law on the INPPLC is under discussion. The Moroccan authorities should, as soon as possible, implement the constitutional requirements and apply Article 36 of the Constitution by adopting the law setting up that national agency.

Fundamental safeguards and corruption prevention

Prevention of corruption involving judges

7. Following the events of the Arab Spring, Morocco in 2011 adopted a new Constitution which, as well as bringing progress relating to inter alia the separation of powers, the independence of the judiciary and good governance, provides for a number of organic and ordinary laws to ensure the conformity of its legislation.
8. To that end, Morocco has engaged in wide-ranging and varied legislative changes and major reforms to the justice system, with the main obligations and inspirations stemming from the respective provisions of the 2011 Constitution. Reform of the justice system, for which the key words are independence, integrity and transparency, is an undertaking which will last several years. It is a major challenge in this context to take the necessary steps to fulfil the six objectives of the “Charte de la Réforme du Système Judiciaire” (Charter on judicial system reform) in order to consolidate the independence of the judiciary in general, and the members of the judiciary in particular, to increase the efficiency and effectiveness of the justice system and to develop its institutional capacities.
9. Financial crime sections were set up in 2011 at four courts of appeal (CA), from the total of 21, comprising approximately 50 members of the judiciary. Their jurisdiction is restricted to the crimes of corruption, trading in influence, misappropriation and extortion involving a sum greater than 100,000 DH. This very recent process merits further reforms so as to continue the setting up at courts of appeal of sections which specialise in dealing with corruption and related offences, to extend and specify their responsibilities in order to include all corruption and related offences committed by MPs, members of the judiciary and senior officials, and to continue the specialised training of members of the judiciary assigned to those sections.
10. The achievement as soon as possible of the objectives of the Charter concerning the independence of the Conseil Supérieur du Pouvoir Judiciaire (CSPJ)(Higher Council of judicial power) is a priority needed in order to lay the foundations for the independence of the justice system. In order to do this, the future legislation will have to provide for extended powers for the CSPJ in terms of the recruitment, appointment, promotion, assignment, transfer and disciplining of members of the judiciary, free from any interference by the executive or legislative authority.
11. The issues relating to the prevention of corruption in Morocco are not sufficiently dealt with in general and/or specific terms in respect of judges, prosecutors, members of the law enforcement agencies or public officials. It is clear from the study of the legislative and institutional framework in force and the outcomes of practice that, with the exception of the mechanisms set up concerning declarations of assets and the few instruments deriving from the disparate and non-

harmonised provisions of the respective regulations, development is either absent or still at an early stage where questions connected with the prevention of conflicts of interests, issues of general and professional ethics and disciplinary measures are concerned. Consequently specific recommendations have been made calling for a more integrated approach to prevention, so that the legal and institutional framework and the different institutions' operational procedures could be further rationalised and harmonised, in order to avoid potential grey areas, inadequacies and legal uncertainty during application.

12. Since judges and prosecutors have the same status, the relevant provisions of the legislation and regulations on the prevention of corruption involving judges and prosecutors, as well as certain operational mechanisms, are largely similar, even identical. There is, nevertheless, still room for better regulation of the procedural safeguards in terms of ethics and the prevention of misconduct, the prohibition of gifts, the measures relating to transparency, the appropriate mechanisms for preventing and resolving conflicts of interests, including "revolving doors" moves to the private sector, disciplinary measures and the requisite training and specialisations (also see below), supplemented by the necessary strengthening of the CSPJ's powers, responsibilities and human and technical capacities.
13. Bearing in mind the principle of transparency as one of the pillars of corruption prevention, it is very important for the CSPJ to ensure that reports of its meetings and all of its decisions are published.
14. The natural corollary in terms of recruitment is that the CSPJ must make a clear contribution to the recruitment by competitive examination of staff to work as "attachés de justice" (judicial assistants) and to fill any other vacancy in the judiciary on the basis of predefined criteria, including, where appropriate, more detailed checks on applicants, based on their qualifications.
15. Where the professional ethics standards and rules of ethics governing members of the judiciary are concerned, the CSPJ must be given new powers to establish relevant professional ethics standards, particularly through the adoption of a code of ethics and good conduct (covering the exercise of duties and matters outside those duties) in conformity with international standards and practices. The ethical principles in their present form – as well as certain relevant provisions of the law – are too general to provide clear indications in particular situations.
16. Because of the lack of legislation on the prevention of conflicts of interests, the concept of conflict of interests as such and the types of conflict are not defined, and there are no clear rules on the management of conflicts of interests or on mechanisms for preventing and resolving such conflicts, including penalties in the event of failure to comply.
17. There are no rules prohibiting gifts (other than protocol gifts) or specific rules on the conduct of members of the judiciary when gifts unrelated to their duty are offered to them.
18. The authorities should also introduce clear rules to prevent conflicts of interests in situations in which members of the judiciary move to the private sector ("revolving doors").
19. The existing system for declarations of assets seems ineffective and highly formal, and a large number of people are under an obligation to make declarations. On account of the difficulties in implementing the relatively recent legal requirements in this respect, there seems to be a need for the authorities, without too much delay, to begin an evaluation of the effectiveness of the current wealth declaration system and to consider reducing the number of persons required to make such declarations, and to increase the scope of detailed checks through exchanges of information with other administrative authorities. Furthermore, there should be a clear definition in the texts of the

authority responsible for checking the wealth declarations made by members of the judiciary (judges and prosecutors). What is more, Moroccan legislation has no offence of unjust enrichment or mechanism for reversing the burden of proof which would enable members of the judiciary or other officials under that obligation to be punished if a substantial difference is detected between their income as officially declared and the assets in their family's possession.

20. The measures for which the Charter provides in respect of disciplinary action should be implemented as speedily as possible, care being taken to consolidate the CSPJ's authority in disciplinary proceedings against members of the judiciary through attachment of the general inspectorate of judicial services to the CSPJ, ensuring that the inspector general and other inspectors are appointed by the CSPJ; a definition of what constitutes a disciplinary offence; the introduction of additional safeguards at the different stages of disciplinary proceedings; and recognition of the CSJP as the only body responsible for issuing rulings and taking decisions in disciplinary cases, suspensions and dismissals, in accordance with the established standards of conduct.
21. Finally, all members of the judiciary should benefit from relevant training and advice on ethics and integrity, with the CSPJ being given an active role to play.

Prevention of corruption involving prosecutors

22. The taking of all necessary measures to consolidate the independence of the public prosecution service is another very significant challenge in Morocco's current situation. That independence will be unable to be adequately ensured unless an end is brought to the authority of the Ministry of Justice both over prosecutors' careers (selection, appointment, promotion, changes of assignment and any disciplinary proceedings against them) and in terms of power to intervene during court proceedings and in prosecutors' decisions to commence or to discontinue proceedings.
23. Furthermore, in addition to what has just been said above on the subject of judges, some specific measures attaching to prosecutors concern principal Crown prosecutors' duty to report at least once a year to the CSPJ on their court's activities, the accessibility of those reports to the parties concerned and the taking of appropriate measures to resolve any conflicts of interests specific to prosecutors.

Prevention of corruption involving the law enforcement agencies (police and Gendarmerie royale)

24. The members of the Direction Générale de la Sûreté Nationale (DGSN)(Directorate general of national security), the Gendarmerie royale (GR) and the Customs service enjoy official advantages which are regulated, valued and officially published, but there are other advantages, offered by the private sector, which constitute a corrupting climate, and should therefore be prohibited.
25. Other than in the Customs service, the lack of a code of ethics within the law enforcement agencies makes it necessary to formalise, adopt and disseminate a code of ethics to all law enforcement agencies, accompanied by appropriate training.
26. Furthermore, the inadequacy of existing rules of ethics entails a need to supplement the police service regulations through ethical standards based on the relevant international standards.

27. As in respect of members of the judiciary, rules should be introduced prohibiting gifts (other than protocol gifts), and clear rules should be drawn up about that prohibition when such gifts are offered.
28. Where the reporting of corruption offences directly to the public prosecution service is concerned, as the general obligation set out in Article 42 of the Code of Criminal Procedure (CPP) is not applied, all the authorities concerned should be reminded of the existence of Article 42 of the CPP and that it should be applied to all public officials, without any obligation to warn the Crown prosecutor or the principal Crown prosecutor's through official channels.

Prevention of corruption involving public officials

29. Where the public service is concerned, similar measures to those recommended for other groups of staff (members of the judiciary and law enforcement agencies) are required, as are specific preventive efforts.
30. Striving for the simplification and clarification of procedures, while emphasising and giving the requisite publicity to those directly accessible to the general public, will play a vital role in reducing corruption risks.
31. It is necessary to assess the effectiveness of the measures taken to prevent corruption in the public service, which should make it possible to target the relevant measures more accurately, in the presence of various action plans, charters, and projects, not all of which have been put into practice or evaluated.
32. In order to increase transparency in the public service, the terms of Article 18 (on the duty of professional discretion) of the "Statut général de la fonction publique" (General public service regulations) should be reviewed and the concept of professional confidentiality subject to criminal prosecution for most public servants extracted therefrom.
33. The new Constitution of 2011 introduced for the first time a guaranteed right of access to the information held by public bodies. A draft law on the right of access to information should be adopted as soon as possible.
34. Sufficient publicity should be given to public consultations, their results displayed and any decisions conflicting with the general opinion expressed justified.
35. The powers and investigative resources of the Inspection Générale des Finances (General inspectorate of public finances) are not completely adequate for effective monitoring, particularly because it cannot directly question and visit the suppliers or clients of public services where corruption is suspected. Furthermore, an inadequate number of inspectors is assigned to on-the-spot checks, and this restricts the numbers of and intervals between on-the-spot checks.
36. The consequence of the practice of informing the Minister of Justice of criminal acts with a view to action by the office of the principal Crown prosecutor at the Court is that both the Cour des comptes (Auditor General's department) and the various general inspectorates do not have the prerogative of reporting acts of corruption directly to the responsible prosecutor's office.
37. The institution of Ombudsman is faced by a need for improvement of the procedures for execution of judgments issued against administrative authorities.

38. There is a lack of explicit, clear and precise references to the prevention of corruption in the regulations which should be remedied (inter alia corruption risks and failures to comply with professional ethics).
39. There is no code of conduct or general code of ethics applicable to the public service as a whole. The drafting of such a code, including the requisite references that specific codes could make to it, together with sectoral and centralised monitoring of violations and possible sanctions are important steps in the prevention of corruption in the public service.
40. Initial training covering integrity, ethics and the prevention of corruption should be introduced and set up for new recruits entering service.
41. Implementation of the general code of ethics will necessitate amendment of both the general and the different specific regulations applicable to the public service. There is also a need for a definition in specific texts, where appropriate, of the scope of professional confidentiality and the conditions for its exercise.
42. As for members of the judiciary and law enforcement agencies, gifts (other than protocol gifts) should be prohibited, and clear rules should be drawn up about that prohibition when such gifts are offered.
43. Where conflicts of interests are concerned, priority should be given to clear regulations and to the dissemination of good practices in this sphere. Furthermore, there is a need for rules to be drawn up to prohibit the practice of “revolving doors” (the improper movement of public officials to the private sector).
44. The system for declarations of assets merits consideration and appropriate measures with a view to the effectiveness of the mechanisms put in place. On the one hand, the administrative authorities and entities concerned should be asked to draw up precise lists of persons required to make such declarations, to keep those lists up-to-date and to inform the financial courts in due course. On the other hand, the effectiveness of the current system of asset declarations should be evaluated, the benefits of a reduction of the number of persons required to make declarations should be studied, and there should be an increase in checks through exchanges of information with other administrative authorities.
45. During in-service training, public servants should be reminded of the existence of the reporting obligation under Article 42 of the CPP, for the duty to report based on the Code of Criminal Procedure must be able to play a part in the detection of acts of corruption. It will also be necessary to draw up clear rules to ensure that the obligation to report suspicions in good faith cannot lead to a liability to sanctions for defamation, while respecting the principle of the use of official channels and public servants’ obligation to show discretion under their respective regulations.
46. Finally, mechanisms affording administrative protection to anyone who reports suspicions in good faith (whistle-blowers) should be put in place.

Prevention of corruption involving members of parliament

47. The team of assessors regrets that it was unable to obtain in time the information it needed for its assessment (late reply to the questionnaire and impossibility of meeting the players concerned during the on-the-spot visit), as it had from the other institutions covered by this report. The team

can but point to the standards which the Council of Europe has issued¹ and invite the parliament to comply with them.

Financing of political parties and election campaigns

48. Measures to ensure the transparency of the financing of political parties and election campaigns are relatively recent concerns in Morocco. The texts in force seem fairly consistent and complete, and significant organisational measures have been taken by the Cour des comptes in order to fill its duties in this sphere. However, there does seem to be a discrepancy between theory and practice, the latter being at a very early stage, making it legitimate to wonder whether the rules laid down are appropriate to the reality of Moroccan society. There is therefore a clear need for further improvements of the current system in order to increase transparency and responsibility in political financing, and ultimately public trust in the political process. First and foremost, the Moroccan authorities and the political parties themselves need to take up the challenge of ensuring that the existing regulations are in practice applied.
49. Insofar as it was impossible to obtain specific information about certain aspects, and for lack of accurate statistics, the assessment team was unable to get a clear idea of the application of the current rules in general, electoral disputes, or the extent of the offences found in relation to financing or the sanctions imposed.
50. The texts and supporting measures provided for which are necessary to implementation of internal monitoring by political parties (accounting software, training programmes, etc) are not in place and will have to be prepared.
51. More details are needed of the role of the accountancy expert who certifies the accounts.
52. Measures should be taken to provide for the publication of parties' accounts and the detailed reports of the Cour des comptes (only a summary is published as things stand), and political parties should be encouraged to communicate themselves on these issues, as there is a statutory requirement for them to have a committee supervising party finances.
53. A centralised system recording and monitoring political financing offences (party and election financing) will have to be set up.
54. The transfer operations provided for by Article 31 of the organic law on political parties now being implemented will have to be completed by the deadline and a balance sheet published.
55. Finally, appropriate measures need to be taken for the effective monitoring of non-public sources of financing.

Prevention of corruption relating to public procurement

56. The authorities should limit as far as possible exceptions to the full application of the decree on public procurement, and should provide objective justification of those exceptions for the public establishments concerned.
57. Measures should be taken to increase transparency, and there is a need to minimise the risks of corruption in public procurement.

¹ See below, paragraph 573, as well as footnote 54.

58. Measures should be taken to ensure that the new provisions of legislation and regulations on public procurement are actually distributed to the officials responsible for implementing them.

Criminal law, law enforcement and criminal procedure

Offences and sanctions

59. In general, the applicable provisions of the Moroccan Criminal Code do to an extent enable corruption offences to be investigated, prosecuted and tried. The current legislation nevertheless presents various inconsistencies and inadequacies in relation to the requirements defined in the Council of Europe's standards on corruption. In view of the seriousness of the corruption problem in Morocco, there is a crucial need to eliminate any shortcomings in the legal framework.
60. It is the case that the concept and scope of the term "public official" in Article 224 of the Criminal Code need clarification, if necessary being brought into line with international standards, with consequent amendment of the articles making acts of corruption and related acts offences.
61. It seems that corruption offences in the public sector are not completely free from uncertainty about the – pecuniary or non-pecuniary – nature of the advantage gained, or about the fact that any advantage from acts of corruption is undue. Furthermore, the various corruption offences in the public sector do not include bribes paid via intermediaries and intended for third party beneficiaries.
62. Bearing in mind the current context, it is necessary to set up a clearly defined mechanism making it possible, during investigations into corruption and trading in influence, to conduct detailed enquiries into wealth so as to detect the assets derived therefrom and to be able to confiscate them. In this respect, appropriate training in this sphere will have to be provided for members of the judiciary and other representatives of investigation and law enforcement bodies.
63. The production and exchange of reliable and relevant statistics relating to the prevention and penalising of corruption is generally lacking, which is why there is a need to manage and maintain such statistics adequately, requiring an information system to be set up.
64. The scope of the application of the legislation relating to acts of corruption does not extend to all foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies or the judges and officials of international courts, as provided for by the Criminal Law Convention on Corruption (ETS 173).
65. Active and passive corruption in the private sector is not an offence in accordance with international standards, and in particular does not cover third party beneficiaries or the persons in charge of private entities. Furthermore, as currently defined, the offence allows improper exonerations of responsibility of private sector workers by their employers, and this should be remedied.
66. The provisions on trading in influence need to be clearer and more consistent, with a delimitation of the two aspects – active and passive – and the inclusion of the elements which constitute that offence in accordance with Article 12 of the Criminal Law Convention on Corruption. Furthermore, it is necessary to establish as offences trading in influence by foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, and judges and officials of international courts. Finally, it is important to remove all uncertainty by stating through the appropriate channels that acts of trading in influence constitute offences, irrespective of the nature – pecuniary or non-pecuniary – of the

undue advantage, irrespective of the nature of the decision and of the result of the trading in influence.

67. Active and passive bribery of domestic or foreign arbitrators and jurors must be made a criminal offence, ensuring and specifying through the appropriate channel that the wording of the provisions of the Criminal Code reflects the different elements laid down in Articles 2 to 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191). Furthermore, the scope of the concept of “arbitrator” will have to be clarified appropriately so as to encompass foreign arbitrators.
68. Moroccan legislation does not cover beyond all doubt the possibility of prosecution of the offences of corruption, trading in influence and related offences committed abroad by non-nationals, but in which Moroccan public officials, international public officials or members of international parliamentary assemblies are involved.
69. Violations of the accounting rules connected with acts of corruption are not established as an offence in accordance with Article 14 of the Criminal Law Convention on Corruption through the provision, inter alia, of effective, proportionate and deterrent sanctions.

Corporate liability

70. Corporate liability for corruption and trading in influence, independently of individuals’ liability, is lacking in the legislation currently in place.

Investigation and criminal procedure

71. The authorities should ensure that there are sufficient numbers of police and gendarmes dedicated solely to investigating corruption and related offences, and should assign to them the necessary resources.
72. Furthermore, the authorities should examine and specify the scope of professional confidentiality in the context of both the public service and the professions, delimiting this, for example, in more explicit terms, depending on the specific characteristics of each profession.
73. The members of the judiciary concerned should also be advised of, and have their attention drawn to, the advisability of ordering telephone tapping in investigations into crimes of corruption.

Confiscation and other deprivation of instruments and proceeds of crime

74. The requisite measures should be taken to improve capacities to detect links between laundering and corruption, ensuring that the institutions and professions subject to an obligation to declare suspicions receive instructions and training, facilitating the detection and reporting of cases of laundering and corruption.
75. An office should be set up with special responsibility for managing seized assets and looking after these with a view to placing them at the State’s disposal following confiscation.

Extent and scope of immunities from investigation, prosecution or adjudication of corruption offences

76. Finally, in the context of the judicial reform under way, the rules on exceptional jurisdiction should be revised, with account being taken of the recommendation on expanding appeal courts' jurisdiction over financial crimes.

International co-operation

77. Where the development of international co-operation is concerned, whether at the level of national agencies, of regional, European or global partners or of institutional or non-governmental international players, the multiplicity of projects and players should be highlighted. It therefore seems appropriate, in the context of the claimed objective of good governance, to systematise monitoring and evaluation of each project encompassing the financial dimension and, inter alia, the use of the assigned resources. As well as giving this responsibility to the players, it is important to include these projects in an overall strategy and to carry out an evaluation of the effectiveness of all the projects in the light of that strategy.
78. In conclusion, the Moroccan authorities are invited to continue their efforts to prevent corruption, following closely the recommendations which appear in this report. These new steps forward should also make it possible to increase public trust in the public authorities.