

FEEDING THE CATS: THE CORRUPTION CONUNDRUM IN THE FAILED ARAB SPRING-EGYPT

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I. INTRODUCTION

There are records of bribes and bribery laws from ancient times.² Archaeologists recently found a 3,400-year-old Assyrian archive, which listed the names of “employees accepting bribes.”³ The Egyptian Pharaoh Horemheb (1314-1342 B.C.) issued the first recorded law providing a secular criminal penalty for bribetaking.⁴ The Horemheb Edict declared that any judge who procured a reward from one litigant and failed to hear the other complainant was guilty of a “crime against justice” and subject to capital punishment.⁵ However, this intimidation apparently did not stop the practice of judicial bribery from spreading beyond Egypt.⁶

Numerous religions proscribe corruption.⁷ Consequently, it is imperative to utilize social and religious values, standards, and norms that condemn corruption in the fight against it.⁸ For example, Moroccans interpret corruption as bribery, which *Ibn Al-Atheir* identified as “reaching the target

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² See generally Shafik 'Allam, *Egyptian Law Courts in Pharaonic and Hellenistic Times*, 77 J. EGYPTIAN ARCHAEOLOGY 109, 109-21 (1991).

³ *Id.* (providing a review of the first millennium B.C. reveals a new terminology in documents from the reign of Psammetichus I onwards—instead of the old *qnbt*-councils—indicating real law courts); *Id.* (discussing the major reform of the judiciary and arguing that the Egyptian law courts appealed to during the Ptolemaic period were the natural continuation of this earlier legal system).

⁴ Timothy A. Martin, *The Development of International Bribery Law*, 14 NAT. RES. & ENV'T 95, 95 (1999).

⁵ *Id.*

⁶ 2 DONALD B. REDFORD, *THE OXFORD ENCYCLOPEDIA OF ANCIENT EGYPT* 114-16 (2001). For further discussion regarding Horemheb's Code, see generally AHMAD IBRAHIM HASSAN, *FALSFET WA TARIKH AL-NOZOM AL-KANOUNIA WA AL-EGTMA'YIA [THE PHILOSOPHY AND HISTORY OF LEGAL AND SOCIAL SYSTEMS IN ANCIENT EGYPT]*, (Alex. Univ. Press Egypt 2003).

⁷ See, e.g., Leila Shadabi, *The Impact of Religion on Corruption*, 12 J. BUS. INQUIRY 102, 104 (2013) (“Everyone agrees that corruption is a negative phenomenon and is prohibited by religions like Islam and Christianity.”).

⁸ For further details on the Islamic stance of the corrupt behavior, see Mohamed 'Arafa, *Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?*, 18 GOLDEN GATE ANN. SURV. INT'L & COMP. L. 171 (2012).

through compliment.”⁹ No modern developed state can exist without a regime that guarantees necessary punishments to curb corruption.¹⁰

A. How Corruption Started in the Arab Republic of Egypt: Historical Background and Overview¹¹

In Egypt, since the turn of the century, corruption has been broadly and openly debated by the media, civil society, and academic organizations and has become the focus of attention by many stakeholders.¹² Corruption is no longer taboo, and the general public is fully cognizant of its toll on the country’s political stability and the danger it poses to economic growth and social development.¹³ Corruption has become a ruling social law that governs various aspects of Egyptian life.¹⁴ For example, political corruption was the basis of the military regime that continued for three decades and suppressed social freedoms, practiced torture and barbarity, and destroyed institutions in apparent desecration of fundamental human rights, causing Egypt to achieve

⁹ IBN AL-ATHIR, AL-KĀMIL FI AL-TĀRIKH [THE COMPLETE HISTORY], 227 (al-Baktaba al-Assrya, Beirut 2008).

¹⁰ *Id.*

¹¹ See AHMED ZAYED, CULTURAL FRAMEWORK GOVERNING THE ATTITUDE AND CHOICE OF EGYPTIANS: A STUDY OF TRANSPARENCY AND INTEGRITY VALUES AND CORRUPTION 6 (Wardany 2009). The Transparency and Integrity Committee (TIC) is a permanent committee charged with studying means and suggesting mechanisms to enhance transparency, accountability, and the fight against corruption in the state’s administrative apparatus, as well as the public sector. SALEH AHMED ET AL., NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009 38 (Transparency Int’l Secretariat 2009), available at https://www.transparency.org/files/content/pressrelease/20110214_TI-S_Egypt_NIS_2009.pdf. With respect to the roots of corruption in Egypt, recent studies have shown that Egyptian politicians and businessmen are among the most corrupt persons in society, followed by security and law enforcement officers (police) and then local councils. *Egypt Risk Report*, GAN INTEGRITY (Sept. 30, 2020), <https://www.ganintegrity.com/country-profiles/egypt/>. Furthermore, the latest research by international organizations and national agencies have advised about the forms of corruption accomplished or initiated by those who occupy public position that involve immunity from legal proceedings. *Id.* It is noteworthy that observers are in favor that corruption in Egypt is ubiquitous and that the use of *wasta* (“mediation” or “influence”) and facilitation payments are indispensable for doing business. Andrew Puddephatt, *Corruption in Egypt*, GLOBAL PARTNERS & ASSOCIATES, March 2012, at 5, available at <https://www.gp-digital.org/wp-content/uploads/pubs/Corruption-in-Egypt-Report-new-cover.pdf>. Thus, the country faces major challenges in combating both grand and petty corruption. *Id.*

¹² See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009 24 (Transparency Int’l Secretariat 2009).

¹³ See, e.g., *id.* at 147 (“[A]nti-money laundering law was proposed due to the increasing concern of the government over the danger of this phenomenon and its detrimental effect on Egypt’s economy.”). In this respect, corruption is understood as the abuse of public office for private gain. *What is Corruption?*, TRANSPARENCY INT’L, <https://www.transparency.org/en/what-is-corruption> (last visited Sep. 29, 2023). See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 20 (“[R]ecent World Business Environment survey documented widespread corruption in interactions between business and government, with most firms interviewed indicating that ‘informal payments’ are frequently paid for services, in particular to tax and customs officials.”).

¹⁴ See *id.* at 24.

emergency status.¹⁵ Additionally, economic corruption was the reason for numerous developments in Egypt during that time.¹⁶

Many Egyptians suffered oppression through corruption.¹⁷ In Mubarak's era,¹⁸ they watched the gloomy reality of the fall of senior and junior figures in all fields, including the diverse media and governmental institutions.¹⁹ Egypt lost much of its media leadership in this era when its economic drive was congested; favoritism spread with destructive consequences for economic growth and social sustainability.²⁰

¹⁵ See, e.g., BERTELSMANN STIFTUNG, BTI 2022 COUNTRY REPORT: EGYPT (BTI Transformative Index 2022), available at <https://bti-project.org/en/reports/country-report/EGY#pos6> (explaining that the military regime after the 1952 revolution repressed all forms of opposition). Even now, Egypt has approximately 60,000 political prisoners, and the practice of forced disappearance, torture, and extrajudicial killings are not uncommon. *Id.*

¹⁶ See, e.g., *id.* (noting how economic policies under President Gamal Abdel Nasser's regime were internally contradictory, resulting in severe economic crisis and stagnation in development).

¹⁷ See Amal T. Kabesh, *Political upheaval in Egypt: Disavowing troubling states of mind*, 20 PSYCHOANALYSIS, CULTURE & SOC'Y 343, 346–47 (2015) (noting that President Hosni Mubarak's regime was, for good reason, widely perceived to be corrupt and that the corruption continued after Mubarak's resignation, eventually leading to the imprisonment and oppression of Muslim Brotherhood supporters). Efforts undertaken to combat corruption by the Egyptian Public Prosecutor and Anti-Corruption agencies—in particular after the falling down of Mubarak's regime—have increased, and extra efforts will be made to find the most effective measures to tackle corruption. See, e.g., NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 22 (explaining how the media and press have played an increased role in enhancing transparency and unveiling corruption in a healthy way. In doing so, the current government will draw on other successful research, practice, and expertise by states and regional as well as international organizations).

¹⁸ See, e.g., Timothy M. Phelps, *Revolution might not be a cure for Egypt's extreme poverty*, L.A. TIMES (Feb. 20, 2011, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2011-feb-20-la-fg-egypt-return-20110220-story.html>; *Egypt: A Nation in Waiting*, AL JAZEERA (Jan. 27, 2011), <https://www.aljazeera.com/videos/2011/1/27/a-nation-in-waiting-2>; Michael Blackman, *Hosni Mubarak, Egyptian Leader Ousted in Arab Spring, Dies at 91*, N.Y. TIMES (Feb. 25, 2020), <https://www.nytimes.com/2020/02/25/world/africa/hosni-mubarak-dead.html#:~:text=Hosni%20Mubarak%2C%20the%20former%20autocratic,He%20was%2091>.

¹⁹ See Andrew Heiss, *The Failed Management of a Dying Regime: Hosni Mubarak, Egypt's National Democratic Party, and the January 25 Revolution*, 29 J. THIRD WORLD STUD. 155, 159–60 (2012) (explaining that one of Mubarak's party management strategies was to control and manipulate the growth of the elite circle and that the emergency law allowed Mubarak to incarcerate, disappear, and torture dissidents and other enemies of the state). Every day, we hear of a new corruption crime or the arrest of a big corruption figure. See, e.g., Sophia Saifi & Azaz Syed, *Former Pakistan PM Khan given three years in jail after guilty verdict in corruption trial*, CNN WORLD NEWS (Aug. 5, 2023, 8:03 AM), <https://www.cnn.com/2023/08/05/asia/imran-khan-guilty-corruption-intl/index.html>. Such a series of corruption cases only confirms the desire to maintain absolute tyranny and conduct illicit acts. See *id.* (reporting that Khan was found guilty of unlawfully selling state gifts during his tenure as prime minister from 2018 to 2022). Corruption is the opposite of reform as it represents the tyranny of those in authority. See George T. Abed & Hamid R. Davoodi, *Corruption, Structural Reforms, and Economic Performance in the Transition Economies*, INT'L MONETARY FUND, July 2000, at 4–14 (analyzing how corruption is a symptom of lagging reform).

²⁰ See STIFTUNG, *supra* note 15 (“For decades, Egypt has made insufficient use of human, financial and organizational resources, favoring loyalty over competences and merits, and favoring patriarchal dominance over equality between the sexes, generations and social classes.”).

Eliminating the corruption that has become a part of daily life²¹ requires eradicating its roots.²² One of these roots was Emergency Law No. 162 of 1958, which gave police the power to undertake many actions, including putting individuals in jail while evading the courts' political monopoly, and undoubtedly affected economic performance, leading to the parasite capitalism that ruined small enterprises.²³ Beyond this, many other economic factors are affected by corruption in its various forms, such as political, parliamentary, fiscal, administrative, or moral.²⁴

Therefore, this article's principal objective is to describe the *status quo* of corruption and present an analysis of the Egyptian position on corruption from both philosophical and legal perspectives. First, such an analysis mandates a historical philosophy concerning corruption and its forms in Egyptian society during the military regime, along with the current administration and a critical assessment thereof. Secondly, it examines the existing legal framework with respect to corruption and its various related crimes. This article will not only shed light on the circumstances that gave rise to the current dilemma but also on how, through history, a country develops anti-corruption policies that either lead to cooperation or confrontation with other countries. Later, this article concludes by critically analyzing the current criminal legal framework in the Egyptian Penal Law No. 58 of 1937 and the Egyptian Criminal Procedural Law No. 150 of 1950 and their recent amendments, in addition to other criminal laws on corruption.²⁵ This article ultimately calls into question the capability of empire and democracy to cohabitate.

²¹ See *id.*

²² See Manar Shorbagy, *Understanding Kefaya: The New Politics in Egypt*, 29 ARAB STUD. Q. 39, 54 (2007) ("Egypt's politics has been characterized by a near total monopoly by the ruling regime which maintains a legal framework that is highly restrictive for both political parties and civil society."). Law No. 162 of 1958 (Emergency Law), *Al-Jarida Al-Rasmiyya*, 1958 (Egypt), available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=111245.

²³ See *id.*

²⁴ See ALINA ROCHA MENOCAL ET AL., WHY CORRUPTION MATTERS: UNDERSTANDING CAUSES, EFFECTS AND HOW TO ADDRESS THEM 14–28 (U.K. DEP'T FOR INT'L DEV. 2015), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/406346/corruption-evidence-paper-why-corruption-matters.pdf (examining several factors that facilitate corruption, including economic, political, administrative, social and cultural factors). Recently there has been a kind of corruption linked to entrepreneurs' loans from banks. See, e.g., Quinn Owen, *Startup CEO charged in \$175 million fraud case*, ABC NEWS (Apr. 4, 2023, 10:34 PM), <https://abcnews.go.com/Business/startup-ceo-charged-175-million-fraud-case/story?id=98363900> (reporting that tech start-up CEO Charlie Javice was arrested and charged with fraud for allegedly lying to J.P. Morgan Chase).

²⁵ In addition to the Egyptian anti-bribery provisions, there are a significant number of other provisions in either criminal legislation or other laws and regulations with punishments for acts similar to bribery. Among these are those which penalize the actions of receipt or the passing of rewards to public officials for purposes of influencing their decisions in the discharge of their public functions. See, e.g., Law No. 80 of 2002 (Anti-Money Laundering Law "AMLL"), *Hosni Mubarak*, 2002 (Egypt), as amended by Law No. 78 of 2003, *rabea alakhar*, 2003 (Egypt); Law No. 62 of

II. THE DAILY LIFE OF CORRUPTION IN EGYPT BEFORE THE WHITE REVOLUTION (CONVENTIONAL CORRUPTION)²⁶

It is difficult to define corruption comprehensively. Corruption is not a logical concept but a phenomenon that cannot be curbed once embedded in the ruling regime because it protects and is protected by the ruler.²⁷ Theoretically, corruption is a form of conduct that departs from ethics, morality, tradition, law, and civic virtue.²⁸ Robert Klitgaard defined it as “[a] person’s illegal preference of his own interest, neglecting others’ and the principles to which he declared commitment.”²⁹ According to the United

1975 (Illicit Enrichment Apparatus “IEA”), *Al-Jarida Al-Rasmiyya*, 7 July 1975 (Egypt); Law No. 11 of 1968 (Illegal Profiting Apparatus “IPA”), 1968 (Egypt) as modified by Law No. 2 of 1977, *al-Sadat*, 1977 (Egypt).

²⁶ In Egypt and the wider Arab world, the protests and subsequent changes in the government have generally been referred to as the 25th of *Thawrat 25 Yanāyir* (January Revolution), *Thawrat al-Horeya* (Freedom Revolution), or *Thawrat al-Ghadb* (Rage Revolution), and less frequently, *Thawrat al-Shabāb* (the Revolution of the Youth), and *al-Thawrah al-baydā’* (Lotus Revolution, or White Revolution). See *Egyptian Panel Lifts Death Toll in Protests*, WALL ST. J. (Apr. 20, 2011, 12:01 AM), http://online.wsj.com/article/SB10001424052748704740204576273071880564288.html?mod=fox_ausralian; see also Ahmad Fatemi, *Egypt: The Bread and Freedom Revolution*, GLOB. REVOLUTION (Feb. 5, 2011), <http://aglobalrevolution.wordpress.com/2011/02/05/egypt-the-bread-and-freedom-revolution/>; *Egyptian-American Leaders call for U.S. support of “Lotus Revolution”*, CNN (Jan. 28, 2011, 10:59 PM), <http://www.cnn.com/2011/WORLD/africa/01/28/egypt.press.club/index.html>; *White Revolution in Egypt*, GULF DAILY NEWS (Feb. 13, 2011), <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid299386>.

²⁷ TI defined corruption as “the abuse of entrusted power for private gain.” *What is Corruption?*, TRANSPARENCY INT’L, <https://www.transparency.org/en/what-is-corruption> (last visited Sept. 30, 2023). It also defined it as the officials’ behavior in the public or governmental sector, whether such officials are politicians or civilian employees, to illegally enrich themselves or their relatives through their given authority. *Id.* Corruption has also been defined as part of an agency/principal problem, where “an agent violates the trust of his or her principal through self-enrichment or through illegally enriching a political party.” CHARLES K. ROWLEY & FRIEDRICH G. SCHNEIDER, READINGS IN PUBLIC CHOICE AND CONSTITUTIONAL POLITICAL ECONOMY 552 (Springer 2008th ed. 2008). For example, when a legislator takes a kickback from a specific category of businessmen to enact and pass a statute in their favor, even if the application of this law would be detrimental to the rest of the community and the public interest, this act is considered a betrayal from the legislator who was entrusted and delegated by the general public to act on their behalf and achieve positive outcomes benefiting them and the society in general. See, e.g., *id.*

²⁸ Kenneth M. Dye, *Corruption and Fraud Detection by Supreme Audit Institutions*, in PERFORMANCE ACCOUNTABILITY AND COMBATING CORRUPTION 299, 304 (Anwar Shah ed., 2007).

²⁹ See generally ROBERT KLITGAARD, CONTROLLING CORRUPTION (Univ. of Cal. Press 1988). See also Robert Klitgaard, *What Can Be Done?*, in CORRUPTION 36 (The UNESCO Courier 1996). See, e.g., Robert A. Sparling, *Impartiality and the Definition of Corruption*, 66 POL. STUD. J., no. 1, 2018, at 376, 377. The Anti-Bribery Moroccan Society defined corruption as “[t]he unacceptable practice due to the misuse of a political, economic, administrative or judicial authority for the person’s own interest, harming the public interest.” See, e.g., Marcus Bauer, *Public Anticorruption in Morocco and Tunisia: A Comparative Study*, INT’L IMMERSION PROGRAM PAPERS 99 (2019) (“In 2018, Morocco and Tunisia were tied as the 73rd least corrupt countries in the world. However, although many of their reforms have been similar, Morocco’s and Tunisia’s anticorruption regimes are different in a number of crucial respects, mostly relating to their different forms of government.”); *Id.* (discussing the differences and similarities between the current anticorruption

Nations Development Programme (UNDP), there are two sorts of corrupt behavior: spontaneous and institutionalized.³⁰ In this regard, spontaneous corruption is usually found in cultures observing robust ethics and morals in public service.³¹ Institutional corruption is often found in societies where corrupt behavior is common, practiced openly, and even considered crucial to conducting business.³²

One Egyptian scholar defined three types of corruption: extortive corruption, manipulative corruption, and nepotistic corruption.³³ These definitions help shed light on the corruption in Egypt. First, extortive corruption occurs when an average person gives a bribe in order to meet their essential needs or defend their rights.³⁴ Second, manipulative corruption occurs when a person attempts to influence another's decision in favor of a particular person, party, or category in any field.³⁵ Third, nepotistic corruption is favoritism of relatives and other close persons in posts and advantages.³⁶ Nepotistic corruption is also known as cronyism and patronage.³⁷ The court decisions after the 2011 Egyptian Revolution have exposed the “nitty-gritty” details of how cronyism was quite extensive under former President Mubarak and how “the networks of privilege” operated.³⁸

efforts in Morocco and Tunisia and examine how public corruption manifests itself, the root causes of public corruption, and the history and the current status of public corruption and the government's response). *See also* Dye, *supra* note 28, at 299 (examining the fraud and corruption issues confronting Supreme Audit Institutions (SAIs) and offering some strategies and ideas for improvement).

³⁰ NORMAN ABJOESEN, *COMBATING CORRUPTION, IMPLICATIONS OF THE G20 ACTION PLAN FOR THE ASIA-PACIFIC REGION 21* (Anne Sahler & Akim Enomoto ed. 2014).

³¹ *Id.*

³² *Id.*; *see also* Amr Adly, *Mubarak (1990-2011): The State of Corruption*, ARI THEMATIC STUD.: THE POLITICS OF CORRUPTION, ARAB REFORM INITIATIV (2011); *see generally* MAHMMOUD NAGIUB HOSNI, SHARH KANUN AL-'UQUBAT, AL-KSEM AL-KHAS, AL-GRA'MM AL-MODRAA BELMASLAHA AL-'AMA [THE EXPLANATION OF EGYPTIAN PENAL LAW—THE SPECIAL PART: THE CRIMINAL OFFENCES AGAINST THE PUBLIC INTEREST], (Cairo Univ. Press 1972).

³³ *See generally* SYED H. ALATAS, *THE PROBLEM OF CORRUPTION* (Times Books Int'l 1986) (distinguishing and explaining extortive, manipulative, and nepotistic corruption).

³⁴ *See generally id.*

³⁵ *See generally id.*

³⁶ *See generally id.*

³⁷ *See generally id.*

³⁸ *See generally id.* In addition, favoritism is problematic from both legal and procedural perspectives, because the appointment of candidates is not based on their skills, experiences, and academic credentials which is ineffective to the work efficiency. *See* Judy Nadler & Miriam Schulman, *Favoritism, Cronyism, and Nepotism*, MARKKULA CTR. FOR APPLIED ETHICS, <https://www.scu.edu/government-ethics/resources/what-is-government-ethics/favoritism-cronyism-and-nepotism/> (last visited Nov. 26, 2023). It was stated that the Egyptian Administrative Judiciary may withdraw an administrative decision that was issued based on fraud, in favor of a certain person. *See generally* Baudouin Dupret, *Administrative Law*, HAL OPEN SCI. 4 (May 26, 2020), <https://hal.science/hal-02624566/document>. However, a report by TI, on the compliance of the Egyptian legal system with the UNCAC, found that the current legislation does not fully comply with the UNCAC requirements regarding hiring, retention, promotion, and retirement of public officials. *See* JUDGE ASHRAF-AL-BAROUDI & HUSSEIN HASSAN, *LEGISLATION IN EGYPT: AN*

Furthermore, corruption under the former regime can be seen throughout the nation in many ways, including an accumulation of citizen's economic encumbrances; negligence on the administrative level, particularly with public funds; a tendency to link proficiency standards to illegitimate gains; and a general lack of respect for the government.³⁹

Corruption in Egypt and throughout the Middle East represents the “permanent moan” from citizens who feel they have no right to citizenship.⁴⁰ Corruption is everywhere in these countries and cripples the whole community.⁴¹ One can argue that in developed countries—concerning confronting corrupt practices—corrupt officials are subject to criminal investigation and trial even while they hold power.⁴² Developed countries enjoy a democratic climate, which gives no public official the right to breach the law, even if they are the Head of State.⁴³ They are thoroughly investigated and subjected to punishment if proven guilty.⁴⁴ For instance, in France, former Minister of Communications Alain Carignon faced a criminal sentence of three years in prison for corruption.⁴⁵ In addition to the political

ANALYSIS OF COMPLIANCE WITH THE UN CONVENTION AGAINST CORRUPTION (Transparency Int'l 2011), available at https://www.transparency.org/files/content/pressrelease/20110630_TI-S_Legislation_in_Egypt.pdf.

³⁹ See generally Amr Adly, *Politically-Embedded Cronyism: The Case of Post-Liberalization Egypt*, 11 J. BUS. & POL. 4 (2017). Furthermore, TI reported that the most governmental areas that are subject to corruption in developing countries are: (1) governmental purchases (public procurements, goods and services, and utilities), (2) division and sale of lands and real estate, (3) tax, excise laws, and customs fees, (4) public official's appointments, and (5) regional rule administrations in the governorates. *Id.*

⁴⁰ For example, the Mubarak regime, its former National Democratic Party (NDP), and the government stole a citizens' role in political life, through detention for decades and security reports for public appointment. *Hosni Mubarak: A Living Legacy of Mass Torture and Arbitrary Detention*, AMNESTY INT'L (Feb. 25, 2020), <https://www.amnesty.org/en/latest/news/2020/02/hosni-mubarak-legacy-of-mass-torture/>.

⁴¹ *CPI 2022 for Middle East & North Africa: Corruption Fuels Ongoing Conflict*, TRANSPARENCY INT'L (Jan. 31, 2023), <https://www.transparency.org/en/news/cpi-2022-middle-east-north-africa-corruption-fuels-ongoing-conflict>.

⁴² See generally *Senior French Politician Gets 3 Years in Jail*, N.Y. TIMES (Nov. 17, 1995), <https://www.nytimes.com/1995/11/17/world/senior-french-politician-gets-3-years-in-jail.html>. In Sweden, judicial authorities decided to hold a criminal interrogation with the former Deputy Prime Minister Mona Sahlin for financial infractions. *Swedish official under investigation*, UNITED PRESS INT'L (Oct. 18, 1995), <https://www.upi.com/Archives/1995/10/18/Swedish-official-under-investigation/5779813988800/>.

⁴³ See S.W.R. DE A. SAMARASINGHE, *DEMOCRACY AND DEMOCRATIZATION IN DEVELOPING COUNTRIES* 14–15 (Data for Decision Making Project 1994), available at <https://efaidnbmnnnibpajpcglclefindmkaj/https://www.hsph.harvard.edu/international-health-systems-program/wp-content/uploads/sites/1989/2020/04/No-7-1.pdf> (explaining that rich, industrialized countries generally enjoy democratic institutions and freedoms).

⁴⁴ This is especially true the case in the United States of America. See generally *Steps in the Federal Criminal Process*, U.S. DEP'T JUST., <https://www.justice.gov/usao/justice-101/steps-federal-criminal-process> (last visited Nov. 6, 2023) (explaining the required steps in the federal criminal process, including criminal investigation and sentencing).

⁴⁵ *Senior French Politician Gets 3 Years in Jail*, N.Y. TIMES (Nov. 17, 1995), <https://www.nytimes.com/1995/11/17/world/senior-french-politician-gets-3-years-in-jail.html>.

functions in a democratic society, the media is also free from governmental pressure.⁴⁶ For instance, the media played a prominent role in exposing corrupt performances in the Watergate,⁴⁷ Whitewater,⁴⁸ and Berlusconi scandals, among many other examples.⁴⁹

However, corruption is routine in developing countries, and citizens anticipate it in all daily transactions.⁵⁰ Worse, although officials routinely transgress the law, they often avoid interrogation and penalty.⁵¹ Often, government officials attempt to convince the people that the government is not corrupt.⁵² Corrupt people, specifically high-ranking officials, frequently go unchecked to such an extent that the nation itself is seen as corrupt.⁵³ For example, ministers, senior officers, and People's Assembly Members (PAM) are often involved in crimes such as misappropriating public funds and

Further, in Sweden, judicial authorities decided to hold a criminal interrogation with the former Deputy Prime Minister Mona Sahlin for financial infractions. *Swedish official under investigation*, UNITED PRESS INT'L (Oct. 18, 1995), <https://www.upi.com/Archives/1995/10/18/Swedish-official-under-investigation/5779813988800/>.

⁴⁶ See generally Salieg L. Munestri, *Watergate Scandal Reassessed: Mass Media's Watchdog Role and Its Impact on American Political System*, 7 J. KOMUNIKASI MASSA 121 (2014).

⁴⁷ See generally *id.* (reexamining the Watergate Scandal and its impact on media and journalism). The Watergate scandal was a United States political scandal in the 1970s that resulted from the break-in to the Democratic National Committee headquarters at the Watergate office complex in Washington, D.C. *Id.* at 122. The Watergate scandal ultimately led to the resignation of the President of the United States, Richard Nixon. *Id.* It also resulted in the indictment, trial, conviction, and incarceration of several Nixon administration officials. *Id.* at 123-24. For further discussion on this scandal, see generally Joe Palazzolo, *From Watergate to Today, How FCPA Became so Feared*, WALL ST. J. (Oct. 2, 2012, 12:01 AM), <https://www.wsj.com/articles/SB10000872396390444752504578024791676151154>.

⁴⁸ See *Lewinsky Scandal*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/reference/encyclopedias-almanacs-transcripts-and-maps/lewin-sky-scandal> (last visited Nov. 6, 2023); see also Ernest Dumas, *Whitewater Scandal*, ENCYCLOPEDIA ARK. (June 16, 2023), <https://encyclopediaofarkansas.net/entries/whitewater-scandal-4061/>.

⁴⁹ See, e.g., Stephan Faris, *Berlusconi Sex Scandal: Ruby Tells Her Story*, TIME (Jan. 20, 2011), <http://www.time.com/time/world/article/0,8599,2043352,00.html>.

⁵⁰ Specifically, corruption creates social systems compliant to its practices and influences societies and the social relationships they contain. James Lewis, *Social impacts of corruption upon community resilience and poverty*, 9 JÀMBÁ: J. DISASTER RISK STUD., no. 1, 2017, at 7, available at <https://jamba.org.za/index.php/jamba/article/view/391/668>. Accordingly, wherever systemic corruption persists, attempts to induce and inculcate resilience to crises and hazards may be unlikely to succeed in the long run. *Id.*

⁵¹ For example, in the 1990s, a former Minister of Interior conspired with the corrupt people in obtaining illicit capital and private interests for his family. See generally Cassandra, *The Impending Crisis in Egypt*, 49 MIDDLE E. J. 1 (1995). He was the first minister that dealt in sales and purchases relations with prisoners in a detention camp. *Id.*

⁵² At the very least, they attempt to hide their illicit assets with the help of bankers, lawyers, accountants and real estate agents. See *What Is Corruption?*, TRANSPARENCY INT'L, <https://www.transparency.org/en/what-is-corruption> (last visited Nov. 6, 2023) (explaining how corruption can happen in the shadows).

⁵³ See Vito Tanzi, *Corruption Around the World: Causes, Consequences, Scope, and Cures*, INT'L MONETARY FUND, May 1998, at 10 (noting that corruption is typically associated with state activities and especially with discretionary and monopoly power of the state).

cooperating to expedite various criminal violations.⁵⁴ Corruption uses the public interest to facilitate private interests.⁵⁵ Consequently, it exists in several patterns and levels in developing countries.⁵⁶ One of the most significant patterns is “top corruption,” which involves the corruption of high-ranking government officials and is particularly common in African nations following independence.⁵⁷ Accordingly, the government seems analogous to a palace where an individual controls while a cluster of beneficiaries seeks to benefit private interests.⁵⁸ In sum, it is the social system that is responsible for corruption and its culture, making it an acceptable notion, particularly “grand” corruption.⁵⁹

The most significant cause of corruption in Egypt has been dictatorship because tyranny makes absolute corruption possible.⁶⁰ Moreover, personal relationships and unofficial traditions play a vital role.⁶¹ Another important

⁵⁴ See, e.g., *Congressman George Santos Charged with Fraud, Money Laundering, Theft of Public Funds, and False Statements*, U.S. DEP’T OF JUST. (May 10, 2023), <https://www.justice.gov/usao-edny/pr/congressman-george-santos-charged-fraud-money-laundering-theft-public-funds-and-false> (reporting that George Anthony Devolder Santos, a United States Congressman representing the Third District of New York, was indicted for, among other things, theft of public funds).

⁵⁵ Cf. Roberto B. Kukutschka et al., *Building Political Integrity to Stamp Out Corruption: Three Steps to Cleaner Politics*, TRANSPARENCY INT’L (Jan. 23, 2020), <https://www.transparency.org/en/news/building-political-integrity-to-stamp-out-corruption-three-steps-to-cleaner-politics> (“Political integrity means exercising political power consistently in the public interest, i.e., not to sustain power holders’ own wealth or position, and independent of private interest.”).

⁵⁶ See generally RONALD WRAITH & EDGAR SIMPKINS, *CORRUPTION IN DEVELOPING COUNTRIES* (Routledge 2013 ed. 1963) (reviewing corruption in the developing countries of Africa).

⁵⁷ In fact, a significant percentage of African citizens regard their government officials to be corrupt. *Citizens Speak Out About Corruption in Africa*, TRANSPARENCY INT’L (July 11, 2019), <https://www.transparency.org/en/news/citizens-speak-out-about-corruption-in-africa>.

⁵⁸ Gamal Essam El-Din, *A Tale of Two Banks*, AHRAM ONLINE (Jan. 23/29, 2003), <https://english.ahram.org.eg>.

⁵⁹ *Id.* “Grand Corruption” includes complicated network operations, including arrangements and measures that are difficult to be unveiled, and it usually includes senior officials in the state and even the President himself. Maíra Martini, *Fighting Grand Corruption: Challenges and Successes*, TRANSPARENCY INT’L, May 14, 2015, at 2. In addition, this sort of corruption is also found in companies to which some former state officials have contributed by creating chances for these corporations to earn millions, smuggling most of it abroad. See, e.g., *id.* at 4 (“Corrupt officials frequently use complex corporate structures to hide their identities and easily evade taxes and/or launder the proceeds of corruption or other crimes.”). The government seemed to have suddenly discovered the spread of corruption among these companies, including tax evasion, illegal positions, continuous violations, questionable practices, and depositor’s rights not being guaranteed. See, e.g., Osama Kamal, *Al-Rayyan: from fact to fiction*, AHRAM ONLINE (Aug. 18, 2011), <https://www.masress.com/en/ahramweekly/27456> (“Al-Rayyan is marked out by a clever script, competent direction, and generally lively performances . . . [O]ne of the country’s top businessmen in the 1980s, al-Rayyan, once handled nearly 5.2 billion EGP in investment funds, and nearly 200,000 people trusted him with their life savings. However, al-Rayyan’s business empire, which had branched out into every sector of the Egyptian economy, came crashing down when the government passed a law in 1988 aiming to regulate fund-management companies.”).

⁶⁰ See Mahmoud Hashem, *Egypt’s decade of dictatorship and repression*, PEOPLES DISPATCH (July 13, 2023), <https://peoplesdispatch.org/2023/07/13/egypts-decade-of-dictatorship-and-repression/>.

⁶¹ See generally Mohamed ‘Arafa, *Dreams without Illusions: The Bureaucratic Cholesterol, Administrative Corruption and the Future of a Real Democratic Middle East*, 53 NEW ENGLAND

cause of corruption is the significant influence of the administrative bureaucratic regime.⁶² The lack of strong political associations able to control the bureaucratic systems enables them to work only for their private interests, using various kinds of administrative corruption.⁶³

While most developing countries remain poor, a few are evolving more rapidly.⁶⁴ This means corruption will spread among the region through the domination of personal loyalty over national values.⁶⁵ According to the report prepared by Transparency International (TI) on *Corruption and Human Rights: Making the Connection*, corrupt activities may transgress human rights directly, indirectly, or remotely.⁶⁶ The distinction between the three kinds of violations is significant, as not every corrupt deed is in itself a violation of a human right; it may lead to the breach of a human right;

L. REV. (2021) (“[B]ut rather the administration of the government’s affairs and the conditions required for operative governance, which can be understood as orderly legal rule and collective action to control corruption, especially the code of conduct technique. So, it emphasizes corruption as a rampant disease in the Middle East, especially in the field of public administration, defined as the variety of guiding general principles that regulate how governments administer their affairs. Public administration is defined as the diversity of structures, procedures and practice, and public sector reform regarding the diversity of public service delivery mechanisms (marketization, commercialization, privatization, and contracting out). It is also defined as the administrative reforms, the bureaucratic organizational change and procedural reform concerning corruption, personnel administration, budgeting, financial management, and e-government. Governance comprises all the processes of overriding, whether undertaken by the government/state, a market, a network, or over a social system; and whether through the laws, legal norms, power, or language of an organized society. Thus, it relates to the processes of communication and decision-making among the actors involved in a collective problem that lead to the creation, fortification, or reproduction of social norms and institutions. In other words, it could be described as the political processes that exist in and between formal institutions. A variety of entities (governing bodies) can govern whose responsibility and authority it is to make binding decisions in a given geopolitical system (such as a state) by establishing laws and rules.”).

⁶² Osama Kamal, *Al-Rayyan: from fact to fiction*, AHARAM ONLINE (Aug. 18, 2011), <https://www.masress.com/en/ahramweekly/27456>.

⁶³ *Id.*

⁶⁴ See Lucia Elmi, *Top 5 Fastest Developing Countries*, BORGENT PROJECT (Mar. 19, 2020), <https://borgenproject.org/top-5-fastest-developing-countries/> (listing the top five fastest developing countries).

⁶⁵ See Cheryl W. Gray & Daniel Kaufmann, *Corruption and Development*, 35 FIN. & DEV. 7, 9 (1998) (noting that accountability is typically weak and that political competition and civil liberties are often restricted in developing and transition countries). A person cannot access any governmental or administrative association service except through bribery or kickback, which is called several names as *ikramia* or *baksiesh* (grant, fee or tips). See generally DAVID MONTERO, KICKBACK: EXPOSING THE GLOBAL CORPORATE BRIBERY NETWORK (Viking 2018) (examining how corporate bribery and kickbacks around the world undermine democracy and the free market system). Corruption also spreads through subordination; when corruption spreads among the upper level, it subsequently transfers to the general public, or it may move like an endemic from one organization to another. See Tanzi, *supra* note 53, at 6, 7 (explaining that the practice of bribery is likely to be cumulative in time, eventually resembling the spreading of contagious disease).

⁶⁶ MAGDALENA S. CARMONA, CORRUPTION AND HUMAN RIGHTS: MAKING THE CONNECTION 27–28 (Int’l Council on Hum. Rts. Pol’y 2009).

therefore, the causal link between the corrupt conduct and the violated human right, should at every time be recognized.⁶⁷

(a) Direct Violations: A corrupt performance is considered to be a direct abuse of a human right when it is deliberately and intentionally committed with the purpose of violating it, meaning that the violation was predictable and that the official abstained from averting it.⁶⁸ For instance, the right to health and the principle of non-discrimination may be diminished by an act of corruption, when the hospital staff gives more attention and care to patients who pay them inducements or bribes or when the medical supplies in public hospitals are missing because they were subject to prohibited deals conducted by the official in charge.⁶⁹ Such an act violates Article 12.1 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which provides for “[T]he right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”⁷⁰

(b) Indirect Violations: An indirect violation occurs when a corrupt activity is an indispensable factor in a chain of events, the presence of which together leads to the violation of a human right.⁷¹ Furthermore, corruption indirectly affects people experiencing poverty by decreasing their net income and depleting public resources, funds, policies, and programs.⁷²

(c) Remote Violation: Remote violation occurs when individuals are suppressed from opposing or protesting, which unequivocally infringes upon the right to political participation, the prohibition of torture, and several other rights.⁷³

A. Types of Corruption in Egypt

Corruption in Egypt takes several forms. To better understand its different forms, the following sections examine its principal types.

⁶⁷ Julio Bacio-Terracino, *Corruption as a Violation of Human Rights*, INT’L COUNCIL ON HUM. RTS. POL’Y (Jan. 2008) (manuscript at 10).

⁶⁸ Amira M. Emara, *The Impact of Corruption on Human Rights in Egypt*, 10 ASIAN ECO. & FIN. REV. 5, 574-89 (2020).

⁶⁹ See, e.g., Matthieu Hanf et al., *Corruption Kills: Estimating the Global Impact of Corruption on Children Deaths*, 6 PLOS ONE 11, 3-6 (2011) (finding high levels of corruption to be correlated with poor health-related outcomes, including higher infant and child mortality rates).

⁷⁰ Eamra, *supra* note 68, at 574-89 (emphasis added); see also G.A. Res. 2200A (XXI), at 3, 8 (Dec. 16, 1966).

⁷¹ See Bacio-Terracino, *supra* note 67, at 11 (“[E]ven when there is not a direct connection, corruption may nonetheless be an essential contributing factor in a chain of events that eventually leads to a violation, and as such corruption indirectly violates human rights.”).

⁷² See generally Eamra, *supra* note 68.

⁷³ See Bacio-Terracino, *supra* note 67, at 8 (explaining how corruption can lead to human rights violation without violating human rights, thus operating as a remote cause of such violation).

1. Political and Administrative Corruption

Following the introduction of a liberal reform policy, the Egyptian economy demonstrated remarkable economic growth.⁷⁴ The former National Democratic Party (NDP) dominated the political landscape in Egypt from its establishment in 1978 until the resignation of the late President M. Hosni Mubarak on February 11, 2011.⁷⁵ Upon gaining office after former President M. Anwar El-Sadat's assassination in 1981, Mubarak declared a state of emergency, which has been in force ever since.⁷⁶ The political environment was characterized by a powerful executive branch and a lack of legislative control, as many policy areas (e.g., interior, defense, and justice) lie outside legislative authority.⁷⁷ Moreover, the 1971 Egyptian Constitution, replaced by the 2012 Egyptian Constitution, subordinated the legislative and judicial branches to the executive.⁷⁸

⁷⁴ See generally Abdelmonem L. Mohamed Kamal & Mostafa E. AboElsoud, *Modeling economic growth factors in Egypt: A quantile regression approach*, 9 HELIYON 2 (2023) (investigating the sources of Egypt's economic growth over the course of four generations of reforms from 1991 to 2019).

⁷⁵ See generally Charles R. Davidson, *Reform and Repression in Mubarak's Egypt*, 24 FLETCHER F. WORLD AFF. 75 (2000) (examining certain facets of the leadership of Hosni Mubarak, one of Middle East's authoritarian technical bureaucrats).

⁷⁶ See generally *id.* (examining certain facets of the leadership of Hosni Mubarak, one of Middle East's authoritarian technical bureaucrats). The current constitutional document regarding the emergency status provides that "[t]he President of the Republic shall declare, after consultation with the Cabinet, a state of emergency in the manner regulated by law. Such proclamation must be submitted to House of Representatives within the following seven days. If the declaration takes place when the House of Representatives is not in session, a session is called for immediately. In case the House of Representatives is dissolved, the matter shall be submitted to the *Shoura* Council, all within the period specified in the preceding paragraph. The declaration of a state of emergency must be approved by a majority of members of each Council. The declaration shall be for a specified period not exceeding six months, which can only be extended by another similar period upon the people's approval in a public referendum. The House of Representatives cannot be dissolved while a state of emergency is in place." CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, as amended, 2019 art. 154.

⁷⁷ See Davidson, *supra* note 75, at 80 ("Egypt's domestic political environment ha[d] not undergone major structural reform for decades and remain[ed] a highly restricted autocratic political system, controlled by a dominant executive and [Mubarak's] political supporters.")

⁷⁸ See ANDREA TETI, POLITICAL AND SOCIAL CHANGE IN EGYPT: PRELUDES TO THE JANUARY UPRISING 1 (Arab Transformations Project 2017), available at https://www.jstor.org/stable/pdf/resrep14103.4.pdf?refreqid=fastly-default%3A6d1598ad90186f073e973a5028756599&ab_segments=&origin=&initiator=&acceptTC=1 ("Under the 1971 constitution and its successors, the country was given a bicameral legislative system, with a weak upper house many of whose members were appointed by the President."); see also Aziz Rana, *Freedom Struggles and the Limits of Constitutional Continuity*, 71 MD. L. REV. 1015, 1017 (2012) (explaining how the 1971 Constitution culminated in "increased centralization of presidential power, the dismantling of judicial independence, and the systematic infringement of basic rights"). Thus, political corruption can be found in fraudulent elections, supporting the emergency law, and human rights basic violations on different levels. See Sahar F. Aziz, *Revolution without Reform: A Critique of Egypt's Election Laws*, 45 GEO. WASH. INT'L L. REV. 1, 27-47 (2013) (illustrating both the parliamentary

Reports by Transparency International confirm an escalation in the wasting of public funds and the retreat of the government's role in fighting corruption, including embezzlement, misappropriation of public funds, seizure, bribery, and forgery.⁷⁹

Administrative corruption is apparent in many fields.⁸⁰ Favoritism is rampant in the private sector for those close to the former regime.⁸¹ Those close to the prior government were given special benefits, control over central projects, and simplified loans without commercial guarantees.⁸² The Forum for Development and Human Rights Dialogue (FDHRD) issued a report on February 26, 2008, analyzing corruption within municipalities, which stated that “during 2007, the amount of squandered funds reached EGP 454 million and that the amount of embezzled money in municipalities reached EGP 14 million.”⁸³ This type of corruption can also be seen in a

and presidential elections in Egypt after the ouster of Mubarak and the domination of Islamists and the irregularities which Egyptian elections suffered from).

⁷⁹ NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 24 (attributing the intensification to the inability of the popular and party associations to oversee the monetary flow inside the government). *Cf. id.* at 59 (explaining that no clear regulations concerning the overseeing of fund disbursement by candidates or political parties exist). They are also incapable of assessing the regional markets, international businesses, abuse of public funds, political donations, and the inability of the laws to enforce the officials to disclose their incomes. *Cf. id.* at 15 (“Integrity mechanisms governing public officials including laws and regulations . . . need to be effectively implemented.”). Anti-corruption in Egypt will not take place except after accomplishing democracy, the role of the state foundations, strengthening values of punishment, and supervision of the Parliament in addition to reinforcing its ability to penalize the executive authority's members in cases of negligence. *See id.* at 27-28 (explaining that punishing corrupt parties is not sufficient for fighting corruption and that fundamental changes in the bureaucratic system and machinery of society are necessary). Law No. 89 of 1998 inspired by the UNCITRAL Model Law on the Procurement of Goods, Construction, and Services and the World Bank's Model Laws of Procurement, which is issued by Ministry of Finance, contains provisions regarding conflict of interests, prohibiting officials and employees in agencies/authorities from participating, whether personally or through intermediaries, in bidding/tendering offers to law enforcement agencies. Law No. 89 of 1998 (Tenders and Auctions Law), *monakasat*, 1998 (Egypt). Also, this law stipulates that public tenders and public auctions must be subject to “Publicity Principles.” *Id.* Article 2 states, “Since all public bids and auctions follow the principles of rationality, equal opportunity, and free competition, they must be declared in daily newspapers and other widespread information media.” *Id.* at art. 2. Also, the executive regulation of this law set instructions for contract bidding conditions, the execution of contracts for labor, supplies, and the required steps. *See id.* However, not enough effort is exerted in inspecting and investigating the documents presented by the officials, which include incorrect, misleading, falsified, and distorted data. *See, e.g., id.* at art. 2 (discussing the executive regulations). *See generally* ACCOUNTABILITY STATE AUTHORITY, <https://asa.gov.eg/page.aspx?id=1> (last visited Dec. 18, 2023) (explaining its tasks in fighting corruption, money laundering, and financial crimes in Egypt along with recent accountability standards)

⁸⁰ *See Egypt Risk Report*, GAN INTEGRITY (Sept. 30, 2020), <https://www.ganintegrity.com/country-profiles/egypt/>.

⁸¹ *See id.*

⁸² *See, e.g.,* ‘Arafa, *supra* note 61.

⁸³ *Id.* Privatization is the process of transferring ownership of a business, enterprise, agency or public service from the public sector to the private sector. *See generally* DAVID PARKER & DAVID S. SAAL, INTERNATIONAL HANDBOOK ON PRIVATIZATION (Edward Elgar Publ'g 2005) (explaining that

myriad of other fields, including privatization, the system of assessing assets, properties, and lands owned by corporations and banks, the credit system, and the trafficking of money abroad via authorized banking channels.⁸⁴ Moreover, in the agricultural sector, there were various types of wrongdoings, including issues with cancer-causing herbicides and the ruining of several vital commodities in the Egyptian economy.⁸⁵

Regarding Egypt's compliance with economic and social rights obligations, a Joint Non-Governmental Organization reported to the Office of the High Commissioner for Human Rights (HCHR) in 2010 that

privatization refers to transfer of any government function to the private sector, including governmental functions like revenue collection and law enforcement); ROGER L. KEMP, *PRIVATIZATION: THE PROVISION OF PUBLIC SERVICES BY THE PRIVATE SECTOR* (McFarland 2007).

⁸⁴ See generally Paul Cook & Colin Kirkpatrick, *Assessing the Impact of Privatization in Developing Countries*, in *INTERNATIONAL HANDBOOK ON PRIVATIZATION* (David Park & David S. Saal ed. 2005); see also Sabine Frerichs, *Egypt's Neoliberal Reforms and the Moral Economy of Bread: Sadat, Mubarak, Morsi*, 48 *REV. OF RADICAL POL. ECON.* 610, 610–32 (2016), available at <https://journals.sagepub.com/doi/full/10.1177/0486613415603158>.

⁸⁵ See Reuters, *Egypt Detains Former Minister over Pesticides*, *DAILY NEWS EGYPT* (Oct. 5, 2012, 1:03 PM), <https://dailynewsegypt.com/2011/07/11/egypt-detains-former-minister-over-pesticides/> (“An Egyptian investigating judge ordered a former agriculture minister detained for questioning over accusations that he allowed the import of cancer-causing pesticides. . . . [Y]oussef Wali, who served as agriculture minister under former President Hosni Mubarak from 1982 to 2004, was also suspected of squandering 200 million Egyptian pounds. . . .”); see also MENA, *Mubarak agriculture minister Wali to stand trial on 20 April in corruption case*, *AHRAM ONLINE* (Jan. 9, 2019), <https://english.ahram.org.eg/NewsContent/1/64/321460/Egypt/Politics-/Mubarak-agriculture-minister-Wali-to-stand-trial-o.aspx>; *Egypt's Criminal Court annuls assets freeze of Mubarak era agriculture minister Youssef Wali*, *AHRAM ONLINE* (Mar. 21, 2018), <https://english.ahram.org.eg/NewsContent/1/64/293197/Egypt/Politics-/Egyptys-Criminal-Court-annuls-assets-freeze-of-Muba.aspx>; Robert Springborg, *Patrimonialism and Policy Making in Egypt: Nasser and Sadat and the Tenure Policy for Reclaimed Lands*, 15 *MIDDLE E. STUD.* 49, 49–69 (1979). One of the cases that shocked Egyptian society was that of Youssef ‘Abdel Rahman, one of the pillars in the former Ministry of Agriculture. He faced charges of bribery, ill-gotten money, abuse of power, and importing and using banned insecticides. See generally Gamal Essam El-Din, *Agriculture Feels the Heat*, *AHRAM ONLINE* (Jan. 30, 2003), <https://english.ahram.org.eg/WriterArticles/Gamal-Essam-El-Din/289/1760.aspx> (“the trial of Youssef Abdel-Rahman, Agriculture Minister Youssef Wali’s . . . is already causing ripples in political and economic circles.”); *Id.* (“The Cairo Criminal Court sentenced and fined all officials in this case. The defense counsel claimed that there was no legal evidence for bribery and incompetence as the accused’s delegation as a legal advisor in the Ministry of Agriculture was ended at that time. The court responded that his character as a public official still existed as he committed the crime and performed the job duties in a way that made him an “actual official” according to the Egyptian Penal Code’s bribery provisions.”). Also, it has been reported that the Agriculture Minister, Amin Abaza, who served under the ousted President Mubarak, was arrested and stood trial in the Isma‘ilia Criminal Court for unlawfully seizing, confiscating, willful damage to public property, and facilitating the acquisition of state-owned land in the Sinai Peninsula along with other defendants. Isma‘ilia Criminal Court sentenced Abaza and the other businessmen to three years in prison for charges of seizing (facilitating acquisition) and squandering EGP 35 million in state funds to establish illusory public projects. See Reuters, *Egypt Sentences 11 to Death Over Riot Between Al-Masry and Al-Ahli Fans*, *NBC UNIVERSAL* (June 9, 2015, 7:32 AM), <https://www.nbcnews.com/news/world/egypt-sentences-11-death-over-riot-between-al-masry-al-n372151#>.

“Egyptians have not been enjoying just and favorable work conditions.”⁸⁶ Government policies have further exacerbated the already severe employment situation by promoting temporary contracting in the public sector, fixing wages below the global averages, and allowing unfair dismissal and abuse by employers.”⁸⁷

Corruption extends to the transportation and communication sectors, encompassing telecommunications, housing, construction, land privatization, infrastructure development, and the procurement and transportation of weapons.⁸⁸ One famous corruption case within the housing sector involves a project named “*Ibni Beitak*.”⁸⁹ The project was supposed to provide youth and low-income individuals with plots of land with an area of 150 m² per piece, for a value of EGP 70/m², and a total value of EGP 10,500.⁹⁰ Then, the property owner would construct a housing unit on 50% of the land surface area, noting that they were allowed to build two upper units with a total built-up area of 225 m².⁹¹ The architectural, construction, health, and electricity drawings were free of charge to the national citizens.⁹² Likewise, the Ministry was supposed to provide financial support of EGP

⁸⁶ See, e.g., U.N. OFF. OF THE HIGH COMMISSIONER, EGYPT: A SELECTIVE SUBMISSION ON COMPLIANCE WITH ECONOMIC AND SOCIAL RIGHTS OBLIGATIONS (7th Sess. Hum. Rts. Council 2010), available at https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session7/EG/JS4_UPR_EGY_S07_2010_JointSubmission4.pdf (discussing the compliance with economic and social rights obligations); *Id.* (“[F]ocus[ing] on Egypt’s compliance with its obligations in relation to the respect, protection, and fulfillment of economic and social rights. It presents and analyses [sic] key data relating to the enjoyment of people’s rights to an adequate standard of living, the right to work, the right to education, the right to health and the right to social security. It also presents data on poverty and the implications of trade liberalization on the realization of economic and social rights in Egypt. The report also includes a set of recommendations for remedial action.”).

⁸⁷ *Id.*

⁸⁸ *Id.*; see generally Ewan Sutherland, *Bribery and Corruption in Telecommunications – New Approaches to Licensing*, INT’L ASS’N FOR MEDIA & COMM’N RSCH, June 2013 (explaining why licensing reforms are required for reducing corruption in the telecommunications sector).

⁸⁹ See generally Taha Gado, *Corruption Under Knees in Ibni Beitak Project: Corruption is a Continous Offer in Ibni Beitak Project*, YAHOO NEWS (Feb. 14, 2009), <http://abnybetak.maktoobblog.com/1587243/الفساد-للركب-في-مشروع-ابني-بيتاك/>; see also DAVID SIMS & TIMOTHY MITCHELL, EGYPT’S DESERT DREAMS: DEVELOPMENT OR DISASTER? (The Am. Univ. in Cairo Press rev. ed. 2018).

⁹⁰ See generally DAVID SIMS & TIMOTHY MITCHELL, EGYPT’S DESERT DREAMS: DEVELOPMENT OR DISASTER? (The Am. Univ. in Cairo Press rev. ed. 2018).

⁹¹ See generally *id.*

⁹² ‘Arafa, *supra* note 61. As a consequence of Egypt’s economic transformations in the past era, the phenomenon of eviction from agricultural land and housing became ubiquitous. See generally BUREAU DEMOCRACY, HUM. RTS. & LAB., 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – EGYPT (U.S. DEP’T OF STATE 2008), available at <https://www.refworld.org/docid/47d92c5216e.html>. Subsequently, numerous corruption cases were attributed to the right to housing. In 2007, the office of complaints on human rights violations received a lot of complaints concerning the administrative evacuation of ten families, in a way breaching their right to housing, without prior notification of the demolition date, and without negotiating with them any compensation or alternative accommodation. *Id.*

15,000 to each citizen.⁹³ However, the Administrative Control Authority attributed acts of corruption to the Ministry of Housing and arrested the public officials in charge of the project, along with the Chairman of one of the private contractors, on charges of bribery amounting to EGP 2 million for the installation of pipes and water lines by direct order.⁹⁴

Corruption in Egypt can be seen indirectly through the annual economic and military assistance, specifically grants from the United States Agency for International Development (USAID Program) given to the Egyptian government.⁹⁵ This funding has regularly been used to fund corrupt behaviors in various sectors, including the press,⁹⁶ the healthcare field,⁹⁷ and the

⁹³ See generally SIMS & MITCHELL, *supra* note 90.

⁹⁴ ‘Arafa, *supra* note 61. This contradicts the principle provided in Article 34 of the Egyptian Constitution regarding adequate housing as a given right, which was confirmed by the Egyptian Supreme Constitutional Court, in its decision in the al-Mah. kamah al-Dustūriyah al-‘Ulyā [Supreme Constitutional Court], case no. 1, session of 2 Jan. 1975, year 4, p. 203.

The principle provides that:

“Private ownership shall be safeguarded and may not be put under sequestration except in the cases specified by the law and under a court judgment. It may not be expropriated except for the public benefit and against a fair compensation in accordance with the law.” CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, art. 34.

⁹⁵ *Egypt*, USAID, <https://www.usaid.gov/egypt> (last visited Nov. 27, 2023).

⁹⁶ The Egyptian Criminal Court has sentenced Anas El-Fiqqi, the former Press, Media, and Information Minister, to seven years in prison, dismissal from his public office, and referring the civil action on the grounds of *renvoi* to be adjudicated by the competent court for squandering public funds from the State Radio and Television Union. See MAHMOUD C. BASSIOUNI, CHRONICLES OF THE EGYPTIAN REVOLUTION AND ITS AFTERMATH: 2011–2016 377 (Cambridge Univ. Press 2017). Also, it sentenced Osama El-Sheikh, the former head of the union, to five years on the same charges. *Id.* at 377. The court convicted them for profiteering and wasting public funds. *Egyptian court acquits 3 ex-ministers, convicts 1*, EMIRATES 24/7 (July 5, 2011), <https://www.emirates247.com/news/world/egyptian-court-acquits-3-ex-ministers-convicts-1-2011-07-05-1.406100>. They were convicted of squandering \$1.6 million by paying over the odds for a television drama series. *Id.* Prosecutors charged El-Fiqqi with granting broadcasting rights to Egypt’s premier football league in 2009, 2010, and 2011 . . . causing the State to incur 1.89 million EGP in losses. *Court sentences 2 former regime officials to prison*, EGYPT INDEP. (Sep. 28, 2011), <https://www.egyptindependent.com/court-sentences-2-former-regime-officials-prison/>. Also, the court found El-Sheikh guilty of squandering 19 million EGP in public funds, for purchasing and airing . . . at inflated prices without approval from the specialized evaluation and pricing panels. See MAHMOUD C. BASSIOUNI, CHRONICLES OF THE EGYPTIAN REVOLUTION AND ITS AFTERMATH: 2011–2016 377 (Cambridge Univ. Press 2017); see also *Mubarak’s information minister convicted*, SYDNEY MORNING HERALD (Sep. 28, 2011, 9:00 PM), <https://www.smh.com.au/world/mubaraks-information-minister-convicted-20110928-1kxfy.html> (“An Egyptian court has convicted Hosni Mubarak’s powerful information minister on corruption charges and sentenced him to seven years in prison.”).

⁹⁷ See generally SOHA BAYOUMI, HEALTH AND SOCIAL JUSTICE IN EGYPT: TOWARDS A HEALTH EQUITY PERSPECTIVE, (UNESCO 2016), available at https://en.unesco.org/inclusivepolicylab/sites/default/files/analytics/document/2019/4/wssr_2016_chap_30.pdf (examining Egypt’s striking health inequities); see also Ahmed Feteiha, *Five years on, Damietta’s Agrium controversy reignites*, AHARAM ONLINE (Nov. 14, 2011), <http://english.ahram.org.eg/NewsContent/3/12/26480/Business/Economy/Five-years-on,-Damiettass-Agrium-controversy-reignis.aspx> (“Since 2008, local activists in Damietta have fought to preempt construction of a contentious fertilizer production plant.”). For further elaboration on corruption cases in these various sectors, see Adly, *supra* note 39, at 7-19

tourism, oil, and gas sectors.⁹⁸ Many others are also included in the circle of corruption.⁹⁹ Finally, in terms of police brutality and the security and law enforcement sector's misuse of power,¹⁰⁰ corrupt practices commence upon

(discussing three cases that deal with land allocation, two with the privatization of publicly-owned enterprises, and one with the sales and exportation of natural resources, *i.e.*, natural gas).

⁹⁸ See generally Diana Elassy, *Corruption and the fall of an Empire*, EGYPT OIL & GAS (Dec. 29, 2014), <https://egyptoil-gas.com/features/corruption-and-the-fall-of-an-empire/> (discussing one of the most recent corruption cases in the Egyptian Oil and Gas Industry); see also Tamim Elyan, *Top Egyptian officials involved in facilitating Israel gas deal*, say leaked documents, DAILY NEWS EGYPT (Oct. 6, 2012), <https://www.dailynewsegypt.com/2011/06/27/top-egyptian-officials-involved-in-facilitating-israel-gas-deal-say-leaked-documents/>; Mohamed Fadel Fahmy, *Israel gas deal sparks attacks in Egypt*, CNN (May 14, 2011, 1:57 PM), <http://www.cnn.com/2011/WORLD/meast/05/14/egypt.israel.al.Sabil.gas/index.html>; Rana M. Taha, *Salem and Fahmy imprisoned over Israel gas deal*, DAILY NEWS EGYPT (Dec. 29, 2020), <https://www.dailynewsegypt.com/2012/06/28/court-rules-15-years-for-hussein-salem-and-sameh-fahmy-for-israel-gas-deal/> (“A Cairo Criminal Court convicted the former Minister of Petroleum and the business tycoon for selling Egyptian natural gas to Israel at below market rate. Fahmy received a sentence of 15 years in jail and was removed from position, by orders of the court, and businessman Hussein Salem was also found guilty and sentenced to 15 years *in absentia*. The defendants were found guilty of harming the national interests of the country and wasting public funds by selling and exporting natural gas to Israel at below market rates . . . All of the defendants in the case were collectively fined roughly 2.5 billion USD. Further, several members of prominent petroleum government bodies were also convicted, and received between three, seven, and ten years in jail.”).

⁹⁹ A crucial step to prevent any manipulation during the investigations and trials was made by former Egyptian Attorney General, who ordered the freezing of the assets—such as real estate, movable property, and liquid assets—of a number of persons under investigation, including their wives, and their adult and minor children. See, e.g., Deya Abaza, *Assets freeze about-face signal struggle within Egypt's judiciary*, AHRAM ONLINE (Mar. 21, 2013), <https://english.ahram.org.eg/NewsContent/3/0/67380/Business/0/Asset-freeze-aboutface-signals-struggle-within-Egy.aspx>. For instance, the steel tycoon Ahmad ‘Ezz, the former NDP Organization Secretary and former political power broker, was recently sentenced to ten years in prison and fined the equivalent of about 11 million USD for economic corruption, seven years for money laundering, and 37 years for other corrupt acts. See David D. Kirkpatrick & Heba Afify, *Steel Tycoon with Links to Mubarak Is Sentenced*, N.Y. TIMES (Sep. 15, 2011), <https://www.nytimes.com/2011/09/16/world/middleeast/egypt-sentences-mubarak-era-tycoon-ahmed-ezz-to-prison.html>; see also *Former tourism minister Garana sentenced to 5 years*, AHRAM ONLINE (May 10, 2011), <https://english.ahram.org.eg/NewsContent/1/64/11780/Egypt/Politics-/Former-tourism-minister-Garana-sentenced-to-5-years.aspx> (“Egypt former tourism minister found guilty of corruption . . . [G]arana was found guilty of corruption and violation of auction laws in buying land in the resort area of Al’Ain Al-Sohkna”); *Egypt jails former trade minister Rachid in absentia*, BBC NEWS (June 25, 2011), <https://www.bbc.com/news/world-middle-east-13916180> (explaining that Egypt’s former Trade Minister Rachid Mohamed Rachid has been sentenced to five years in prison *in absentia* for embezzling public funds).

¹⁰⁰ Based on Focus Group Discussions held in Cairo, June 2009. In practice, and especially in the last three years, several police officers have been convicted of torturing innocent citizens, but not of corruption. See *Egypt police jailed for killing*, BBC NEWS (Nov. 28, 2007), http://news.bbc.co.uk/2/hi/middle_east/7117309.stm; Amro Hassan, *EGYPT: Police officer imprisoned for torturing suspect*, L.A. TIMES (Nov. 8, 2009, 8:18 AM), <https://www.latimes.com/archives/blogs/babylon-beyond/story/2009-11-08/egypt-police-officer-imprisoned-for-torturing-suspect>. It should be remembered that Egypt is a party to the United Nations Anti-Torture Convention (as is the United States) and has adopted national implementing legislation since 1985 making it a crime under Egyptian Law for anyone to engage in torture and the treaty went into force in 1987. See, e.g., HEBA MORAYEF, “WORK ON HIM UNTIL HE

entry into the Police Academy and include activities such as torture, abuse of authority, and even killing in police stations.¹⁰¹

In a recent bombshell case, the United States Attorney for the Southern District of New York indicted U.S. Senator Robert (Bob) Menendez, his wife Nadine Arslanian Menendez, and three New Jersey businessmen for participating in a years-long bribery scheme.¹⁰² The indictment alleges that Menendez and his wife accepted hundreds of thousands of dollars in bribes from the businessmen in exchange for Menendez's agreement to use his official position to protect and enrich them and to benefit the Government of Egypt.¹⁰³ The sweeping indictment includes three charges: (a) conspiracy to commit bribery, (b) conspiracy to commit honest services fraud, and (c) conspiracy to commit extortion under color of official right, along with some forfeiture allegations.¹⁰⁴ The Attorney General said,

[T]hree New Jersey businessmen who collectively paid hundreds of thousands of dollars of bribes, including cash, gold, a Mercedes Benz, and other things of value—in exchange for Senator Menendez agreeing to use his power and influence to protect and enrich those businessmen and to benefit the Government of Egypt. My Office is firmly committed to rooting out corruption, without fear or favor, and without any regard [for] partisan politics.¹⁰⁵

CONFESSES": IMPUNITY FOR TORTURE IN EGYPT (Hum. Rts. Watch 2011), available at <https://www.hrw.org/report/2011/01/30/work-him-until-he-confesses/impunity-torture-egypt>; see also G.A. Res. 39/46 (XXVII) (Dec. 10, 1984).

¹⁰¹ See, e.g., *Egypt police beat, detain blogger says rights group*, REUTERS (Feb. 9, 2009, 10:29 AM), <https://www.reuters.com/article/oukin-uk-egypt-blogger/egypt-police-beat-detain-blogger-says-rights-group-idUKTRE51853F20090209>.

¹⁰² See Press Release, U.S. ATT'Y OFF. FOR THE S. DIST. OF N.Y., *U.S. Senator Robert Menendez, His Wife, And Three New Jersey Businessmen Charged With Bribery Offenses* (Sep. 22, 2002), <https://www.justice.gov/usao-sdny/pr/us-senator-robert-menendez-his-wife-and-three-new-jersey-businessmen-charged-bribery> ("Robert Menendez Allegedly Agreed to Use His Official Position to Benefit Wael Hana, Jose Uribe, Fred Daibes, and the Government of Egypt in Exchange for Hundreds of Thousands of Dollars of Bribes to Menendez and His Wife Nadine Menendez, Which Included Gold Bars, Cash, and a Luxury Convertible.")

¹⁰³ See *id.*

¹⁰⁴ See, e.g., Alex Hammer, *Egyptian Businessman, 40, Accused of Bribing Sen. Bob Menendez, 69, Arrested by Feds on Corruption Charges at JFK and Freed on \$5million Bond*, DAILY MAIL (Sep. 27, 2023), <https://www.dailymail.co.uk/news/article-12564401/Egyptian-businessman-accused-bribing-Sen-Bob-Menendez-arrested-JFK.html> ("Egyptian businessman accused of bribing New Jersey Sen. Bob Menendez for legislative favors . . . The bribes, feds say, came in exchange for Menendez agreeing to use his power and influence to personally enrich . . . and to benefit the Government of Egypt. He's accused of helping facilitate meetings and dinners between Menendez, the senator's wife Nadine, and Egyptian military and intelligence officials in a secret bid to increase US aid to Egypt.")

¹⁰⁵ *Id.*

Menendez's wife worked with an Egyptian-American businessman and introduced Egyptian intelligence and military officials to her husband.¹⁰⁶ Those introductions helped establish a corrupt agreement in which the businessmen—with assistance—provided bribes to the Senator and his wife in exchange for his actions to benefit Egypt and the businessmen, among others.¹⁰⁷ As part of the scheme, the Senator provided sensitive, non-public United States government information to Egyptian officials and took steps to secretly aid the Government of Egypt.¹⁰⁸ For example, in or around May 2018, he provided—via text messages—Egyptian government officials with non-public (not classified) information regarding the number and nationality of persons serving at the U.S. Embassy in Cairo, Egypt.¹⁰⁹ Such information could pose significant operational security concerns if disclosed to a foreign government or made public.¹¹⁰ Further, he wrote a letter on behalf of Egypt to other U.S. Senators advocating for them to release a hold on \$300 million in aid to Egypt and also conveyed to Egyptian officials that he would approve or remove holds on foreign military financing and sales of military equipment to Egypt in connection with his leadership role on the Senate Foreign Relations Committee.¹¹¹

In exchange for Menendez's commitment to carry out these and other additional actions, one of the businessmen promised financial benefits to his wife.¹¹² These benefits included three \$10,000 checks, gold, and cash,

¹⁰⁶ Patricia Zengerle, *Menendez Indictment Prompts Calls in US Congress for Egypt Aid Rethink*, REUTERS (Sep. 27, 2023), <https://www.reuters.com/world/menendez-indictment-prompts-calls-us-congress-egypt-aid-rethink-2023-09-26/>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* (“Charges that Senator Bob Menendez accepted bribes in exchange for wielding his influence to aid the Egyptian government prompted calls in the U.S. Congress . . . for the Biden administration to rethink \$235 million in military aid to Cairo [C]hair of the Senate Foreign Relations Committee’s Middle East subcommittee, said . . . the committee would investigate the allegations and Egypt’s involvement.”).

¹⁰⁹ *See, e.g.,* Perry Stein et al., *Sen. Bob Menendez of New Jersey Indicted on Federal Bribery Charges, Gold bars and envelopes stuffed with cash were part of an alleged corruption scheme with the New Jersey senator’s wife*, THE WASHINGTON POST (Sep. 22, 2023), <https://www.washingtonpost.com/national-security/2023/09/22/menendez-indictment/> (“Sen. Robert Menendez (D-N.J.) and his wife Nadine have been indicted on bribery charges . . . [for] a corrupt scheme involving gold bars, stacks of cash and using the senator’s powerful position to secretly benefit the Egyptian government [T]hose bribes included cash, gold, payments toward a home mortgage, compensation for a low-or-no-show job, a luxury vehicle, and other things of value.’ [He is] charged with conspiracy to commit bribery and conspiracy to commit honest services fraud . . . [and] conspiracy to commit extortion as a public official. He also allegedly secretly wrote a letter for the Egyptian government to lobby other U.S. senators to release some \$300 million in U.S. aid to Egypt.”).

¹¹⁰ *See, e.g., id.*

¹¹¹ *Id.*

¹¹² *See, e.g.,* Shayna Jacobs & Mark Berman, *Sen. Menendez and His Wife Plead Not Guilty to Federal Bribery Charges*, THE WASHINGTON POST (Sep. 27, 2023), <https://www.washingtonpost.com/national-security/2023/09/27/bob-menendez-bribery-arraignment-new-york-court/> (“Sen. Bob Menendez and his wife pleaded not guilty to federal bribery charges . . . appearing in

sourced partly from IS EG Halal, a New Jersey company he operated with financial support.¹¹³ The Egyptian Government granted IS EG Halal a monopoly on certifying U.S. food exports to Egypt as compliant with halal standards, even though neither the businessman nor his company had experience with halal certification.¹¹⁴ Despite the efforts of a U.S. official to explain why this monopoly was detrimental to U.S. interests, Menendez reiterated his demand that the USDA refrain from interfering with IS EG Halal's monopoly.¹¹⁵

2. *Legislative Corruption*

Using force or violence against a member of an election or referendum committee or threatening force to prevent someone from casting his vote in an election or referendum or sway his vote a certain way is prohibited by law.¹¹⁶ Furthermore, Law No. 175 of 2005 on the People's Assembly regulates election propaganda and political campaigns.¹¹⁷ The law prohibits offering gifts, aid, or any type of direct or indirect benefits, as well as using any state-owned, public, or parasternal-owned facility and foreign funding.¹¹⁸ This law complements the rules on campaign funding, which are regulated by the Higher Election Committee (HEC).¹¹⁹ Currently, to evade corrupt

court . . . they were indicted . . . and accused of participating in a brash scheme to abuse his powerful position, enrich themselves and secretly aid the Egyptian government.”).

¹¹³ See, e.g., *id.*

¹¹⁴ See, e.g., *id.*

¹¹⁵ See, e.g., *id.*

¹¹⁶ See Law No. 107 of 2013 (Anti-Protest Law), 2013 (Egypt), available at <https://www.refworld.org/docid/551a5f2a4.html> (discussing the anti-demonstration law). Vote-buying is a contemporary phenomenon in Egypt that is spreading significantly even after January revolution. See generally *Egypt: Freedom in the World 2023 Country Report*, FREEDOM HOUSE, <https://freedomhouse.org/country/egypt/freedom-world/2023> (last visited Nov. 26, 2023). This is one of the main problems discovered in the parliamentary and presidential election process. *Id.* It has been reported by many NGOs that monitored the latest parliamentary elections, vote-buying is still a major problem. *Id.* This phenomenon is especially evident in the poor and remote levels in society where socio-economic circumstances are weak and political and social awareness is low. *Id.* This phenomenon should be curtailed by supporting both the institutional and legal framework, while concurrently refining the voter's culture, registration system, and ensuring effective, fair, transparent supervision, and control of elections whether parliamentary or presidential.

¹¹⁷ See generally Law No. 38 of 1972, *majlis al-sha' aab/al-nwab* 1972 (Egypt) as amended by Laws No. 16/1974, 109/1976, 14/1977, 21/1979, 22/1979, 23/1979, 114/1983, 188/1986, 201/1990, 13/2000, 167/2000, 12/2002, 175/2005, 149/2009, Decree Law 108/2011, Decree Law 120/2011, and Decree Law 123/2011, available at <https://aceproject.org/ero-en/regions/mideast/EG/Law%20No.%2038%20of%201972%20-%20english.pdf>.

¹¹⁸ *Id.* at art. 11.

¹¹⁹ According to the election law, any person who violates the provisions of Item 6 of the rules should be penalized by no less than one-year imprisonment and/or a fine of EGP 50,000-100,000 (USD 9,000-18,000). Moreover, the funds received should be confiscated. *Id.* Moreover, violators of any other rules should be penalized by at least three months imprisonment and/or a fine of EGP 5,000-20,000 (USD 900-3,600). *Id.* Article 87 of the *de facto* 2012 Constitution states that:

practices, the National Electoral Commission (NEC) is exclusively responsible for handling referendums and managing presidential, parliamentary, and local elections.¹²⁰ The NEC must prepare a database of voters, input the division of districts, exercise control over electoral funding and expenditure, oversee electoral campaigns, supervise the elections of trade unions and other organizations, and other procedures up to the announcements of results.¹²¹ To guarantee impartiality and autonomy, voting and counting votes in elections and referendums run by the NEC must be administered by its affiliated members under the supervision of the Board.¹²² Moreover, the Egyptian Constitution requires members of the Commission to be furnished with the necessary securities that enable them to perform their role with neutrality, fairness, and independence.¹²³

Article 109 of the 2014 Egypt Constitution, amended in 2019, requires that:

No House of Representatives member may, throughout his tenure, whether in person or through an intermediary, purchase or rent any piece of state property, or any public-law legal persons, public sector companies, or the public business sector. Nor is he allowed to lease, sell or barter with the state any part of his own property, nor conclude a contract with the state as vendors, suppliers, contractors or others. Any such actions shall be deemed void. A member must submit a financial disclosure upon taking office, upon leaving it and at the end of every year. If, because of or in relation to his membership, he should receive cash or in-kind gifts, ownership thereof reverts to the state treasury. The foregoing is organized by law.¹²⁴

The Mubarak administration regime did not follow either constitutional or legislative norms in this regard.¹²⁵ According to Article 28 of the

The Court of Cassation shall have final jurisdiction over the validity of memberships in both chambers. Challenges shall be submitted to the Court within a period not exceeding 30 days from date on which the final election results are announced. A verdict must be passed within 60 days from the date on which the challenge is filed. . . . [W]here a membership is deemed invalid, it becomes void from the date on which the verdict is reported to the chamber.

CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 26 Dec. 2012; *see also* ABROGATED CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, as amended, 22 May 1980, 25 May 2005, 26 Mar. 2007, as replaced, 20 Mar. 2011 [hereinafter Abrogated Egypt Constitution], at art. 93 (Egypt). Also, each member is subject to investigation by the Ethics Committee for his or her behavior as a member of the Parliament, which takes place in practice. *But see* ABROGATED EGYPTIAN TEMPORAL CONSTITUTIONAL DECLARATION, arts. 28, 32-34, 39-40 (Egypt).

See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 208.

¹²⁰ *See id.*

¹²¹ *Id.* at art. 210.

¹²² *Id.* at art. 209.

¹²³ *Id.* at art.109; *cf.* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 26 Dec. 2012, art. 88.

¹²⁴ *See* Sahar F. Aziz, *Revolution without Reform: A Critique of Egypt's Election Laws*, 45 GEO. WASH. INT'L L. REV. 1, 6 (2013) ("As witnessed with the NDP under the Mubarak regime, laws can be

Republican Resolution Decree, Members of Parliament (MPs) are not allowed to occupy government or public sector jobs during their membership except in cases of promotion, transfer between organizations, judicial decisions, or as prescribed by law.¹²⁶ These exceptions created a network of corrupt interests between the previous regime and government officials.¹²⁷ Law No. 62 of 1975 on illicit gains requires MPs to file asset disclosure forms.¹²⁸ According to Article 5, a judicial committee is formed to inspect asset disclosure procedures.¹²⁹ The Illicit Enrichment Apparatus (IEA) supports these committees by receiving asset disclosure forms and asking for explanations about complaints and has the right to request the Administrative Control Authority (ACA) to investigate cases of alleged illicit enrichment.¹³⁰ In practice, it is necessary to periodically check any increase in the wealth of any public official or their spouse or minor children.¹³¹

manipulated to guarantee certain electoral outcomes that further entrench the dominant party.”); *see also* Law No. 38 of 1972, *majlis al-sha‘aab/al-nwab* 1972, art. 11 (Egypt) as amended by Laws No. 16/1974, 109/1976, 14/1977, 21/1979, 22/1979, 23/1979, 114/1983, 188/1986, 201/1990, 13/2000, 167/2000, 12/2002, 175/2005, 149/2009, Decree Law 108/2011, Decree Law 120/2011, and Decree Law 123/2011, available at <https://aceproject.org/ero-en/regions/mideast/EG/Law%20No.%2038%20of%201972%20-%20english.pdf>.

¹²⁶ *See* Law No. 38 of 1972, *majlis al-sha‘aab/al-nwab* 1972, art. 28 (Egypt) as amended by Laws No. 16/1974, 109/1976, 14/1977, 21/1979, 22/1979, 23/1979, 114/1983, 188/1986, 201/1990, 13/2000, 167/2000, 12/2002, 175/2005, 149/2009, Decree Law 108/2011, Decree Law 120/2011, and Decree Law 123/2011, available at <https://aceproject.org/ero-en/regions/mideast/EG/Law%20No.%2038%20of%201972%20-%20english.pdf>. Recently, the public prosecution requested all supervisory bodies complete criminal investigations about the corporations that were privatized during that time. *See Egypt: 10-Year Prison Sentence for Atef Ebeid and Youssef Wali*, ALLAFRICA (Mar. 1, 2012), <https://allafrica.com/stories/201203020159.html>. Former Prime-Minister Dr. ‘Atef Ebeid faced corruption charges concerning illegal privatization. *See id.* The Giza Criminal Court sentenced him and the former Agriculture Minister Youssef Wali to ten years in jail for squandering more than EGP 700 million of public funds by selling the protected nature reserve of *Bayadeya* Island in Luxor. *Id.* The court ordered the defendants to pay back EGP 796 million, the value of the squandered funds, in addition to another equal amount in fines. *See id.*

¹²⁷ *See generally* Philip Marfleet, *Mubarak’s Egypt – Nexus of Criminality*, 2 STATE CRIME J. 112 (2013) (examining how the Egyptian state became an avenue for channeling public resources into private hands through complex relations of privilege among oligarchs and officials).

¹²⁸ Law No. 62 of 1975 (Illegal Profit-Making), *Al-Jarida Al-Rasmiyya*, 1975 (Egypt).

¹²⁹ *Id.* at art. 5.

¹³⁰ *Id.*

¹³¹ *See id.* Moreover, the CAO is authorized to audit the asset disclosures of the Speakers of the House at the beginning and at the end of their term limits as well as every five years, if they stay in office. NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 24. Furthermore, the Egyptian government has enacted several laws in line with international agreements concerning the free access to information such as Money Laundering Combat Law (Law No. 80 of 2002) and its amendment by (Law No. 181 of 2008), Law of the Central Bank, Banking and Exchange (Law No. 88 of 2003), and National Council for Human Rights (Law No. 4 of 2003). *Id.* at 55. The issue is even more difficult in practice; MPs are not obliged to publish their assets or those of their families. *Id.* In this regard, there are several laws that protect the privacy of citizens, such as related bank information, as banks are not allowed to reveal citizens’ accounts information to anyone but the account holder or investigation authorities. *Id.* The People’s Assembly and the *Shoura* Council were not among the foundations that are subject to the auditing of the CAO and have their own

Transparency and integrity in the Parliament suffer because an increasing number of Members of Parliament engaged in business are not subject to clear rules regarding conflict of interests.¹³² One example of this issue is the case of a businessman who was accused of anti-competitive behavior and used his position in the Parliament to block amendments to a business-related law in 2008.¹³³ Scholars have suggested that legislative corruption transpires when the law protects crimes or is designed to favor a particular person.¹³⁴ It should be noted that cronyism is the distribution of property rights and entitlements to those in powerful positions who are closely tied to the state.¹³⁵ Cronyism may not always be illegitimate or illegal.¹³⁶ Instead, it can undertake delicate forms of close ties between the state and big businesses without infringing the law or damaging the overall economy.¹³⁷ The main problem with cronyism is that it takes place at the expense of free market competition.¹³⁸ In the case of Ezz Steel, Ahmad Ezz's formal and informal power positions allowed him to tailor the anti-trust law in order to secure his monopolistic position in the domestic market.¹³⁹

independent budget; however, they are subject to internal audit and the Illicit Enrichment Law. *Id.*; see also Law No. 38 of 1972, *Al-Jarida Al-Rasmiyya*, 1972, art. 35 (Egypt).

¹³² NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 55.

¹³³ For further discussion on 'Ezz steel monopolization, see Hany Abdel Massih Ghaly, Competition Law and Policy in Developing Countries: The Case of the Egyptian Steel Monopoly (May 2011) (LL.M. thesis, Am. Univ. in Cairo) (on file with Am. Univ. in Cairo AUC). It has been reported that 'Ezz's monopolizing the steel industry in Egypt by holding more than 60% of the market share. *Id.* at 33. This report estimated 'Ezz's wealth to be 18 billion Egyptian pounds). See, e.g., Law No. 3 of 2005, Hosni Mubarak, 2005 (Egypt), available at <https://www.gafi.gov.eg/English/StartaBusiness/Laws-and-Regulations/PublishingImages/Pages/TradeLaws/Law%20No%203%20of%202005%20Promulgating%20the%20law%20on%20Protection%20of%20Competition%20and%20Prohibition%20of%20Monopolistic%20Practices.pdf> (promulgating the Law on the Protection of Competition and the Prohibition of Monopolistic Practices and its Proposed Amendments in January and June 2008).

¹³⁴ See, e.g., Phil Williams & Roy Godson, *Anticipating Organized and Transnational Crime*, 37 CRIME, L. & SOC. CHANGE 311, 321 (2002) (“[C]orruption which in the old system was used to benefit the political elites now becomes a major instrument used by organized crime to protect itself.”).

¹³⁵ See Naresh Khatri et al., *Cronyism: a cross-cultural analysis*, 37 J. INT'L BUS. STUD. 61, 62 (2006) (defining cronyism as “a reciprocal exchange transaction where party A shows favor to party B based on shared membership in a social network at the expense of party C's equal or superior claim to the valued resource.”).

¹³⁶ See Didier Jacobs, *Extreme Wealth Is Not Merited* 9 (Nov. 2015) (unpublished discussion paper) (on file with Oxfam Int'l) (“Cronyism is lower in the ladder of demerit than crime because it is not always illegal, and its soft form—lobbying—not always harmful.”).

¹³⁷ Adly, *supra* note 39, at 4.

¹³⁸ See Randall G. Holcombe, *Crony Capitalism: By-Product of Big Government*, 17 INDEP. REV. 541, 556 (2013) (concluding that significant government oversight of the economy can breed cronyism, which in turn can induce businesses to turn away from entrepreneurial activity that contributes to the economy's productivity).

¹³⁹ See Salma El-Wardani, *Money, power and law-twisting: The makings of the real Ezz empire*, AHARAM ONLINE (May 7, 2011), <https://english.ahram.org.eg/News/11480.aspx> (“The case of Ezz Steel is the classic example of how political power meshed with monopolistic business strategies to create personal empires amid a shaky national economy.”).

3. *Judicial Corruption*¹⁴⁰

Egypt's former President, Hosni Mubarak, attempted to make the judicial authority totally subordinate, but judges have recently been requesting judicial independence from government control, in addition to complete judicial supervision over parliamentary and presidential elections.¹⁴¹

The Minister of Justice is not a member of the judicial staff.¹⁴² Rather, he is "one of the executive authority members as he is subject to the cabinet."¹⁴³ The position of Minister of Justice is a political position that judges are prohibited from occupying while active because it is not independent of the executive branch.¹⁴⁴ In other words, the Justice Minister is not an active judge, so the primary issue is whether he serves judges or the ruling regime.¹⁴⁵ This creates constitutional legitimacy issues.¹⁴⁶ The most

¹⁴⁰ It should be noted that an effective justice system would enhance Egyptian citizens to have confidence in their right to express their concerns about the wrongdoings of corrupt officials.

¹⁴¹ Mohamed A. 'Arafa, *Mubarak Criminal Liability: Is It a Fair Trial after the Revolution or a Drama Series?*, 1 REVISTA CONTRAPONTO 181, 196 n.74 (2014). By the same token, the case of judicial independence may be a legislative corruption because the corrupt legislative body blocks issuing an operative active law. *Id.* The parliament retained the old law to keep the judicial system under the domination of the executive authority. *Id.*

¹⁴² See generally Mohamed 'Arafa, *The Unexpected Trials of Egyptian Leaders: Is It a Question of Law or Politics?*, 12 US. CHINA L. REV. 6 (2015). After the White Revolution, a number of former ministers and high-ranking officials have not been the subject to formal cross-examination and investigation, among whom are former Minister of Justice Mamdouh Mar'ie who is known for his role in the forged ballots scandal during the 2005 presidential and parliamentary elections. 'Arafa, *supra* note 142, at 197 n.177. He was asked to appear before the Inspector-General of the Ministry of Justice to answer some reports accusing him of various misdeeds. *Id.* He did not appear before the Inspector-General, claiming health conditions. *Id.* Among the reports, his interference in the work of judges at the Illegitimate Gain Agency resulted in the resignation of the Head of the Agency in 2008. *Id.*

¹⁴³ 'Arafa, *supra* note 142, at 197.

¹⁴⁴ *Id.* at 196. Article 72 of Law No. 46 of 1972 prohibits any court from having political attitudes. *Id.* at 197 n.80; see also Law No. 46 of 1972 (Judicial Authority Law), *Al-Jarida Al-Rasmiyya*, 1972, art. 72 (Egypt). It also bans judges from involvement in any political activity. *Id.* Moreover, judges are not permitted to be designated to elections in the People's Assembly or to regional or political organizations except after resignation. *Id.* According to Article 74 of the same law, judges are not allowed to disclose information regarding the legal proceedings of any case. *Id.*

¹⁴⁵ 'Arafa, *supra* note 142, at 196-97 (highlighting that it is very important that judges be able to investigate and prosecute without enduring any external interference or feel any pressure from outside).

¹⁴⁶ *Id.* at 196 n.76. It should be noted that Chapter Three, Sub-section I (General Provisions) of the Egyptian Constitution regarding the Judicial Authority provides in Articles 184, 185, 186, and 187 respectively that:

The Judicial Authority shall be independent, vested in the courts of justice, which shall issue their judgments in accordance with the law. Its powers are defined by law. Interference in the affairs of the judiciary is a crime that is not forfeited by the passing of time. Every judiciary body shall administer its own affairs; each shall have an independent budget and be consulted on the draft laws governing its affairs, by the means that are regulated by law. Judges are independent, cannot be dismissed, are

significant issue is that judicial reform is considered a main condition for independence, democracy, and political neutrality.¹⁴⁷ It is worth mentioning in this regard that there are strict codes of conduct and ethics for members of the judiciary, precluding conflict of interest and nepotistic rules.¹⁴⁸ For example, according to Article 72 of Law No. 46 of 1972, “no judge is allowed to be employed or perform any commercial act, or perform any act that could threaten the independence and dignity of the judiciary.”¹⁴⁹ The Supreme Council of the Judiciary (SCJ) prevents judges from carrying out any act or conduct inconsistent with their duties and functions.¹⁵⁰ Moreover, courts are forbidden from expressing political thoughts.¹⁵¹

Regarding the acceptance of gifts, Law No. 47 of 1978 for State Employees prohibits members of the national judiciary from accepting or requesting gifts, hospitality, commissions, or advances from individuals to whom they provide public services.¹⁵² However, this rule is not being fully

subject to no other authority but the law, and are equal in rights and duties. The conditions and procedures for their appointment and disciplinary actions against them are defined and regulated by the law. When delegated, their delegation shall be absolute, to the destinations and in the positions defined by the law, all in a manner that preserves the independence of the judiciary and the accomplishment of its duties. Sessions in court shall be public, unless, in consideration of public order or morals, the court deems them confidential. In all cases, the verdict shall be given in an open session.

See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, arts. 184-87. See, e.g., CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 26 DEC. 2012, arts. 168-71; cf. ABROGATED TEMPORAL CONSTITUTIONAL DECLARATION, arts. 26-27, 29, 31, 39-40, 59 (Egypt).

¹⁴⁷ ‘Arafa, *supra* note 142, at 196 n.76. A long time ago, the executive authority represented in the Ministry of Justice sought to control judicial relations. See Nathan J. Brown, *Egypt’s Judges in a Revolutionary Age*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Feb. 22, 2012), <https://carnegieendowment.org/2012/02/22/egypt-s-judges-in-revolutionary-age-pub-47254> (“But some judges, activists, and intellectuals chafed at the remaining elements of executive influence over judicial affairs. In a variety of structural ways, the Ministry of Justice and the presidency retained some influence.”). The Judges’ Club remained as a source of desirability for its members away from Ministry of Justice and the Minister who inhabits a political party position, representing the executive and the judicial authority. See *id.*

¹⁴⁸ See generally NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 83-84.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ See Ahmed Aboulenein, *How Egypt’s Crackdown on Dissent Ensnared Some of the Country’s Top Judges*, REUTERS INVESTIGATES (Oct. 18, 2016), <https://www.reuters.com/investigates/special-report/egypt-judges/> (“Article 73 of Egypt’s Judiciary Act prohibits judges from practicing politics and bans a judge sitting on a case from expressing political opinions.”). See also ‘Arafa, *supra* note 142, at 181, 197 n.80; NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 84 (providing Article 75 stipulates: Judges who are related to each other by ties of parenthood or alliance by marriage, up to the fourth degree, may not sit in the same judicial circuit. Further, the public prosecutor, or one of the parties to the case or defense counsel in charge of his defense may not be one who is tied up by such relationship with any of the judges examining the case. The proxy of an attorney at law, who entertains such relationship with the judge, shall be disregarded unless the proxy was given after examination of the case by the judge).

¹⁵² NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 84.

applied in practice.¹⁵³ Moreover, there are no provisions in Law No. 46 of 1972 concerning the protection of prosecuting attorneys and judges in corruption cases.¹⁵⁴ One of the leading cases of judges being inspected for corruption charges occurred in 2007 when twenty judges were referred to and adjudicated by the disciplinary committee for failing to implement their responsibilities according to high standards.¹⁵⁵

For example, several violations occurred in the most recent 2010 parliamentary elections.¹⁵⁶ “The judiciary, consequently, claimed that investigations be held.”¹⁵⁷ “Nevertheless, the judges surprisingly found that those that demanded investigations to be held were referred to a disciplinary court without following the legal measures.”¹⁵⁸ Therefore, “judges demanded a new law to ban interference from the executive.”¹⁵⁹ “[H]owever, certain political powers lead some corrupt journalists to describe the judicial authority as a *state inside the state*.”¹⁶⁰

¹⁵³ *Id.* (“Article 65 of Law No. 142/2006 permits [working in other courts or international organizations], after the issuance of a presidential decree and after taking the opinion of the general board of the court to which the judge belongs or the Attorney General, and with the approval of the Supreme Council.”).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ ‘Arafa, *supra* note 142, at 197. See also Jack Shenker, *Egypt’s rulers tighten grip amid claims of election fraud and intimidation*, THE GUARDIAN (Nov. 30, 2010, 13:13), <https://www.theguardian.com/world/2010/nov/30/egypt-poll-electoral-fraud-claims> (“[V]iolations include ballot-stuffing, vote-buying, and the exclusion of opposition representatives, civil society monitors and journalists from polling stations.”).

¹⁵⁷ ‘Arafa, *supra* note 142, at 197 n.78.

¹⁵⁸ *Id.* (“Less than 25% of the population shared in the elections, with the government party-fielded candidates winning 90% of the seats in Parliament.”).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 181, 197 (emphasis added). For further discussion on the judicial corruption in Egypt and its independence (and the current *status quo*), see Sahar Aziz, *Theater or Transitional Justice: Reforming the Judiciary in Egypt*, in TRANSITIONAL JUSTICE IN THE MIDDLE EAST AND NORTH AFRICA (Chandra Sriram ed., Oxford Academic 2017) (explaining the rule of law and judicial independence in the context of the Egyptian transition). She “argues that while many external observers have viewed the Egyptian judiciary as relatively independent, political control by the Mubarak regime limited that independence successfully and rendered the judiciary conservative. Further, while the concept of rule of law has been operational in the country, rather than a thick understanding of rule of law, there has been a hybrid version, of thin rule of law combined with rule by law. These phenomena operate in the context of patterns of patronage and the “deep state” to limit the prospect of reform.” *Id.* Sahar F. Aziz, *Independence Without Accountability: The Judicial Paradox of Egypt’s Failed Transition to Democracy*, 120 DICK. L. REV. 667, 670 (2016) (“Although the judiciary had long advocated for reforms to the Judicial Authority Law to remove formal executive controls over judicial affairs, their motive lied more in their desire for complete judicial autonomy from the executive rather than improving judicial governance through accountability measures.”).

4. *Media, Press, and Information Corruption*

The press is a public, independent authority that delivers its message according to the Constitution and the law.¹⁶¹ Media is a component of civil society with the highest effect on public opinion.¹⁶² In other words, the press must deliver its message unrestricted and independently to serve society by all means of expression that reflect the tendencies of public opinion and help shape and direct it.¹⁶³ The delivery of information by the press must occur within the substantial parameters of society while safeguarding civil liberties, rights, and duties and respecting the privacy of individuals, according to the Constitution and the law.¹⁶⁴

The press is responsible for promoting transparency through circulating information among the public.¹⁶⁵ Although the number of groups promoting transparency, integrity, and eliminating corruption has increased, their

¹⁶¹ *TIMEP Brief: Press Freedom in Egypt*, THE TAHRIR INST. FOR MIDDLE E. POL'Y (May 24, 2019), <https://timep.org/2019/05/24/timep-brief-press-freedom-in-egypt/>.

¹⁶² See generally W. Phillips Davison, *public opinion*, ENCYCLOPEDIA BRITANNICA (Aug. 17, 2023), <https://www.britannica.com/topic/public-opinion> (“Mass media and social media, to varying extents, play another important role by letting individuals know what other people think and by giving political leaders large audiences.”).

¹⁶³ See generally Mohamed ‘Arafa, *The Archeology of the Freedom of Information Laws: Egypt ‘Fake-News Laws’*, 20 FLORIDA C. L. REV. 1, 74-75 (2020) (“Recently, the Egyptian media has confronted challenges directed to its freedom and independence as a result of the ambiguous laws and the regulatory agenda that lacks the definition and determination of both the public (state) and private media, where such monitoring framework is considered as a pressure on the Egyptian media. Based on the acts directed against reporters and media in Egypt, international human rights organizations . . . criticize the lack of freedom of the press in Egypt, where numerous journalists have been jailed, and several websites blocked, including those of independent media and right groups, claiming that such online websites support terrorist groups and radical ideology and that they report fake news about the country’s political *status quo*, which is considered as spreading fear and alarm and is a threat to the nation’s national security.”).

¹⁶⁴ *Id.* at 75-76 (“Suppression of information found on the internet around the globe, including in the Middle East, is not a new phenomenon. Freedom of speech and expression facilitated by the internet can pose a threat to autocratic leaders globally who seek to maintain strict control over both the content their citizens consume and the content they post. It is significant that the advocacy role played by civil society groups in promoting this influential capacity, through their ability to act politically on public information, is revealed. While Egypt has lately adopted its constitutional norms on access to information, worries and doubts arise about Egyptian citizens’ genuine ability to access information held by the public institutions. The long culture of bureaucratic secrecy, politico economic environment, and the legal framework instead inflame exclusionary policies concerning access to public information . . . as believed necessary for national security and protecting public order.”).

¹⁶⁵ *Contra* Press Release, U.N. Special Rapporteur David Kaye & Fionnuala Ni’Aloáin, Egypt extends its assault on freedom of expression by blocking dozens of websites-UN experts warn (Aug. 30, 2017), <https://www.ohchr.org/en/press-releases/2017/08/egypt-extends-its-assault-freedom-expression-blocking-dozens-websites-un> (“Limiting information as the Egyptian Government has done, without any transparency or identification of the asserted ‘lies’ or ‘terrorism,’ looks more like repression . . .”).

impact has not been felt.¹⁶⁶ Various restrictions are placed upon the official daily newspapers, especially regarding corruption-related stories within the government.¹⁶⁷ While the Constitution and other laws guarantee the right of

¹⁶⁶ See Amy A. Holmes, *The Attack on Civil Society Outside Cairo*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Jan. 26, 2017), <https://carnegieendowment.org/sada/67810> (“It appears the state is attempting to silence or subdue virtually the entire spectrum of civil society, including activists across the political spectrum, cultural initiatives, independent media outlets, feminist organizations, Nubian associations, and even co-working spaces or cafes where young people gather.”). See generally Muhammad Shukri, *Egypt’s Brotherhood Accused of Trying to Control Media*, BBC NEWS (Aug. 13, 2012), <https://www.bbc.com/news/world-middle-east-19245300>.

¹⁶⁷ *Freedom House in the World 2007- Egypt*, FREEDOM HOUSE (April 16, 2007), <https://www.refworld.org/docid/473c55c21f.html> (“Foreign publications and Egyptian publications registered abroad are subject to direct government censorship. Independent newspapers were allowed to open in 2005, but limitations on press freedom still abound, especially when reporters attempt to cover issues the government does not want to highlight.”). On the National Media Council, according to the 2014 Constitution, Article 211 states that: “The National Media Council is an independent entity that has a legal personality, enjoys technical, financial and administrative independence, and has an independent budget. The Council is regulating the affairs of radio, television, and printed and digital press, among others. The Council is responsible for guaranteeing and protecting the freedom of press and media stipulated in the Constitution; safeguarding its independence, neutrality, plurality and diversity, preventing monopolistic practices; monitoring the legality of the sources of funding of press and media institutions; and establishing the controls and regulations necessary to ensure the commitment of press and media outlets to adhere to professional and ethical standards, and national security needs as set out by law. The law determines the composition of the Council, its system of operation, and stipulates the conditions of employment for its staff. The Council is to be consulted on bills and regulations related to its field of operation.” See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 211. Moreover, “[t]he Press is a public independent authority that delivers its message according to the Constitution and Law.” *Id.* Article 212 identifies the determinants of the work of the press, stating that: “The National Press and Media Association is independent, manages state-owned press and media institutions, and undertakes the development of them and their assets, and ensures their development, independence, neutrality and their adherence to sensible professional, administrative and economic standards...” See *id.* at arts. 212 & 213. See also ABROGATED EGYPT CONSTITUTION, arts. 206-07 (Egypt); *cf. id.* at art. 13. Also, Egyptian civil society and the media have advanced a number of independent anti-corruption drives. See BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT 15 (MENA-OECD Initiative 2009), available at <https://www.oecd.org/global-relations/46341460.pdf>. In this respect, Article 188 of the Penal Code restrains media contribution by imposing heavy fines and punishments for corruption accusations. *Id.* Articles 70, 71, and 72 of the current Constitution states, “Freedom of the press, printing, publication and mass media shall be guaranteed. The media shall be free and independent to serve the community and to express the different trends in public opinion and contribute to shaping and directing in accordance with the basic principles of the State and society, and to maintain rights, freedoms and public duties, respecting the sanctity of the private lives of citizens and the requirements of national security. The closure or confiscation of media outlets is prohibited except with a court order. Control over the media is prohibited, with the exception of specific censorship that may be imposed in times of war or public mobilization.” “Freedom to publish and own newspapers of all kinds is a guaranteed subject of notification for every natural or juridical Egyptian person. The establishing of radio stations, television broadcasting, and digital media is regulated by law.” In other words, freedom of press and printing, along with paper, visual, audio and digital distribution is guaranteed. Egyptians—whether natural or legal persons, public or private—have the right to own and issue newspapers and establish visual, audio and digital media outlets. Newspapers may be issued once notification is given as regulated by law. The law shall regulate ownership and establishment procedures for visual and radio broadcast stations in addition to online newspapers. It is prohibited to censor, confiscate, suspend or shut down Egyptian newspapers and

journalists to find and publish information, some laws and regulations hinder journalist practices, including free speech.¹⁶⁸ By the end of 2007, the number of laws used to confine media independence had amplified.¹⁶⁹ This was possible because of the contradictory provisions in the Constitution, Penal Code, Emergency Law, Media Law, religious regulations, and laws specific to associations, unions, the Ministry of Information, and the Higher Council.¹⁷⁰ No formal rules govern political advertising, though there is evident bias in state-owned media towards former National Democratic Party figures.¹⁷¹ Numerous cases have been reported of mistreatment of journalists who tackled corruption issues or criticized political figures, police, or the

media outlets in any way. Exception may be made for limited censorship in time of war or general mobilization. No custodial sanction shall be imposed for crimes committed by way of publication or the public nature thereof. Punishments for crimes connected with incitement to violence or discrimination amongst citizens, or impugning the honor of individuals are specified by law. The state shall ensure the independence of all press institutions and owned media outlets, in a way that ensures their neutrality and expressing all opinions, political and intellectual trends and social interests; and guarantees equality and equal opportunity in addressing public opinion. *See* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 70-71.

¹⁶⁸ *Freedom House in the World 2007- Egypt*, FREEDOM HOUSE (April 16, 2007), <https://www.refworld.org/docid/473c55c21f.html> (“Freedom of expression is restricted by vaguely worded statutes criminalizing direct criticism of the president, the military, and foreign heads of state, as well as speech that is un-Islamic, libelous, harmful to the country’s reputation, or disruptive to sectarian coexistence.”).

¹⁶⁹ *See generally* Sahar Aziz, *To Stop Corruption, Egypt Needs a Freedom of Information Law*, HUFFINGTON POST (May 23, 2012, 2:36 PM), https://www.huffpost.com/entry/to-stop-corruption-egypt_b_1538999 (“But for Egypt to achieve sustainable democracy, many reforms remain to be implemented, the most important of which is public access to information that permits meaningful government accountability. Without accurate information, Egyptians cannot adequately stop the rampant corruption debilitating the nation’s economy and political system. Nor can the media serve as an effective check on government abuse.”).

¹⁷⁰ *See Freedom House in the World 2007- Egypt*, FREEDOM HOUSE (April 16, 2007), <https://www.refworld.org/docid/473c55c21f.html> (“The Emergency Law restricts many other basic rights. It empowers the government to wiretap telephones, intercept mail, search persons and places without warrants, and indefinitely detain without charge suspects deemed a threat to national security.”). The *Kanun al-Tawaar’e* (Emergency Law) gives authorities broad powers to constrain civil liberties and order suppression or closure of the print media. In short, the law is used to enforce government censorship and make the media fiscally dependent on the government. *See* Law No. 162 of 1958 (Emergency Law), *Al-Jarida Al-Rasmiyya*, 1958, (Egypt), available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=111245; Daniel Williams, *Egypt Extends 25-Year-Old Emergency Law*, THE WASHINGTON POST (May 1, 2006), <https://www.washingtonpost.com/archive/politics/2006/05/01/egypt-extends-25-year-old-emergency-law-span-classbankheadmubarak-had-vowed-to-replace-far-reaching-measure/378a716c-3f1c-483b-9498-15c672f81cc5/>. It should be kept in mind that Egypt’s notorious emergency law expired on May 31, 2012, ending 31 years of absolute powers to arrest and detain for a police force accused of severely abusing its extensive authority. Associated Press, *31-year-old emergency law ends in Egypt*, DESERET NEWS (June 1, 2012, 12:18 AM), <https://www.deseret.com/2012/6/1/20416023/31-year-old-emergency-law-ends-in-egypt>.

¹⁷¹ *See* NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 12 (“Other problems include . . . the existence of public media bias in favour of the ruling party.”).

former state security police apparatus.¹⁷² Further, state-owned newspapers and television channels do not broadcast any news about internal corruption involving people in authority.¹⁷³

Law No. 180/2018, adopted in 2018, created regulations for information disseminated by the press and media and created the Supreme Council for Media Regulation (SCMR).¹⁷⁴ Enforcement of this law creates alternative portrayals of events and silences opposition, including opinions that challenge the main state narrative and the voices of marginalized individuals.¹⁷⁵ The legislation prevents press entities, media channels, and online websites from reproducing or broadcasting anything that contradicts the Egyptian Constitution, professional ethics, public order, or morals.¹⁷⁶ It also includes provisions to prevent content that calls for bans on breaching the rule of law or incites discrimination, racism, violence, hatred, or fanaticism.¹⁷⁷ The statute empowers the SCMR to prevent the dissemination of foreign publications, announcements, or media content from abroad based on national security attitudes and allows the SCMR to avert circulation of any explicit sexual or religious content or sects to upset public order.¹⁷⁸

Additionally, several laws restrict the freedom of news and information sharing, including Law No. 2 of 1975, amended by Law No. 22 of 1983; Law No. 356 of 1954, which prohibits citizens from accessing any government archives, records, and documents; the Penal Code under Article 80;¹⁷⁹ and

¹⁷² See *USCIRF Annual Report 2008 - Egypt*, U.S. COMM’N ON INT’L RELIGIOUS FREEDOM (May 1, 2008), <https://www.refworld.org/docid/4855699d37.html> (“Under the Emergency Law, the security forces mistreat and torture prisoners, arbitrarily arrest and detain persons, hold detainees in prolonged pretrial detention, and occasionally engage in mass arrests.”); *Freedom House in the World 2007- Egypt*, FREEDOM HOUSE (April 16, 2007), <https://www.refworld.org/docid/473c55c21f.html> (“In May 2006, several journalists critical of the government were brutally assaulted, and in one case murdered, by unidentified assailants. One Egyptian American reporter for a U.S.-based newspaper was sexually assaulted by plainclothes security officials the same month as she attempted to cover the judges’ story; a female reporter for *al-Dustur* suffered the same fate.”); NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 26 (“The most important topics the council reports have tackled include: mistreatment of prisoners and detainees, abuse of power by some policemen in the treatment of prisoners and citizens . . .”).

¹⁷³ NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 131. See also *Attacks on the Press 2006: Egypt*, COMM. TO PROT. JOURNALISTS (Feb. 5, 2007, 11:35 AM), <https://cpj.org/2007/02/attacks-on-the-press-2006-egypt/>.

¹⁷⁴ Law No. 180 of 2018 (Law on Press, Media and the Supreme Council for Media Regulation), *Al-Jarida Al-Rasmiyya*, 2018, vol. 34 bis(h) (Egypt).

¹⁷⁵ ‘Arafa, *supra* note 142, at 106-07.

¹⁷⁶ *Id.* at 107-08.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 109-11.

¹⁷⁹ See, e.g., Sahar F. Aziz, *Revolution without Reform: A Critique of Egypt’s Election Laws*, 45 GEO. WASH. INT’L L. REV. 1, 27–47 (2013); NATIONAL INTEGRITY SYSTEM STUDY EGYPT 2009, *supra* note 12, at 132. See also George Sadek, *Egypt: Female Tourist Convicted of Spreading False Rumors That Damage Country’s Reputation*, THE LIBR. OF CONG. (Sept. 12, 2018), [https://www.loc.gov/item/global-legal-monitor/2018-09-12/egypt-female-tourist-convicted-of-spreading-false-rumors-that-damage-countrys-reputation/#:~:text=Article%2080\(d\)%20of%](https://www.loc.gov/item/global-legal-monitor/2018-09-12/egypt-female-tourist-convicted-of-spreading-false-rumors-that-damage-countrys-reputation/#:~:text=Article%2080(d)%20of%20)

the Emergency Law No. 162 of 1958, which gives the President authority to govern and censor the media.¹⁸⁰ However, the current Egyptian Constitution reads:

Information, data, statistics, and official documents are owned by the people. Disclosure thereof from various sources is a right guaranteed by the state to all citizens. The state shall provide and make them available to citizens with transparency. The law shall organize rules for obtaining such, rules of availability and confidentiality, rules for depositing and preserving such, and lodging complaints against refusals to grant access thereto. The law shall specify penalties for withholding information or deliberately providing false information. State institutions shall deposit official documents with the National . . . Archives once they are no longer in use. They shall also protect them, secure them from loss or damage, and restore and digitize them using all modern means and instruments, as per the law.¹⁸¹

Furthermore, the Press Law prescribes professional standards for journalists and reads:

In regard to what is published, the journalist has to respect the standards and ethics provided for by the constitution and the provisions, keeping in all his activities to the necessities of honor, loyalty, honesty, and the ethics of [the] profession and its traditions to preserve society's ideals and values, without violating any of the citizens' rights or harming any of their liberties.¹⁸²

Moreover, according to the Code of Journalistic Honor, journalists' ethical standards are numerous and include the search for the truth, honesty, loyalty, accuracy, and objectivity.¹⁸³ Professional organizations governing

20Egypt%27s,years%27%20imprisonment%20and%20a%20fine. (“Article 80(d) of Egypt’s Penal Code states that whoever deliberately spreads false information or rumors abroad about the internal conditions of the country that might weaken the country’s financial credibility or harm the country’s national interests is punishable by six months to five years’ imprisonment and a fine.”). Article 80/D was added to the Penal Code as part of a package of crimes and misdemeanors emanating from abroad harmful to State national security. See Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Jarida Al-Rasmiyya*, 1973, art. 80 (Egypt).

¹⁸⁰ NATIONAL INTEGRITY SYSTEM STUDY EGYPT 2009, *supra* note 12, at 132. Sometimes, corrupt laws corrupt the media too because media will be frightened by the corrupt laws. *Id.*

¹⁸¹ See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 68 (describing access to information and official documents).

¹⁸² NATIONAL INTEGRITY SYSTEM STUDY EGYPT 2009, *supra* note 12, at 132.

¹⁸³ *Id.* at 133 (“The Code of Journalistic Honour states that ‘any violation of the regulations mentioned will be considered a breach of Egyptian Journalists’ Syndicate Law 76/1970 and Press Law 96/1996.’”). However, only some of these codes are integrated into the Press Law, and breaking these codes can subject the journalist to punishment ranging from a monetary penalty to imprisonment. In short, media corruption is present when media does not follow their codes, spreads fake news, and supports a presidential candidate at the expense of another. *Id.*

media ethics include the Journalists Union and the Supreme Council for the Press (JUHCP).¹⁸⁴ However, no rules exist on conflicts of interest or gifts and hospitality.¹⁸⁵ “In fact, there are not even rules on current employment restrictions, as in reality many journalists work as advisors to businessmen or ministers while retaining their jobs as journalists.”¹⁸⁶ This facilitates corruption within the press and media sector.¹⁸⁷

The National Media Council (NMC) governs the affairs of radio, television, and printed and digital press, among others.¹⁸⁸ The Council must guarantee “the freedom of media in all its forms, safeguard plurality, fight centralization and monopoly, protect the interests of the public, and establish controls and regulations ensuring the commitment of media to adhere to professional and ethical standards, to preserve the Arabic language, and to observe the values and constructive traditions of society.”¹⁸⁹ Along with that regulatory body, The National Press and Media Association (NPMA) “manages State-owned press and media organizations and undertakes the development of them and their assets to maximize their national investment value and ensure their adherence to sensible professional, administrative, and economic standards.”¹⁹⁰

Against this succinct backdrop of corruption in Egypt, it is essential to focus on Egypt’s relative international status concerning corruption before analyzing the institutional and legal framework regarding this crime in the current domestic Egyptian laws.

III. EGYPT ANTI-CORRUPTION: THE INTERNATIONAL *STATUS QUO*?

Formally speaking, international actors are dynamic in the country through various measures.¹⁹¹ They work in the Egyptian legal framework in three forms: (1) international non-governmental organizations (INGOs) that focus on the Arab world, (2) international organizations that emphasize human rights and corruption, and (3) foundations that pursue cooperation

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* (“There are also no rules on post-employment restrictions.”).

¹⁸⁶ *Id.*; see, e.g., *Editor to Face Trial over Mubarak ‘Health Scare’*, MAIL & GUARDIAN (Sep. 11, 2007), <https://mg.co.za/article/2007-09-11-editor-to-face-trial-over-mubarak-health-scare/>.

¹⁸⁷ See Tarek Atia & Mohamed Abdel-Rahman, *Egypt: Zig-zag Politics and the Scourge of Paid-for Journalism*, ETHICAL JOURNALISM NETWORK, <https://ethicaljournalismnetwork.org/egypt> (last visited Sep. 30, 2023).

¹⁸⁸ Rasha Allam, *Egypt*, MEDIA LANDSCAPES, <https://medialandscapes.org/country/egypt> (last visited Nov. 30, 2023).

¹⁸⁹ See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, arts. 211-13.

¹⁹⁰ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 2012, 26 DEC. 2012, art. 216.

¹⁹¹ See generally NATIONAL INTEGRITY SYSTEM STUDY EGYPT 2009, *supra* note 12, at 173.

with the government or civil society.¹⁹² Most organizations include transparency and honesty as part of their undertakings, but it is not their sole activity.¹⁹³

Generally, international actors work sensibly concerning corruption and transparency problems to dodge conflict with the government.¹⁹⁴ Corruption issues are considered to be matters of national sovereignty, and the Egyptian general public would not be comfortable with such an intervention in domestic affairs.¹⁹⁵ Instead, their efforts are focused on reinforcing the aptitude of Egyptian society.¹⁹⁶ Further, they are committed to promoting respect for the principles of anti-corruption instruments in the public and private sectors by proposing and promoting policies, legislation, and constitutional amendments.¹⁹⁷

For example, Transparency International, an organization focused on stopping corruption and promoting transparency, produces a yearly report titled the Corruption Perceptions Index (the “CPI Report”).¹⁹⁸ The CPI Report “ranks 180 countries and territories around the world by their perceived levels of public sector corruption, scoring on a scale of 0 (highly

¹⁹² *Id.* (“INGOs include organizations such as the Cairo Institute for Human Rights Studies (CIHRS), Arab Organization for Human Rights (AOHR), Arab Program for Human Rights Activists, Arab Penal Reform Organization, as well as the Arab Centre for the Independence of the Judiciary and the Legal Profession (ACIJLP).”). These international organizations include the United Nations Office for Drugs and Crime (UNDOC), which is a global leader in the fight against illicit drugs, corruption, and international crime. *Id.* UNDOC’s purpose is to enrich capacity building and public social awareness of societies in fighting corruption as a universal crime, among its other acts. *Id.* Additionally, the UNDOC Global Program against Corruption (GPAC) acts as a focal point for the UNODC field office network in the development and application of anti-corruption projects, which are designed to increase local abilities over time. *Id.* GPAC also contributes through programs and various projects that ascertain and apply good practices in preventing and restricting corruption, and it has generated multiple technical and policy guides, such as the Anti-Corruption Handbook. *Id.*

¹⁹³ *See generally* NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009 174-75 (Transparency Int’l Secretariat 2009).

¹⁹⁴ *See generally id.*

¹⁹⁵ *See generally id.* (“[S]ome international actors work with the judiciary and legislature to enhance their capacity to tackle issues related to anti- corruption.”).

¹⁹⁶ *See* Hala El Said, *Foreword: Development, a right for all: Egypt’s pathways and prospects*, U.N. DEV. PROGRAM (2021), https://www.undp.org/sites/g/files/zskgke326/files/migration/arabstates/English_RiB_Sep-12.pdf (“At the heart of all these efforts comes the strategic objective of improving the quality of life for Egyptian citizens by intensifying investment in human capital, conducting serious reforms, and implementing major development projects and initiatives in education, health, housing and utilities, in order to provide adequate housing and a decent life for Egyptians . . .”).

¹⁹⁷ *See generally* UNITED NATIONS CONVENTION AGAINST CORRUPTION 9 (U.N. Off. on Drugs and Crime-Vienna 2004), available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf. However, some international actors work with the judiciary and legislature to improve their ability to tackle issues related to anti-corruption. *See generally id.*

¹⁹⁸ *See generally* About, TRANSPARENCY INT’L, <https://www.transparency.org/en/about> (last visited Nov. 27, 2023); *Corruption Perceptions Index*, TRANSPARENCY INT’L, <https://www.transparency.org/en/cpi/2022> (last visited Nov. 30, 2023).

corrupt) to 100 (very clean),” and provides recommendations for combatting corruption going forward.¹⁹⁹ Based on these reports, the perception of corruption in Egypt shows a concerning trend.²⁰⁰ As of 2022, Egypt ranks 130th out of 180 countries with a score of 30 out of 100.²⁰¹ This means that Egypt has dropped 32 spots since 2010, indicating that the perception of corruption in Egypt has only gotten worse.²⁰²

In this respect, numerous universal agreements highlight the issue of global corruption and attempt to battle it, one of which is the 2003 African Union Convention on Preventing and Combating Corruption (AUC).²⁰³ The basic core of this document is to endorse and support development in Africa by averting, identifying, punishing, and eradicating corruption.²⁰⁴ The main principles of the AUC are respect for democratic foundations, the rule of law, popular contribution, good governance, respect for human rights, transparency and accountability, the advancement of social justice, and the attack on corruption.²⁰⁵ Egypt is, however, a signatory to the United Nations Convention Against Corruption (UNCAC) of 2003, which is relatively similar to the AUC, but also designates the persons that can be held liable for corrupt acts and shapes definite anti-corruption policies.²⁰⁶ However, the details surrounding much of the application of those policies are left up to the individual signatories.²⁰⁷ In Egypt, the bodies tasked with anti-corruption enforcement include the Administrative Control Authority (ACA) and the Illicit Gain Enrichment Office (IGE).²⁰⁸

¹⁹⁹ *Corruption Perceptions Index*, TRANSPARENCY INT’L, <https://www.transparency.org/en/cpi/2022> (last visited Nov. 30, 2023).

²⁰⁰ CORRUPTION PERCEPTIONS INDEX 2022 (Transparency Int’l 2023), available at https://images.transparencycdn.org/images/Report_CPI2022_English.pdf.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *See generally* NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 174. *See also* African Union Convention on Preventing and Combating Corruption, Jul. 11, 2003, 43 I.L.M. 5 [hereinafter African Convention], available at https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf. The African Union defines corruption with special details; Article 4.1(a) defines corruption as “the solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.” *Id.* at 7. This section is then followed by eight other precise definitions of corruption, leaving little room for an excuse of vagueness or misunderstanding. *Id.* at 7-8. The Council is responsible for supporting anti-corruption instruments, gathering information on corruption and the conduct of the multinational corporations working in Africa, providing advice for governments, proposing rules and controls for the performance of government servants, and the inauguration of firms. *See id.*

²⁰⁴ *See id.*

²⁰⁵ *See id.*

²⁰⁶ *See* UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 9; NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 26-27.

²⁰⁷ *See generally* UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197.

²⁰⁸ *Id.*

Egypt ratified the UNCAC in 2005 but is not a party to either the OECD Anti-Bribery Convention of 1997 or the Inter-American Convention of 1996 on tackling corruption.²⁰⁹ Egypt does not have a specific anti-corruption law, but active and passive bribery, attempted corruption, abuse of office, abuse of public resources or funds for private gain, and extortion are criminalized by the Penal Code of 1937.²¹⁰ The treaties mentioned above aim to promote and encourage measures to battle corruption more efficiently through promoting, facilitating, and supporting international cooperation, mutual and technical legal assistance,²¹¹ the appropriate management of public affairs and assets, enhancing accountability, and confirming the state's sovereignty through non-interference in internal affairs.²¹² In addition, they criminalize acts closely correlated with or connected to corruption, such as money laundering, concealing or holding the revenues of corruption, and assisting or encouraging corruption.²¹³ Furthermore, they allow the freezing and

²⁰⁹ NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 26-27. *See generally* Mohamed A. 'Arafa, *Battling Corruption within a Corporate Social Responsibility Strategy*, 21 *IND. INT'L. & COMP. L. REV.* 397 (2011) ("Many see corruption as a problem pertaining exclusively to white-collar workers and administrative and government officials [C]orruption is a crosscutting and devastating phenomenon, be it political, social, economic, or cultural."). *Id.* at 400.

²¹⁰ In other words, political will—as an integral part of the political spectrum—plays a critical role in fighting corruption because integrity is the basis for both political and constitutional legitimacy of governance. NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 146. The Anti-Money Laundering Law and its subsequent amendments criminalize money laundering. *Id.* The law only refers to public sector and private-public sector corruption, whereas business-to-business corruption is not covered. *Id.*

²¹¹ *See generally* UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 33-39 (explaining national and international purposes of Article 1 and focusing on the importance of mutual legal assistance in Article 46). The UN Convention Against Corruption focused on techniques used to extradite criminals, legal assistance in the fields of criminal investigation, the necessary legal procedures, and the cooperation needed to execute laws, including measures of joint interrogations between concerned countries and special criminal investigative devices. *See generally* MAHMOUD C. BASSIOUNI, *INTERNATIONAL EXTRADITION: UNITED STATES LAW & PRACTICE* (Oxford Univ. Press 2007).

²¹² *See generally* UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 9-17 (explaining anti-corruption policies and practices in managing public affairs and assets in Chapter II). It is noteworthy, that the UNCAC is comprised two types of provisions: preventive and punitive. *Id.* Concerning the prevention, these articles focus on the following issues: policies and practices to fight corruption through implementation mechanisms; agencies battling corruption; the principles of the public sector and its procedures; the finances of the public sector; access to information and public reports; awareness, training, and public education; and the principals of the private sector and setting its operative regulations, including accounting and auditing. *Id.* (articulating preventative provisions in Chapter II). Turning to the punitive articles, the UNCAC called on national governments to adopt the necessary legislations and other procedures to criminalize acts considered corrupt *per se*. *Id.* at 17-29 (mandating criminalization of certain acts in Chapter III).

²¹³ *Id.* (mandating criminalization of certain acts in Chapter III).

confiscation of assets acquired through corruption.²¹⁴ Also, the UNCAC permits compensation for harm caused by corruption.²¹⁵

A long time ago, the Egyptian People's Assembly ratified the UNCAC, which means, under the Egyptian Constitution, it is an integral part of the domestic Egyptian legal system.²¹⁶ It follows that it acquired binding legal force requiring implementation, specifically on the procedural level.²¹⁷ The UNCAC indeed raises a sequence of concerns in terms of negotiating the national sovereignty of the state.²¹⁸ Both law and political will are indispensable in any strategy to combat corruption, as a social vision is

²¹⁴ *Id.* at 42-48 (explaining that Article 20 concerns an increase of assets for public officials through illicit enrichment and Chapter V lists several provisions regarding asset recovery.).

²¹⁵ UNITED NATIONS CONVENTION AGAINST CORRUPTION 26, 43 (U.N. Off. on Drugs and Crime-Vienna 2004), available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf (explaining that Article 35 requires that victims of corruption have the right to initiate legal proceedings for compensation and Article 53 regards the ability of the courts to order the offender to compensate another that was harmed). These conventions highlighted that restoring the assets to their legal owners was one of the essential principles in addition to the protection of witnesses, informants, and victims of corruptive acts. *See id.* at 43. However, such protection was not included in the AU treaty. *See African Union Convention on Preventing and Combating Corruption*, Jul. 11, 2003, 43 I.L.M. 5, available at http://www.africaunion.org/official_documents/Treaties_%20Conventions_%20Protocols/Convention%20on%20Combating%20Corruption.pdf (last visited Nov. 27, 2023).

²¹⁶ *See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009*, *supra* note 12, at 26. The current constitutional text in this domain provides:

The President of the Republic represents the state in foreign relations and concludes treaties and ratifies them after the approval of the House of Representatives. They shall acquire the force of law upon promulgation in accordance with the provisions of the Constitution. With regards to any treaty of peace and alliance, and treaties related to the rights of sovereignty, voters must be called for a referendum, and they are not to be ratified before the announcement of their approval in the referendum. In all cases, no treaty may be concluded which is contrary to the provisions of the Constitution or which leads to concession of state territories.

Compare CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 152, *with* ABROGATED EGYPT CONSTITUTION, art. 151 (Egypt), *and* ABROGATED TEMPORAL CONSTITUTIONAL DECLARATION, art. 56/6 (Egypt), which states, "The Supreme Council of the Armed Forces deals with the administration of the affairs of the country. To achieve this, it has directed the following authorities [to] represent the state domestically and abroad, sign international treaties and agreements, and be considered a part of the legal system of the state." *See generally* 'ALI AL-KAHWAJI, AL-MO'AHADAT AL-DAWLIYA AMAM AL-QADI AL-JINA'AI [THE INTERNATIONAL CONVENTIONS BEFORE THE CRIMINAL JUDGE], 7-40 (Alexandria Univ. Press 1997). This was confirmed by the Egyptian Supreme Constitutional Court, in its ruling in the al-Mah.kamah al-Dustūriyah al-'Ulyā [Supreme Constitutional Court], case no. 1, session of 2 Jan. 1975, year 4, p. 150, concerning "the necessity to interpret the provisions of the international treaties in the context of good faith and in accordance with the ordinary meaning of their words, without prejudice to the merits of the treaties or their purposes."

²¹⁷ *See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009*, *supra* note 12, at 26 ("[I]n 2005 the Government of Egypt ratified the United Nations Convention Against Corruption (UNCAC), signaling the increased interest in tackling the issue of corruption in a more effective manner.").

²¹⁸ *See Ophelie Brunelle-Quraishi, Assessing the Relevancy and Efficacy of the United Nations Convention against Corruption: A Comparative Analysis*, 2 NOTRE DAME J. INT'L & COMPAR. L. 100 (2011). However, these concerns are balanced by the utility of making the government legally and politically bound to eradicate corruption. *Id.*

required.²¹⁹ The existence of that vision will pave the way for the rule of law.²²⁰

The very sustenance of free market exchange and competition depends on elementary institutions that can endorse and distribute even property rights, preserve the rule of law, and regulate anti-competition, conflict of interest, fraud, and corruption.²²¹ Unfortunately, Egypt did not take this track.²²² The weakness of institutional arrangement refers to the situation where the state has no capability to uphold equal property rights, enforce the law (it even interrupts it systematically), or regulate the irregularities of information and power misdeeds.²²³ If escape from the underdevelopment of Egypt is sought, an accurate examination of its causes should be undertaken to decide the optimal role of the general public before the government

²¹⁹ See generally UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 6 (“[N]eed to construct a strategy that has a coherent vision.”).

²²⁰ See *id.* at 53. In 2009, the Global Forum on Fighting Corruption and Safeguarding Integrity, hosted in Doha, Qatar, centered on the theme: “*Strength and Unity: Working Together Against Corruption.*” See Press Statement, Doha, Qatar, “Strength in Unity: Public-Private Partnerships to Fight Corruption” (Nov. 7, 2009), <https://2009-2017.state.gov/j/inl/rls/rm/131695.htm>. Discussions were focused on the following five points: the role of the legislature, offices of prosecution and judiciary institutions, launching a culture of integrity, public private partnership in procurement, need for reforms in public and private sector, and global financial crisis and corruption. *Id.* Following this conference, Egypt adopted a National Anti-Corruption Strategy with ten main objectives that cover prevention and criminalization of corruption. *Egypt Adopts a National Anti-Corruption Strategy*, U.N. DEV. PROGRAM (Dec. 16, 2014), <http://www.undp-aciac.org/resources/ac/newsDetails.aspx?nid=1198>.

²²¹ See generally Amr Adly, *Too Big to Fail Egypt’s Large Enterprises After the 2011 Uprising*, CARNEGIE ENDOWMENT FOR INT’L PEACE, March 2017, at 3, available at https://carnegieendowment.org/files/CMec_65_Adly_Final_Web.pdf (“Greater economic autonomy of big business from the state means that large enterprises will have to rely less on political connections to secure profits and market share. They will instead become more market oriented. Moreover, the absence of strong particularistic interests and informal ties with the state may lead these enterprises to develop a broader concept of their collective welfare. This may encourage greater transparency and market operations free of state intervention.”).

²²² In other words, the free market policy proved to be the equivalent of a state profiting in the case of transitional economies. See Dina Jadallah, *Economic Aid to Egypt: Promoting Progress or Subordination?* 3 CLASS, RACE AND CORP. POWER 2 (2015). See, e.g., Sufyan Alissa, *The Political Economy of Reform in Egypt*, CARNEGIE ENDOWMENT FOR INT’L PEACE, Oct. 2007, at 5, available at https://carnegieendowment.org/files/cmec5_alissa_egypt_final.pdf; see Michele Dunne & Mara Revkin, *Egypt: How a Lack of Political Reform Undermined Economic Reform*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Feb. 23, 2011), <https://carnegieendowment.org/2011/02/23/egypt-how-lack-of-political-reform-undermined-economic-reform-pub-42710> (“Among the supreme ironies of the legacy of U.S. policy in Egypt is that the economic reforms Washington invested in for decades are at risk of unraveling due to the lack of serious political reforms. The United States aggressively pursued economic reform in Egypt . . . [and] deteriorating economic conditions will make it difficult for Egypt’s new leadership to resist populist tendencies.”).

²²³ *Id.* at 7. See generally GALAL AMIN, *EGYPT IN THE ERA OF HOSNI MUBARAK* (The Am. Unvi. in Cairo Press rep ed. 2012) (discussing the Egyptian society and the Egyptian state in the half-century or more that has elapsed since the Nasserite revolution, this time focusing on the era of President Mubarak and explaining the linkage between corruption and poverty, the struggle of the middle class, and the vexing issue of presidential succession, and Egypt’s foreign policies).

regulates economic activity and combats corruption and bribery.²²⁴ This ambition may be fulfilled by abandoning neo-liberal prescriptions and implementing feasible legal policies.

Having discussed the major corruption phenomena in Egypt, it is important to examine the legal framework—statutory and institutional—regarding the basic features of various Egyptian anti-corruption policies and anti-bribery laws, especially under the current administration.

IV. CORRUPTION AND BRIBERY UNDER EGYPTIAN ANTI-CORRUPTION LAWS

The Transparency and Integrity Committee provides a review of corruption and bribery legislation in Egypt.²²⁵ The Committee has two central goals.²²⁶ First, it strives to identify the role of laws, decrees, and regulations in hindering corruption while enhancing transparency and integrity values through an institutional framework.²²⁷ Second, it is meant to reassure the adoption of social and economic “impact assessments” for any alteration in

²²⁴ See generally ‘Arafa, *supra* note 61 (“In the meantime, the specter of corruption endures to haunt the country. Prior to Mubarak’s exile, Egypt was described—and even still is—as ‘a state where wealth fuels political power and political power buys wealth’ [T]he current government claims that it is proceeding with thoughtful speed towards a civilian democracy and battling corruption. Addressing the legacy of corruption under Mubarak and others will remain a priority for Egyptians and a basis for skepticism towards the new political order and economic stability. Thus, corruption has several features on the national level, all seen in Egypt, like, accumulating citizen’s economic encumbrances as consumers; negligence on the administrative level, particularly to public funds; tendency to link proficiency standards to illegitimate gains; and a public lack of respect for the government, laws, rules, and norms. The Administrative Prosecution Authority presented a recent study in its annual report on the causes of the spread of bribery and administrative corruption in Egypt and effective ways to eliminate it. The report mentioned “poor moral and religious education; lack of [effective] supervision and follow up; delays in the adjudication of disciplinary sentences for bribery crimes in a manner that does not achieve public and private deterrence, and [the] poor salaries of public employees [along with] the large number of services accomplished by a limited number of employees.”). For example, the Egyptian Supreme Constitutional Court supported the right to work, in its ruling decision in the al-Mah.kamah al-Dustūriyah al-‘Ulyā [Supreme Constitutional Court], case no. 1, session of 2 Jan. 1975, year 4, p. 448. It stipulated that:

Work is a right and duty, guaranteed by the State in its legislation or by any other measures—the different qualities of performance among the employees is the basis for differentiating between them—the objective conditions alone constitute the standard of work evaluation and the determination of the merited remuneration.

However, “[i]t should be pointed out that the next civil service regulation, law no. 47/1978, did not restore the necessary symmetry between an academic qualification and a job category. It only followed the other laws by stating the need to fulfil the requirements of a job description (Article 20). This can be described as a fallback from professionalism or simply de-professionalism of public administration.” Sarah Nasreldeen, *Professionalism Criteria in the Egyptian Civil Service System: An Analytical Study*, 45 ARAB J. ADMIN. 1, 8 (2022).

²²⁵ See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12.

²²⁶ See *id.* at 8.

²²⁷ See *id.*

legislation affecting daily life.²²⁸ Indeed, battling corruption requires a continuous legislative and regulatory reform process to create simple, straightforward, adaptable, and appropriate laws.²²⁹ It is also crucial that an institutional mechanism is created to evaluate legislative and administrative remedies to achieve the most adequate procedures available.²³⁰

A. Current Statutes Enhancing Transparency and Integrity Standards (The National Legislative Framework)

Historically, Egypt possessed elaborate and extensive criminal laws, including those aimed at corruption and fraudulent performances.²³¹ Egyptian law has also established a legal framework to curb corruption, which is close to the requirements of the UNCAC.²³² Examples include proscriptions on bribery, which is usually committed by a public employee, clergy member, director, or board of directors member.²³³ Bribery could occur in a corporation, association, syndicate, institution, or even an organization legally carrying out public interest.²³⁴ The prohibition applies to every director or employee under articles 103 to 111 of the Second Chapter of the Penal Code No. 58 of 1937.²³⁵ Its successive amendments apply to every person who has offered or aided a bribe or the embezzlement of public funds under articles 112 to 119.²³⁶ The law does not stop at punishing only

²²⁸ See *id.* This would represent the recent techniques and methodologies of transparency and integrity through supporting societal participation. *Id.*

²²⁹ See *id.*

²³⁰ See generally *id.* Article 5/3 of the UNCAC reads: “Each State Party shall endeavor to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.” UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 9.

²³¹ See Mustafa Marie, *The Ancient Egyptians rigorously fought corruption*, EGYPT TODAY (Dec. 6, 2020, 1:38), <https://www.egypttoday.com/Article/4/95029/The-Ancient-Egyptians-rigorously-fought-corruption> (“The ancient Egyptians set harsh punishments for those accused of treason or corruption.”). Nonetheless, recently Egypt moved toward launching decentralized local government, assigning more powers to local units, promoting popular contribution as well as inspiring community involvement instead of being reliant on the central government. Thus, under the new government, the two main pillars of reform include decentralization and administrative restructuring. The prominence of the latter is demonstrated by the fact that local government servants represent a huge percent of all governmental officials. For further details on centralization and decentralization policies, see generally ‘Arafa, *supra* note 61.

²³² See JUDGE ASHRAF-AL-BAROUDI & HUSSEIN HASSAN, LEGISLATION IN EGYPT: AN ANALYSIS OF COMPLIANCE WITH THE UN CONVENTION AGAINST CORRUPTION (Transparency Int’l 2011), available at https://www.transparency.org/files/content/pressrelease/20110630_TI-S_Legislation_in_Egypt.pdf.

²³³ NATIONAL INTEGRITY SYSTEM STUDY: EGYPT, *supra* note 12, at 146.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

the embezzler but goes on to penalize each servant who unintentionally causes serious harm to the entity where they work.²³⁷

Other examples include prohibitions on non-justified illicit enrichment, abuse of power, peddling in influence, money laundering, and tax evasion.²³⁸ There are several other statutes regulating work in various sectors, such as the Central Bank Law and Banking Systems No. 120 of 1975 (and its presidential decrees concerning the confidentiality of bank accounts and credit law), the Capital Market Law No. 95 of 1992, and the Incentives and Investment Guarantees Law No. 8 of 1997.²³⁹ The Mubarak administration launch monitoring systems and regulatory procedures to fight corruption.²⁴⁰ Egypt also established a system for contracting the administrative bodies based on transparency through Law No. 89 of 1998 on bids and tender offers (Public Procurement).²⁴¹ Additionally, many more Egyptian laws involve

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ Ahmed Alaa Fayed, *The Current Status of Corruption in Egypt*, 10 CONTEMP. ARAB AFF'S 4, 510-21 (2017) ("Given that corruption was one of the primary reasons that pushed the Egyptian masses to rally in 2011, it is important to look at its current status to see whether the levels of corruption have increased, decreased or remained the same since. [T]he current status of corruption in Egypt according to different national and international perception indices . . . to explain why corruption remains prevalent in Egypt, it looks at the different anticorruption efforts accomplished by the state and non-governmental organizations after 2011.").

²⁴⁰ See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT, *supra* note 12, at 119-27.

²⁴¹ *Id.* at 105-09 ("[A] form of external control mechanism is GAGS, which is responsible for different issues including maintaining registries of parties banned from participating in bids/tenders."). Practically speaking, such a complaint mechanism does not work in an operative manner, which is time wasting and has lengthy procedures. See *id.* In addition to the above, the legislators issued numerous legislations with a supervision and regulatory nature on how to manage and regulate public funds and assets, and how to protect them against corruption. See *id.* Among these legislations is the Law of Financial Controller No. 53 of 1973 and its amendments concerning public funds which clarified the appropriate ways and suitable techniques to use public funds, the entities responsible to audit and control the final accounts and the financial statements of the units cited in the State's General Budget, along with the procedures followed in case of violation. See *id.* at 42. Further, the Government Accountability Act No. 1127 of 1981 as it represents a financial and administrative assessment and inspection tool for the rules to be obeyed by the managerial apparatus in executing the State's Public Budget, and the registration, recording, and laying out of their financial transactions. See *id.* It further includes the principles of financial accountability. See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009 42 (Transparency Int'l Secretariat 2009). Government Accountability aims to ensure financial checking before expenditures are made, certifying the internal supervision of the administrative apparatus funds, justifying expenditure, publicizing the outcomes of executing the State's Budget, detecting the obligations of the governmental entities and following up on their reliability. See *id.* at 105-09. Moreover, there is another cluster of laws in which the Egyptian lawmakers created a legal framework for employees—including the employment process, the relationship with the employer, and the discipline of the workers—in order to ensure the appropriate and accurate handling of work and to fight delinquency that may be committed by the official, which leads to the impediment of the development process. See *id.* at 84. One of these laws is the Law No. 47 of 1978, which prohibits civil servants and government officials from accepting gifts, hospitality or rewards, or taking commissions or loans in consistent with their duties and tasks. See *id.*; Law No. 43 of 1979 (promulgating the law of the local government system), 1979 (Egypt); see NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 159, 166.

attacking corruption.²⁴² These laws broadly apply to civil servants in all government bodies, including municipalities, governorates, and ministries.²⁴³ The laws forbid various sorts of misconduct by public officials and are supplemented by many decrees (presidential executive orders) and regulations governing public officials' conduct in the governmental apparatus.²⁴⁴

More significantly, when selecting the legal reform strategy to fight corruption, the following factors should be considered: the current international standards and norms that fit the particular circumstances of the country, the value of the rule of law prevalent in a country, and the institutional resources available to design the strategy.²⁴⁵ The legal framework should integrate provisions correlated with preventing corrupt practices, enable relevant institutions to combat corruption and cover disciplinary and penal matters.²⁴⁶

²⁴² See generally NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12. For example: Law No. 62 of 1975 concerning Illicit Enrichment, *Id.* at 167; Law No. 5 of 1991 on Civil Leadership Positions in the State Administrative System, *Id.* at 37; Law No. 144 of 1988 establishing the Central Auditing Authority, Law No. 80 of 2002 (Anti-Money Laundering Law “AMLL”), Hosni Mubarak, 2002, art. 75 (Egypt), as amended by Law No. 78 of 2003, *rabea al akhar*, 2003 (Egypt); NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 121; Law No. 35 of 1984 on the Judicial Authority, *Id.* at 112; and Law No. 117 of 1958 concerning Administrative Prosecution Authority, all involve attacking corruption. *Id.* at 120.

²⁴³ See generally *id.* In this sense, governors and mayors have the authority to enact regulations and issue rules to govern and regulate the work of the public officials—including work time, location, schedule, and leaves, prohibition of certain wrongdoings, and implementation of administrative penalties thereof which range from warning to dismissal to disciplinary trial. See *id.* at 159-71 (explaining regional and local governments in Egypt and their responsibilities.).

²⁴⁴ Fayed, *supra* note 239. See generally NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 146-47.

²⁴⁵ See generally UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197. Since Egypt signed the UNCAC in 2003 and ratified it in 2005, it has been referred to as the legal, technical, and reference framework approved by world nations as a guide to anti-corruption efforts. See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 26; Aram Khaghaghordyan, *International Anti-corruption Normative Framework: The State of the Art*, HERTIE SCH. OF GOVERNANCE, Oct. 2014, available at https://www.againstcorruption.eu/wp-content/uploads/2015/12/D1.1_Part3_International-Anti-corruption-Normative-Framework.pdf (“[T]he UNCAC . . . has been recognized as a reference framework for the fight against corruption . . .”).

²⁴⁶ See UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 9. A corruptive act may entail both disciplinary and penal action. In a landmark decision in al-Mah. kamah al-Dustūriyah al-‘Ulyā [Supreme Constitutional Court], case no. 2, session of 22 May 1961, the Egyptian Supreme Court has stated:

If the Disciplinary—Administrative—law is separate from the Penal Law, on the basis of the different characteristics of each law and the scope of its application, nonetheless, the same act could result in disciplinary fault that necessitate disciplinary accountability and a criminal conduct proscribed by the law . . . [I]t added as an example that stated,] Bribery as a breach of public [d]uty and as a contravention to the provisions of the Penal Law comprises both disciplinary fault and a crime, [which] requires the coordination of the State [a]dministrative, and judicial apparatus to combat this crime without impairing the jurisdiction of any of them.

B. The Institutional Framework: Anti-Corruption Agencies (ACAs)

The Egyptian legislation launched numerous agencies, authorities, and institutions in charge of mobilizing corruption in both the private and public sectors.²⁴⁷ Most of these agencies have been established by law to address corruption, but none are politically independent.²⁴⁸ They are all closely connected to the President, Prime Minister, or Minister of Justice.²⁴⁹ However, the law authorizes certain privileges for many of these agencies to guarantee independence; some have direct and integral competency, while others have complementary roles.²⁵⁰ As corrupt behavior represents a rampant disease, the new Constitutional framework plays a fundamental role.²⁵¹ The new charter directly addresses corruption for the first time in Egypt's constitutional history.²⁵² It establishes a new commission for battling corrupt acts, strengthens the values of integrity and transparency standards, improves the national strategy concerned with such matters, fights conflicts of interests, promotes the adoption of codes of conduct in numerous areas, guarantees the implementation of said policy in harmonization with other independent regulatory bodies, and oversees the concerned agencies specified by law.²⁵³ The new Constitution regarding the regulatory agency for corrupt practices stipulates the following:

The National Anti-Corruption Commission combats corruption, deals with conflicts of interest, promotes and defines the standards of integrity and transparency, develops the national strategy concerned with such matters, ensures the implementation of said strategy in coordination with other independent bodies, and supervises the concerned agencies specified by law. The Central Auditing Organization has control over state funds and any other body specified by law. The Central Bank stipulates monetary, credit, and banking policies, supervises their implementation, monitors the

²⁴⁷ See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 120-27.

²⁴⁸ See *id.* In this regard, countries usually require various bodies to prevent, detect, and prosecute corruption. *Anti-corruption Models: Models of Anti-Corruption Institutions*, NETWORK OF ANTI-CORRUPTION PROSECUTORS, <https://www.iap-association.org/NACP/Anti-Corruption-Models> (last visited Nov. 27, 2023). For greater efficiency and success, their commitments should be clearly defined. See generally UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197. Some countries use multi-purpose organizations that assimilate preventive anti-corruption roles and law enforcement powers. *Anti-corruption Models: Models of Anti-Corruption Institutions*, NETWORK OF ANTI-CORRUPTION PROSECUTORS, <https://www.iap-association.org/NACP/Anti-Corruption-Models> (last visited Nov. 27, 2023). Others launch bodies committed to prevention and designate specified autonomous anti-corruption law enforcement institutes. *Id.*

²⁴⁹ See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 120-27. The agencies are required to make annual progressive reports, but these are not made publicly available and are only presented to the President, the Minister of Justice or the Interior Minister. See *id.* at 124-25.

²⁵⁰ See *id.*

²⁵¹ See *id.* at 19.

²⁵² See *id.*

²⁵³ See *id.*

performance of the banking system, works to establish price stability, and has exclusive rights to issue currency. All of the above shall be in accordance with the overall economic policy of the State.²⁵⁴

The Constitution also provides:

[T]he state is committed to fighting corruption, and the competent control bodies and organizations are identified by law. Competent oversight bodies and organizations commit to coordinating with one another in combating corruption, enhancing the values of integrity and transparency in order to ensure the sound performance of public functions, preserve public funds, and develop and following up on the national strategy to fight corruption in collaboration with other competent control bodies and organizations, in the manner organized by law.²⁵⁵

In the same vein, the most essential legal anti-corruption agencies in Egypt are:

1. *The Central Auditing Organization* (CAO), governed by Law No. 144 of 1988, is responsible for managing, inspecting, and allocating public funds.²⁵⁶ It oversees the financial and administrative activities of civil service agencies, companies, and banks that receive public funds.²⁵⁷ The CAO also assists the Parliament in scrutiny.²⁵⁸ The supervision the CAO performs is comprised of accounting and legal aspects, monitoring

²⁵⁴ See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, arts. 215-21 (discussing independent bodies and regulatory agencies; creation of each independent body or regulatory agency; and reporting by independent bodies and regulatory agencies). In other words, “[i]ndependent bodies and regulatory agencies are identified by law. These bodies and agencies have legal personality, and technical, financial and administrative independence, and are consulted about draft laws and regulations that relate to their fields of operation. These bodies and agencies include the Central Bank, the Egyptian Financial Supervisory Authority, the Central Auditing Organization, and the Administrative Control Authority [F]or the creation of each independent body or regulatory agency, a law is issued defining its competencies, regulating its work and stipulating guarantees for its independence and the necessary protection for its employees and the rest of their conditions, to ensure their neutrality and independence. The President of the Republic appoints the heads of independent bodies and regulatory agencies upon the approval of the House of Representatives with a majority of its members, for a period of four years, renewable once. They cannot be relieved from their posts except in cases specified by law [I]ndependent bodies and regulatory agencies notify the appropriate investigative authorities of any evidence of violations or crimes they may discover. They must take the necessary measures with regards to these reports within a specified period of time” *Id.*

²⁵⁵ *Id.* at art. 218 (discussing fighting corruption).

²⁵⁶ NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 75-77 (according to Law No. 144 of 1988, “The CAO is an independent organisation [sic] with public legal personality subordinated to the president of the Republic.”).

²⁵⁷ *Id.* at 75-79.

²⁵⁸ *Id.* at 75-77.

- performance, following up on the implementation of an action plan, and controlling decrees issued for financial violations.²⁵⁹
2. *The Administrative Control Authority (ACA)*, governed by Law No. 54 of 1964 and its amendments, investigates the motives behind work and production incompetence.²⁶⁰ This includes revealing the deficiencies of the administrative, technical, and financial systems that block the systematic processing of operations in public entities.²⁶¹ The ACA also recommends methods to prevent corruption and supervises the implementation of laws, decisions, and regulations.²⁶² The ACA is Egypt's anti-corruption watchdog.²⁶³ Moreover, the ACA is responsible for exposing administrative and financial infractions, including criminal offenses committed by employees while performing their duties.²⁶⁴ Generally, the ACA has legal authority to investigate public sector corruption and make arrests accordingly.²⁶⁵
 3. *The Administrative Prosecution Authority (APA)* was created by Law No. 117 of 1958 to check and investigate all public officials.²⁶⁶ The APA is maintained by a large, qualified, professional, skilled staff that interrogates administrative, technical, and economic crimes and may hand over culprits to the criminal courts.²⁶⁷ The APA also serves as an internal recording and reporting mechanism where public officials may direct their complaints of corruption.²⁶⁸
 4. *The Illegal Profiting Apparatus (IPA)* was established by Law No. 11 of 1968 under the authority of the Ministry of Justice to examine alleged illegitimate income and unjust enrichment.²⁶⁹ Public officials must disclose their assets and those of their spouses and children upon taking office and present a financial statement regarding their financial status.²⁷⁰ The IPA collects reports concerning corrupt practices from the general public and private and public employees.²⁷¹ The system periodically

²⁵⁹ *See id.* at 75-79.

²⁶⁰ *Id.* at 120.

²⁶¹ *Id.*

²⁶² NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009 120 (Transparency Int'l Secretariat 2009). The ACA is also assigned with the task of investigating citizens' complaints of any breach of the laws, investigating negligence in achieving work obligations, and examining the complaints of negligence, misadministration or plundering. *Id.* at 123. Also, the ACA is authorized to scrutinize and examine public servants' asset disclosures and to hand over the suspects to the Illegal Gain Department. *Id.*

²⁶³ *Id.* at 120.

²⁶⁴ *Id.* at 123.

²⁶⁵ *Id.*

²⁶⁶ NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009 120 (Transparency Int'l Secretariat 2009).

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 125.

²⁶⁹ *Id.* at 121.

²⁷⁰ *Id.*

²⁷¹ *See USCIRF Annual Report 2008 - Egypt*, U.S. COMM'N ON INT'L RELIGIOUS FREEDOM (May 1, 2008), <https://www.refworld.org/docid/4855699d37.html>. However, the IPA does not inspect all

- inspects and records any upsurge in the public officials' wealth or their immediate family.²⁷²
5. *The Judicial Authority* created by Law No. 46 of 1972 and Law No. 47 of 1972 of the State Council and its different agencies (e.g., Attorney General) is one of the most critical entities, which is in charge of defending the community's interest and combating corruption in all its forms.²⁷³
 6. *The Consumer Protection Association*, governed by Law No. 67 of 2007, aims to protect consumers and safeguard interests against harmful and fraudulent practices defined by Law No. 67 of 2006.²⁷⁴
 7. *The Protection of Competition and Prohibition of Monopoly Association* was established by Law No. 3 of 2005 to protect competition, prohibit monopolistic practices, exclude unfair competition, and punish detrimental transactions or dealings.²⁷⁵
 8. *The Egyptian Money Laundering Combating Unit (EMLSU)* was established in 2002 by the Anti-Money Laundering Law No. 80 of 2002 with amendments through Law No. 78 of 2003.²⁷⁶ The EMLSU is a financial intelligence unit responsible for combating money laundering, processing criminal proceeds, and combating the financing of terrorism in financial institutions in Egypt.²⁷⁷ Article 2 “defines money laundering and criminalizes the laundering of funds from a variety of criminal activities such as resources or monies from narcotics and drug

corruption cases, but rather forwards cases to investigative consultants. *Id.* If the investigative specialists do not find evidence to support charges, Law No. 2 of 1977 also imposes penalties on people that report corruption incorrectly or with “bad intentions.” *Id.* In cases where asset disclosures are proven to be falsified or deceitful, the IPA refers the case to the competent criminal courts. *Id.*

²⁷² *See id.*

²⁷³ *See* RAJEEV PILLAY ET AL., EVALUATION OF UNDP'S REGIONAL COOPERATION FRAMEWORK FOR THE ARAB STATES (2002 – 2005) (U.N. Dev. Programme 2005); ADDIS ABABA, ECONOMIC COMMISSION FOR AFRICA: ANNUAL REPORT 2007 (U.N. Econ. & Soc. Council 2007). However, the public prosecutor has always been viewed as one of the basic guards of society's public interests and the defender against corruption crimes. *Id.* The public prosecutor himself, or by his delegates, initiates criminal actions against employees or public servants for any misdemeanors committed while carrying out their jobs. *Id.* The public prosecutor also brings actions for crimes that involve public employee's negligence or recklessness that results in severe destruction to the assets and interests of the agency the employee works for, or is entrusted with. *Id.* Finally, the public prosecutor is responsible for initiating criminal motions for crimes related to companies' members or boards of directors that are subject to the provisions of the General Business Sector Law No. 203 of 1991. *Id.* In addition to these agencies, the National Security Agency created by Law No. 100 of 1971 have a significant role in fighting the corrupt activities. *See World Report 2021: Egypt*, HUM. RTS. WATCH (Mar. 29, 2020), <https://www.hrw.org/world-report/2021/country-chapters/egypt>.

²⁷⁴ *See* NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note, at 12.

²⁷⁵ *See* Youssry Saleh & Partners, *Egypt: Egyptian Competition Law Overview*, MONDAQ (July 12, 2019), <https://www.mondaq.com/antitrust-eu-competition-/824900/egyptian-competition-law-overview>.

²⁷⁶ *See* NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 121.

²⁷⁷ *See id.* at 26.

trafficking, prostitution and other immoral acts, terrorism, antiquities theft, arms dealing, and organized crime.”²⁷⁸ The EMLSU was established due to the cumulative pressure and concern about the threat of this phenomenon and its negative impact on Egypt’s economy.²⁷⁹

In practice, several ACAs have been proven to be effective in undertaking their role in fighting corruption.²⁸⁰ However, irrespective of the effectiveness of these institutions, they still suffer from weaknesses in terms of their lack of complete political independence; therefore, one of the primary defects of governmental ACAs is their subordination to the executive branch.²⁸¹ Accordingly, it is highly recommended to protect them from political interference by enhancing their independence and ensuring no political intervention occurs in their decisions, as shown in several past incidents.²⁸² Furthermore, the neutrality these agencies maintain adds to their credibility and impartiality; therefore, it should be preserved.²⁸³

²⁷⁸ See *id.* Further, Article 14 of this law “imposes penalties on those who commit or attempt to commit a money laundering crime a period not exceeding seven years in prison, a fine equal to twice the amount of money involved in the crime, and in all cases the seized funds shall be confiscated or an additional fine equal to the value of these funds shall be imposed if such funds cannot be seized or have been disposed to others in good faith.” *Id.*

²⁷⁹ See *id.* In addition, concerns were declared by the OECD Financial Action Task Force (FATF) regarding the absence of a comprehensive legal regime to combat money laundering crimes. *Id.* It should be noted that the Egyptian law on battling money laundering includes sufficient provisions on asset recovery, but the problem is the unsuccessful and ineffective applicability of these provisions. NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009 26 (Transparency Int’l Secretariat 2009).

²⁸⁰ See generally *id.*

²⁸¹ See *id.* at 123-25.

²⁸² See UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 26. Moreover, enhancing the transparency of ACAs’ findings and reports by making them available to the general public after inspections, creating a vital mechanism for whistle-blowing and following up on the investigations and decisions of ACAs in a more transparent manner to the public will support their task in fighting corrupt deeds. *Id.* Article 36 of the UNCAC, which required the need for establishment of a specialist investigative anti-corruption body, provides: “Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. *Id.* Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. *Id.* Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.” *Id.*

²⁸³ See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 26. Besides making government services more efficient through E-Governance Strategy—accessible via SMS and online—the aim is to reduce the facilitation payments by minimizing direct contact between government officials and citizens. *Id.*

V. THE BASIC ANTI-BRIBERY FEATURES OF THE EGYPTIAN PENAL CODE

Like the Latin legal system, Islamic *Shari'a* law is based on the distinguished principle *nullum crimen nulla poena sine lege*, which reflects the idea that someone should not face criminal punishment for an act that was not criminalized at the time of the act.²⁸⁴ Accordingly, to discipline corruption, a legal framework of rules must define and prohibit it. For such rules to be suitably pragmatic, they must be transparent, applied in an impartial and consistent manner, and not subject to arbitrary change.

In modern international commerce, lawyers must identify bribery as an evil encountered and generally condemned in both Middle Eastern and Western legal systems.²⁸⁵ In fact, Middle Eastern governments have enacted legislation imposing criminal liability on those involved in bribery.²⁸⁶ These Middle Eastern anti-bribery laws, usually derived from European (Napoleonic) Penal Codes, have often been influenced by and are consistent with traditional Islamic jurisprudence prohibiting bribery.²⁸⁷

It is significant to investigate the anti-bribery (anti-corruption) provisions of the Egyptian Penal Law, enacted in 1937, and its amendments, as they are among the broadest and most detailed in the Middle East.²⁸⁸ Even before Egypt became a party to the UNCAC, it had criminalized serious forms of corruption.²⁸⁹ It should be kept in mind that the Egyptian Penal

²⁸⁴ See Khalid Al Hamrani, *Double Trouble? The Relevance of the FCPA in the Middle East*, (June 2020) <https://www.tamimi.com/law-update-articles/double-trouble-the-relevance-of-the-fcpa-in-the-middle-east/>. The Middle East has set the stage for a number of well-publicized “Corrupt Payments” debates including some which suggest enacting a statute based on the United States Foreign Corrupt Practice Act (FCPA). *Id.* In this context, some legal scholars have concluded that bribery is more ubiquitous in the Middle East than elsewhere in the world for reasons comprising culture, politics, and religion. *Id.*

²⁸⁵ Howard Stovall, *Summary of Middle Eastern Criminal Code Provisions Prohibiting Bribery*, 2 (1999), https://stovall-law.com/files/2019-07-25_12_44_25_antibribery_in_the_middle_east_cal.pdf.

²⁸⁶ See *Transparency and Integrity in Lobbying*, ORG. FOR ECON. CO-OPERATION & DEV., 2013, available at <https://www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf>. The Transparency and Integrity Commission (TIC) stated the main forms of corruption in Egypt include: issuing decisions in favor of a certain group other in violation of the public interest; lack of transparency in public procurement; receipt of payments/bribes in return for facilitating access to governmental services, for example, customs and taxes, documenting and specifying fines, and misuse or waste of public funds or/and public property.

²⁸⁷ See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12.

²⁸⁸ See *id.* Indeed, the Egyptian anti-bribery provisions have been criticized as excessively sophisticated and their punishments are extremely severe. A revised draft of the Penal Law in 1966 attempted to address these criticisms, but that draft was not enacted. *Id.*

²⁸⁹ See *id.* at 1, 168. Regarding the criminalization and penalization of corruption acts, Articles 103 through 132 covers the public official’s misconduct in a comprehensive way and includes laws on active and passive bribery, embezzlement of public funds, and making proceeds from public office. *Id.* For the purposes of criminal prosecution, these articles determined the prohibited acts and identified the applicable criminal sanctions. *Id.* at 96. The Egyptian statute includes further

Code, which is based on the French Napoleonic Code, and its amendments cover a wide range of corruption offenses and provide for severe penalties.²⁹⁰

A. Defining Corruption Offenses and Bribery under Egyptian Penal Law

It is essential for businesses to understand the legislative framework in which they operate without exposing themselves to undue risk. Corruption and bribery are diversely defined under many laws, but fundamental principles apply universally. Bribery covers the act of “giving, offering, or promising” bribes (active bribery) as well as “taking, requesting, and accepting” them (passive bribery).²⁹¹ This includes financial and other undue advantages of a monetary or non-monetary nature.²⁹² For instance, monies or

provisions to penalize the “acts of any employer who, even by negligence or recklessness caused severe harm to the assets or the interests of a public body.” See Law No. 58 of 1937 (Criminal Code), *al-Waqā’i’al-Misrīyah*, 1937, vol. 71, arts. 103-12 (Egypt). Additionally, Article 106 penalizes “the act of requesting bribes, for oneself or for the other, in the private sectors and business partners.” See *id.* at art. 106. Furthermore, Article 106bis of the same code “forbids the manipulation of real or presumed influence for private gain or obtaining undue advantage, whether the transgressor is a public official or not.” See *id.* Some provisions of the Penal Code also prohibit corruption-related offenses such as the abuse of official capacity to influence judicial decisions or to hinder its execution and the use of coercion on a witness to preclude him/her from testimony or to present false testimony. See *id.* at art. 300. In addition to the Penal Code, various legislations proscribe corruption-related offenses that could be done by public officials, such as illicit enrichment and the concealment or laundering the proceeds of corruption (money laundering). See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 1, 15, 146. Moreover, Egypt is a party to the United Nations Convention Against Transnational Organized Crime as well as the United Nations Convention Against Illicit Traffic in Narcotic Drugs. UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197. Also, Egypt is the inaugurating member of the Middle East and North African Financial Action Task Force. This is a regional, inter-governmental co-operative body that centers on money laundering and financing of terrorism. See Mohamad Talaat, *Anti-Corruption in Egypt*, GLOB. COMPL. NEWS, <https://www.globalcompliancenews.com/anti-corruption/handbook/anti-corruption-in-egypt/> (last visited Nov. 30, 2023).

²⁹⁰ The TIC called for the modification of the current public office law to detail and explain other forms of corruption that might not necessitate criminal conduct, such as the abuse of authority, or making use of office. See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 79.

²⁹¹ For further discussion on the classification of bribery into active and passive in the French penal system, see generally MOHAMMAD ZAKY ABOU’AMER, KANUN AL-‘UQUBAT, AL-KSEM AL-KHAS, AL-GOZ’E AL’AWEL: AL-GRA’MM AL-MODRAA BELMASLAHA AL-‘AMA, AL-RASHWA WA AL-GRA’MM AL-MOLHKA BEHA [THE EGYPTIAN PENAL LAW—THE SPECIAL PART, PART I: THE CRIMINAL OFFENCES AGAINST PUBLIC INTEREST, BRIBERY AND THE RELATED-CRIMINAL OFFENCES], (1983); RAMSSES BAHIENAM, AL-KSEM AL-KHAS FI KANUN AL-‘UQUBAT: “GARIMAAT AL-RASHWA” [THE SPECIAL PART OF THE EGYPTIAN PENAL LAW: BRIBERY OFFENCE], (1989). In this regard, the French criminal doctrine classifies corruption and bribery into “Active Corruption” and “Passive Corruption” despite the Egyptian criminal doctrine and jurisprudence does not explicitly adopt this classification. See R. GARRAUD, TRAITÉ THEORIQUE ET PRATIQUE DU DROIT PÉNAL [TREATISES ON THE THEORY AND PRACTICE OF THE PENAL LAW], 370 (3rd ed. 1930).

²⁹² *Id.*; see also MOHAMMAD ZAKY ABOU’AMER, KANUN AL-‘UQUBAT, AL-KSEM AL-KHAS, AL-GOZ’E AL’AWEL: AL-GRA’MM AL-MODRAA BELMASLAHA AL-‘AMA, AL-RASHWA WA AL-GRA’MM AL-MOLHKA BEHA [THE EGYPTIAN PENAL LAW—THE SPECIAL PART, PART I: THE

loans are considered monetary advantages, whereas holidays, entertainment, and career enhancements or promotions may be regarded as non-monetary advantages.²⁹³

The Egyptian criminal doctrine defines corruption as the “misuse of public office or power for private gain or misuse of private power in relation to business outside the realm of government.”²⁹⁴ In comparison, bribery is the offering, promise, giving, demanding, or acceptance of an advantage as an inducement for an illegal or unethical action or a breach of trust.²⁹⁵

Acts of bribery are intended to influence individuals in the performance of their duties and incline them to act fraudulently and dishonestly.²⁹⁶ In the same vein, whether the beneficiary or recipient of a bribe works in the public or private sector is irrelevant.²⁹⁷

Corruption offenses are principally set out in the Egyptian Penal Code, which defines bribery in Articles 103-112 as “a grave criminal offense falling under the category of crimes against the civil service, trust, and public interest and considered as a serious crime under Egyptian law, especially when it involves a government employee, referred to as a ‘Public Official’ or simply an ‘Official.’”²⁹⁸ In some circumstances, a private sector servant who accepts a bribe is also punishable under the same law.²⁹⁹ The provisions of the Egyptian Penal Law dealing with bribery are contained in the portion of the Penal Law covering “Crimes Against the Public Interest and Duty.”³⁰⁰

The prohibition against bribery guarantees that the government will function properly and that no public worker will use their position or

CRIMINAL OFFENCES AGAINST PUBLIC INTEREST, BRIBERY AND THE RELATED-CRIMINAL OFFENCES], (1983); RAMSSES BAHENAM, AL-KSEM AL-KHAS FI KANUN AL-‘UQUBAT: “GARIMAAT AL-RASHWA” [THE SPECIAL PART OF THE EGYPTIAN PENAL LAW: BRIBERY OFFENCE], (1989).

²⁹³ *Id.*

²⁹⁴ See MOHAMMAD ZAKY ABOU‘AMER, KANUN AL-‘UQUBAT, AL-KSEM AL-KHAS, AL-GOZ‘E AL‘AWEL: AL-GRA‘MM AL-MODRAA BELMASLAHA AL-‘AMA, AL-RASHWA WA AL-GRA‘MM AL-MOLHKA BEHA [THE EGYPTIAN PENAL LAW—THE SPECIAL PART, PART I: THE CRIMINAL OFFENCES AGAINST PUBLIC INTEREST, BRIBERY AND THE RELATED-CRIMINAL OFFENCES], 617-21 (1983) [hereinafter *ABOU‘AMER*].

²⁹⁵ *Id.* at 37-48, 129.

²⁹⁶ See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 83-84.

²⁹⁷ See *id.* The Egyptian Penal Code’s provisions cover the passive and active bribery of public officials in an indirect way. *Id.* The latest amendments to these provisions focus on “passive” corruption, which reflects the Egyptian government’s concern at that time to forbid public officials from misusing their power for personal benefit. *Id.*

²⁹⁸ See Law No. 58 of 1937 (Criminal Code), *al-Waqā‘i‘al-Misrīyah*, 1937, vol. 71, arts. 103-12 (Egypt).

²⁹⁹ See ABOU‘AMER, *supra* note 294 (noting that the anti-bribery provisions are primarily directed to public employees).

³⁰⁰ See Law No. 58 of 1937 (Criminal Code), *al-Waqā‘i‘al-Misrīyah*, 1937, vol. 71, arts. 103-12 (Egypt). Other such crimes are the misappropriation of public funds and forgery in official documents. *Id.*

influence to achieve any personal benefit or private gain.³⁰¹ Bribery essentially involves the trading or peddling of a position.³⁰² It requires two parties: first, the recipient official who requests or accepts payment or promise in exchange for performing or refraining from performing a function of their position, and second, the briber, who makes the offer of or simply agrees to pay the bribee what they requested.³⁰³ The primary aspect of the crime of bribery is the conduct or behavior of the official; bribery is deemed to have occurred as soon as the official agrees to a payment or promise to abuse the duties of their position.³⁰⁴ In other words, there will typically be a *quid pro quo* transaction that both parties will benefit from.³⁰⁵ Thus, the primary focus in bribery under Egyptian law is on the official.³⁰⁶

B. The Bribery of Public Officials: Criminalization Requirements

Combating corruption requires a comprehensive and coherent legal framework that criminalizes bribery and related acts. Criminalization has a clear and robust impact both inside and outside the criminal law sphere.³⁰⁷ Under the Egyptian Penal Code, corruption is a serious criminal felony.³⁰⁸ While the law does not explicitly refer to any *mens rea* or mental intent

³⁰¹ See ABOU'AMER, *supra* note 294.

³⁰² See generally MAHMMOUD NAGIUB HOSNI, SHARH KANUN AL-'UQUBAT, AL-KSEM AL-KHAS, AL-GRAMM AL-MODRAA BELMASLAHA AL-'AMA [THE EXPLANATION OF EGYPTIAN PENAL LAW—THE SPECIAL PART: THE CRIMINAL OFFENCES AGAINST THE PUBLIC INTEREST], (1972); see also Amr Adly, *Mubarak (1990-2011): The State of Corruption*, ARI THEMATIC STUDIES: THE POLITICS OF CORRUPTION, ARAB REFORM INITIATIVE (2011).

³⁰³ See generally MAHMMOUD NAGIUB HOSNI, SHARH KANUN AL-'UQUBAT, AL-KSEM AL-KHAS, AL-GRAMM AL-MODRAA BELMASLAHA AL-'AMA [THE EXPLANATION OF EGYPTIAN PENAL LAW—THE SPECIAL PART: THE CRIMINAL OFFENCES AGAINST THE PUBLIC INTEREST], (1972).

³⁰⁴ See generally Adly, *supra* note 221.

³⁰⁵ *Id.*

³⁰⁶ *Id.* Nonetheless, separate provisions and crimes have been developed for punishing the briber and any intermediary. *Id.*

³⁰⁷ See generally Law No. 58 of 1937 (Criminal Code), *al-Waqā'i' al-Misrīyah*, 1937, vol. 71, arts. 103-12 (Egypt); see also NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 83-84.

³⁰⁸ See Law No. 58 of 1937 (Criminal Code), *al-Waqā'i' al-Misrīyah*, 1937, vol. 71, arts. 9-12 (Egypt). In this context, it should be noted that the tripartite classification of the criminal offenses adopted by the Egyptian Penal Code will be deducted from Article 9 of this code in which stipulates that: "Offences are of three kinds: (1) Felonies (2) Misdemeanors, and (3) Infractions." Also, Article 10 as amended the Penal Law and the Law of the Criminal Procedure by Act No. 95/2003 provides that: "A felony is an offence punishable by any of the following penalties: death, life Imprisonment, aggravated detention, and simple detention." On the other hand, Article 11 of the same code stated that: "A misdemeanor is an offence punishable by either of the following penalties: imprisonment, a fine the maximum of which exceeds five hundred Egyptian pounds." But according to Article 12 "A contravention (infraction) is an offence punishable by a fine the maximum is which does not exceed five hundred Egyptian pounds." See *id.* For further details concerning this main classification, see AHMAD 'AWAD BELAL, MABAD'E KANUN AL-'UQUBAT AL-MASRY: AL-KESM AL-'AMM [PRINCIPLES OF EGYPTIAN CRIMINAL LAW, THE GENERAL PART, BOOK I: THE THEORY OF CRIMINAL OFFENCES], (2004).

requirement in its definition of corruption or bribery, corruption is an intentionally committed criminal offense.³⁰⁹ However, Article 104bis does refer to non-intentional corruption, *i.e.*, when a public official performs an act of corruption in the discharge of their duties “without having the intention” of doing so.³¹⁰ Bribery comprises an undue advantage (inducement), whether financial or other, according to Article 107 of the Penal Code.³¹¹

As described above, Egyptian law criminalizes both passive and active bribery of public officials.³¹² Incrimination of bribers is not unequivocally cited in the law but is implicitly covered in Article 107bis, which stipulates that “[t]he briber . . . shall be punished with the [same] penalty prescribed for the bribe-taker.”³¹³

There are three common elements to the crime of bribery under Egyptian law: (a) the status of the recipient of the bribe as a “public official;” (b) the *actus reus* (substantive element), meaning the criminal activity itself including the benefit such as a gift or promise thereof; and (c) the *mens rea* (requisite criminal intent/mental component).³¹⁴ These three elements of bribery are analyzed in further detail in the following discussion.

³⁰⁹ *Id.*; see also Law No. 58 of 1937 (Criminal Code), vol. 71, arts. 9-12 (Egypt).

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*

³¹³ See Law No. 58 of 1937 (Criminal Code), vol. 71, art. 107 (Egypt); V.E. GARCON, CODE PÉNAL ANNOTE [PENAL CODE ANNOTATION/SUPPLEMENT], art. 177, no.74; WALINE V. MARCEL, TRAITÉ ELEMENTAIRE DE DROIT ADMINISTRATIF [TREATISES OF THE BASIC ADMINISTRATIVE LAW], 201, 407 (6th ed. 1951).

³¹⁴ See, *e.g.*, Mohammad Talaat, *Anti-Corruption in Egypt*, GLOB. COMP. NEWS, <https://www.globalcompliance.com/anti-corruption/handbook/anti-corruption-in-egypt/> (last visited Nov. 7, 2023). In other words, there are three fundamental elements regarding bribery under most Middle Eastern laws: the recipient of the bribe as a “public official” with “official duties,” the material element (*i.e.*, the gift or promise), and the moral element that required the existence of the criminal *corrupt* intent. See, *e.g.*, *id.*

C. The Scope of Applicability of Egyptian Law's Bribery Provisions:
Elements of Bribery as a Criminal Offense (Briber Criminality)

1. *Who Can Engage in Bribery? The Concepts of "Public Officials" and "Official Duties" in the Egyptian Penal Law*³¹⁵

From a plain etymological perspective, the law needs to define the meaning of "domestic public official" when referring to the active or passive bribery of public employees. This will evade improbability since the lack of a "clear definition may make the scope of an offense" ambiguous or vague.³¹⁶ The law should define such officials as "any person holding a legislative, administrative, or judicial office, whether appointed or elected, and any person exercising a public function, whether in a public body or a public enterprise."³¹⁷ Article 111³¹⁸ of the Penal Code provides a broad concept and description of public officials, covering

³¹⁵ See generally KHALED SULTAN, GARA'MM AL-RASHWA FI 'AKOUD AL-TJARAH AL-DAWLIYAH: DERASSH MOUKRNAH [BRIBERY CRIMES IN INTERNATIONAL COMMERCIAL CONTRACTS: A COMPARATIVE STUDY], (2009). In this respect, it should be noted that, it is obvious from the meaning of Article 222 that doctors, surgeons, and nurses are considered public officials in regard to the anti-bribery provisions because it is stipulated that: "Any doctor, surgeon, or a nurse give within a way of nepotism a falsified certificate or report concerning pregnancy, disease or death with his or her knowledge of its falsification shall be imprisoned or pay a fine of 100 EGP. And if he or she request for himself or herself or for others to do any of these illegitimate acts or upon any recommendation or mediation or by trading in influence shall be penalized by bribery's punishments." See Law No. 58 of 1937 (Criminal Code), art. 22 (Egypt). Further, according to the Principle of "Moral Multiplicity of Crimes and Punishments," Article 298 in regard to "False Testimony" states, "If anyone falsely testified before the court in a criminal or a civil action upon a recommendation or . . . shall be penalized by bribery sanctions if it is severer than the penalties of false testimony." See *id.* at art. 298. For further details on the forgoing principle, see AHMAD 'AWAD BELAL, MABAD'E KANUN AL-'UQUBAT AL-MASRY: AL-KESM AL-'AMM [PRINCIPLES OF EGYPTIAN CRIMINAL LAW, THE GENERAL PART, BOOK I: THE THEORY OF CRIMINAL OFFENCES], (2004).

³¹⁶ See BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT 1, 18 (MENA-OECD Initiative 2009), available at <https://www.oecd.org/global-relations/46341460.pdf>; see also MOHAMMAD ZAKY ABOU'AMER, KANOUN AL-IJRA'AT AL-JINA'IYAH [CRIMINAL PROCEDURAL LAW], (2008).

³¹⁷ *Id.*

³¹⁸ *Id.* In the same sense, Article 434/8 of the French Penal Code provides that:

The direct or indirect request or acceptance without right of offers, promises, donations, gifts or advantages, by a judge or prosecutor, a juror or any other member of court of law, an arbitrator or an expert appointed either by a court or by the parties, or by a person appointed by a judicial authority to carry out conciliation or mediation, in return for performing or abstaining from performing an act of his office, is punished by ten years' imprisonment and a fine of €150,000. Yielding to the solicitations of a person described in the previous paragraph, or to a proposal of any offer, promise, donation, gift or reward with a view to obtaining from such a person the performance or non-performance of an act pertaining to his office, is subject to the same penalties. Where the offence referred to under the first paragraph is committed by a judge or prosecutor in favor or against a person who is being criminally prosecuted, the penalty is increased to fifteen years' criminal imprisonment and a fine of €225,000.

[A]ny person performing a public service or employed in governmental agencies or placed under the control and the supervision of the government as well as members of national or local representative councils either elected or appointed, and therefore including Members of Parliament³¹⁹ subject to the lifting of their immunity.³²⁰

It also includes “members of the judiciary,³²¹ arbitrators, experts, religious representatives, liquidators, judicial administrators, board members, and employees and managers in any enterprise in which the state is a shareholder.”³²² In this respect, the Egyptian jurisprudence has also decided that some institutions, objectives, or the like are *per se* public and, subsequently, their servants are considered public officials.³²³ In addition, members of the boards of directors, managers, employees, or representatives of associations, public companies, societies, foundations, or establishments are considered public officials under Article 106/A if the state or any public organization³²⁴ contributes to its funding at any level.³²⁵ Further, Egyptian

Also, Article 435/3 of the same code provides: “For the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions . . . the unlawful proffering, at any time, of any offer . . . to a person . . . or an electoral mandate in a foreign State, or within a public international organization . . .” See C. pén. arts. 434/8, 435/3, available at https://www.napoleonseries.org/research/government/france/penalcode/c_penalcode3b.html.

³¹⁹ See Cour de cassation [Cass.] [supreme court for judicial matters] crim., March 29, 1886, Bull. Crim., No. 199, arts. 435/4 - 5 (Fr.), available at <https://www.oecd.org/france/2076560.pdf>; *Id.* at art 3 (providing the Penal Code of the Republic of France).

³²⁰ UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 26; *Id.* at 9.

³²¹ *Id.* at 8 (explaining that persons holding a judicial office are not expressly mentioned but could fall under Articles 111-115 and interpreted implicitly from the original language: “any person performing a public service . . .”). See generally ABOU‘AMER, *supra* note 294.

³²² *Id.* See also BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT 15 (MENA-OECD Initiative 2009), available at <https://www.oecd.org/global-relations/46341460.pdf>.

³²³ For instance, a vessel pilot employed in the Suez Canal has been considered as a public employee, given the fact that the Suez Canal Power managed a public utility service. Similarly, the Public Authority for Agrarian Reform is a public entity, its property is public property, and its employees are public officials. The same conclusion applies to employees in public establishments for flour and rice mills, and public co-operatives. See ABOU‘AMER, *supra* note 294.

³²⁴ See BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT (MENA-OECD Initiative 2009), available at <https://www.oecd.org/global-relations/46341460.pdf>. (“Corrupt transactions generally involve a high level of confidentiality and secrecy, involving persons other than the bribers (i.e., persons, natural or legal, seeking a business advantage) and the bribe-takers (officials providing the business advantage). To ensure an arms-length distance between bribers and bribed, bribes are frequently transferred to designated third parties (spouses, children, political parties) through agents, intermediaries, consultants, etc. In order to prevent the involvement of third parties, their role in corrupt transactions should be regulated and sanctioned.”). See generally AHMAD FATHI SOROUR, AL-WASIT FI KANUN AL-‘UQUBAT, AL-KSEM AL-KHAS [A GUIDE FOR EGYPTIAN PENAL LAW: THE SPECIAL PART], (1968).

³²⁵ See generally NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12. See ABOU‘AMER, *supra* note 294. See also the Law No. 60 of 1971 (Public Entities), 1971 (Egypt); Law No. 61 of 1971 (Public Sectors Corp.), 1971 (Egypt). Egyptian law criminalizes the use of public assets for private gain. In addition, under Article 112 “public funds extend beyond state-owned

jurisprudence defines public officials as “any person consigned to a permanent job in the service of a public utility managed by the State or a regional or utility public legal person and holding a permanent office that is part of the administrative organization of such service.”³²⁶ Third-party beneficiaries are explicitly covered in all applicable provisions and considered as bribery offenders “for himself or for a third party” in Articles 103, 103bis, 104, 104bis, 106, 106bis, and 106/A as long as they are natural individuals.³²⁷ However, it is unclear what sort of individual is subject to the

resources to include all funds cited in Article 110 of this law, such as syndicates, unions and economic companies, associations and units. Using all of these resources, in addition to public resources, for private gain or personal interest is illegal.” See Egyptian Crim. Code, arts. 110-112 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf. In this respect, there is a doctrinal criminal and administrative debate concerning the doctrine of what so-called “The Theory of Actual Official: *Fonctionnaire de fait*” in which his or her appointment in the public office is null or void because of some formalistic-procedural defects have been realized during his or her appointment regarding the application of bribery provisions on his or her side. For sure, if he or she committed any corrupt behavior, both criminal and disciplinary liability shall be addressed during remaining-working in the office according to the pre-dominant opinion in both doctrine and jurisprudence. With respect to this debate, See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12. With respect to this debate, See also ABOU’AMER, *supra* note 294, at 133-34. In Jordan, Article 169 of the Penal Code defines public officer as follows: “A public official means any public servant in the administrative or judicial branch, any officer in, or member of, the civil or military authorities, and any employee or worker in the public or state’s administration.” See, e.g., THE PENAL CODE OF THE HASHEMITE KINGDOM OF JORDAN, *Al-Jarida Al-Rasmiyya*, 8 Aug. 2001, art. 169, [hereinafter Jordan Penal Code].

³²⁶ See generally ABOU’AMER, *supra* note 294. Furthermore, Law No. 47 of 1978 on State Civil Servants in its first article provides that: “employees in governmental ministries, agencies and bodies of special budgets, local government units, and public bodies should be considered as public officials.” Law No. 47 of 1978 (promulgating the Regul. for Civ. Servants), *Al-Waqaui Al-Misryia*, 1978 (Egypt).

³²⁷ *Id.* It should bear in mind, that there are some definite legal requirements that must be fulfilled in order to avoid the incidence of bribery in the procurement process. MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., BUSINESS ETHICS AND ANTI-BRIBERY POLICIES IN SELECTED MIDDLE EAST AND NORTH AFRICAN COUNTRIES 12 (OECD & OCDE 2006), available at <https://www.oecd.org/mena/competitiveness/36086689.pdf>. Intermediations are permissible under the laws of numerous countries and jurisdictions, including Algeria, Bahrain, Egypt, and Jordan. *Id.* In order to prevent the occurrence of bribery acts in the intermediation process requires: (a) intermediaries are obliged to be properly registered and recorded and (b) the incomes resulting from the intermediaries’ undertakings (“commissions”) must be disclosed by the intermediaries to the competent authorities such as audit consultants. *Id.* at 11-12. This second requirement illustrated in an express way by Egypt’s Law No. 120 of 1982 governing the Activities of Commercial Agents and Certain Activities of Commercial Intermediaries at Article 14 which provides as follows:

The Ministries and organs of the Government, the Units of local governments, the Public Institutions and the Companies and the Units of the Public Sector shall, when making contracts, include in the tender a provision concerning the amount of the commission or brokerage payable to the commercial agent or commercial intermediary when the contract is awarded, as well as the person(s) who will receive the sum, and requiring to deposit such sum for the account of the person entitled thereto in a bank operating in the Arab Republic of Egypt which is subject to the Central Bank’s supervision (control) and in the currency agreed by the parties. *Id.* at 12.

penalty under Article 106, which criminalizes passive corruption by “any employee” and, particularly, whether it may apply to private sector workers or is restricted to “employees of departments associated with the government” under Article 111.³²⁸ Bribery through intermediaries is emphasized by Articles 105bis and 108, under which intermediaries are punishable unless they acted in *good faith*.³²⁹

For decades, the Penal Code contained *no* provisions for the bribery of foreign public officials.³³⁰ But recently in 2018, after amending Article 111, it does explicitly “consider staff from public international organizations or foreign officials as public officials.”³³¹ It was difficult to agree with those who argue that corruption and bribery of foreign public officials can be addressed through Articles 2 and 3, whose nationality and extraterritoriality principles of jurisdiction apply to Egyptian criminal law.³³² In this context, it

³²⁸ See generally ABOU‘AMER, *supra* note 294.

³²⁹ *Id.* (emphasis added). In the author’s perspective, it is recommended—and for the purpose of non-impunity—that the scope of Article 106 should be reviewed with a more precise definition rather than the term “any employee” and the role of intermediaries in corruption practices in Egypt must be examined in order to assess the efficiency of current legal provisions. See Egyptian Crim. Code, art. 106 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf; *Id.* at arts. 105/b, 106 (mandating that indirect bribery is illegal “as a result of . . . intermediation.”). Under Article 109/b-2, bribery is “subject to harsher penalties imposed elsewhere” See *id.* at art. 109/b-2. For instance, when, pursuant to Article 108, “the purpose of the crime is to commit an act punished by the law with a severer penalty than the one prescribed for the briber,” intermediaries would be subject to sanctions when offering or agreeing to mediate. See *id.* at art. 108. Intermediaries acting in good faith, *i.e.* when transmitting an offer, promise, or gift to the official without knowledge of his or her intent to commit the offense, would be exempted under Article 60 concerning the offense committed in good faith. See *id.* at art. 60. This means that the Penal Code deals in several instances with “criminal justification on grounds of Islamic law,” providing that exercising a “right based on the *Sharie‘a*” does not constitute a criminal offense. See *id.*

³³⁰ See BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT 18 (MENA-OECD Initiative 2009), available at <https://www.oecd.org/global-relations/46341460.pdf> (emphasis added). See also ABOU‘AMER, *supra* note 294.

³³¹ See generally *id.*

³³² See generally ABOU‘AMER, *supra* note 294. See Egyptian Crim. Code, art. 2 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf. Article 2 of the Egyptian Penal Code stipulates that:

The provisions of this code shall further apply to the persons mentioned hereinafter: (1) Any person who commits outside Egypt any act that renders him either a principal or an accomplice to any offence committed either wholly or in part in Egypt . . . Any person who commits abroad one of the following crimes: (i) A felony against the government security, as prescribed in Part [1] and [2] of Book (II) of the present law; (ii) A felony of forgery as prescribed in Article (206) of the present law, and (iii) A felony of counterfeit, forgery or falsification of currency note or coin as prescribed in Article 202, or a felony of bringing into or taking out of Egypt that counterfeit, forged or falsified currency note or coin, circulating it, or possessing it for the purpose of circulating or dealing with it as prescribed in Article 203, providing the currency is legally circulated in Egypt.

is essential to note that to conform with the latest international standards, Egypt has been urged to criminalize corruption vis-à-vis foreign public officials and officials of public international organizations, such as the World Bank and IMF.³³³

In other words, Article 106(bis)(b) of Law No. 5 of 2018 (*amending the Penal Code*) provides that any foreign public employees or employees of a public international organization who ask for or accept a gift or promise of one, for themselves or others, for performing or abstaining from or breaching one of their international duties is committing bribery and punishable by imprisonment for life and a fine of 500 to 1,000 Egyptian pounds (US\$28 to \$56).³³⁴ Article 111(2) defines the term “foreign public employee” as “any person who holds, by appointment or election, a legislative, executive, administrative, or judicial position in a foreign country, and any person performing a public function on behalf of a foreign country” and an “employee of an international organization” as “any international civil servant or any person acting on behalf of an international organization.”³³⁵

See Egyptian Crim. Code, art. 2 (Egypt). Accordingly, committing any one constituent element of a criminal act on the Egyptian territory could theoretically be sufficient and adequate to validate the application of Egyptian law, and consequently subject to the jurisdiction of Egyptian criminal courts. *Id.* Pursuant to Article 3 of the same code:

Any Egyptian who, while he/she is outside Egypt, commits an act considered a felony or misdemeanor under this law shall be punished according to its provisions if he/she returns to Egypt, provided that the act committed was punishable under the law of the country where the act was committed.

See id. at art. 3. Hence, corruption of foreign public servants not definitely covered. *Id.* The exercise of extra-territorial jurisdiction is sometimes subject to procedural and technical requirements that can make it problematic to apply over public officials in bribery’s complicated cases committed abroad by the country’s own nationals. *Id.* These procedural requirements may affect the success of this kind of jurisdiction as foreign authorities may be reluctant to report the conducts of their own public employees. *See id.*

³³³ *See generally* ABOU’AMER, *supra* note 294; *See* UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 26. Normally, corruption and bribery acts implicate public or government officials (or their close families and business associates). *See generally* *Corruption: A Glossary of International Criminal Standards*, OECD 1, 35 (2007), <https://www.oecd.org/corruption/anti-bribery/39532693.pdf>. Thus, as a policy matter, a government official could be a public official, whether foreign or domestic, a political candidate or party official, a representative of a government-owned/majority-controlled organization, or an employee of a public international organization. *Id.* Recently, the Egyptian Criminal Code has defined the term “Foreign Official” and designate bribery of foreign officials as an offense in accordance with Article 2 of the UNCAC, as an *autonomous* definition. It should be noted that Law No. 5 of 2018 amending article 6 and article 111 of the Penal Code penalizing the act of bribery of a foreign public employee *Egypt: Ninth UN Anti-corruption Conference Held in Sharm El-Sheikh*, LIBR. CONG. (Jan. 3, 2022), <https://www.loc.gov/item/global-legal-monitor/2022-01-03/egypt-ninth-un-anti-corruption-conference-held-in-sharm-el-sheikh/> (noting that while article 103 of the Penal Code criminalizes requests for a bribe by domestic public employees, article 109 punishes the act of offering a bribe to domestic public officials).

³³⁴ *Egypt: Ninth UN Anti-corruption Conference Held in Sharm El-Sheikh*, LIBR. CONG. (Jan. 3, 2022), <https://www.loc.gov/item/global-legal-monitor/2022-01-03/egypt-ninth-un-anti-corruption-conference-held-in-sharm-el-sheikh/>.

³³⁵ *Id.*

Moreover, it is noteworthy that the Algerian Anti-Bribery Law is the broadest Arab criminal law, which is consistent with international norms and standards, in particular with the UNCAC definition of public officials.³³⁶ As part of countries' obligations to global anti-corruption instruments, most, if not all, need to conform their domestic legislation with approved standards and norms.³³⁷ As described, the UNCAC is a crucial guide for anti-corruption efforts in the Arab region.³³⁸ Egyptian authorities should consider reevaluating the scope and effectiveness of their legal provisions. The gaps between Egyptian law and the provisions of the UNCAC reveal the need to modernize and update the contemporary legal framework and take into account the latest practices regarding economic crimes. For example,

³³⁶ See MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., BUSINESS ETHICS AND ANTI-BRIBERY POLICIES IN SELECTED MIDDLE EAST AND NORTH AFRICAN COUNTRIES 21 (OECD & OCDE 2006). In this respect, Article 2/B of the Algerian Anti-Corruption Law provides that:

“Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, and (iii) any other public official may mean any person who performs a public service or provides a public utility as defined in the domestic law of the State.

Article 2/B of the Algerian Anti-Corruption Law. For further discussion about the concept of public employee in Algerian Penal (Anti-Bribery) Law, see HANAN MOHAMMAD MALIKA, GRA'EM AL-FASAD: AL-RASHWA WA AL-AKHTELAS WA TAKSO'UB AL-MOUAZAF AL-'AMM MN WAR'A WAZIFATO FI AL-FIQH AL-ISLAMI WA KANOUN MOUKAFAHT AL-FASAD AL-GAZA'RI MOUKARNN BEBA'D AL-TESHRIA'AT AL-'ARABIYA [CORRUPTION CRIMES: BRIBERY, EMBEZZLEMENT OF PUBLIC FUNDS, AND TRADING IN INFLUENCE IN ISLAMIC JURISPRUDENCE AND THE ALGERIAN COMBATING LAW ON CORRUPTION COMPARED WITH SOME ARABIC LEGISLATIONS], 45-50 (2010). This definition is very close to the same definition of the public official stated in Article 2/a, b, and c of the UNCAC. See, e.g., ANTI-CORRUPTION LAW OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA (ALJUMHURIYAH AL JAZA'IRIYAH AD DIMUQRATIYAH ASH SHA'BIYAH) “*Kanoun Moukafaht Al-Fasad Al-Gaza'ri*”, *Al-Jarida Al-Rasmiyya*, 22 Nov. 2006, at art. 2/6 (Algeria).

³³⁷ See HANAN MOHAMMAD MALIKA, GRA'EM AL-FASAD: AL-RASHWA WA AL-AKHTELAS WA TAKSO'UB AL-MOUAZAF AL-'AMM MN WAR'A WAZIFATO FI AL-FIQH AL-ISLAMI WA KANOUN MOUKAFAHT AL-FASAD AL-GAZA'RI MOUKARNN BEBA'D AL-TESHRIA'AT AL-'ARABIYA [CORRUPTION CRIMES: BRIBERY, EMBEZZLEMENT OF PUBLIC FUNDS, AND TRADING IN INFLUENCE IN ISLAMIC JURISPRUDENCE AND THE ALGERIAN COMBATING LAW ON CORRUPTION COMPARED WITH SOME ARABIC LEGISLATIONS], 45-50 (2010). This definition is very close to the same definition of the public official stated in Article 2/a, b, and c of the UNCAC. See, e.g., ANTI-CORRUPTION LAW OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA (ALJUMHURIYAH AL JAZA'IRIYAH AD DIMUQRATIYAH ASH SHA'BIYAH) “*Kanoun Moukafaht Al-Fasad Al-Gaza'ri*”, *Al-Jarida Al-Rasmiyya*, 22 Nov. 2006, at art. 2/b (Algeria).

³³⁸ See BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT 1, 16 (MENA-OECD Initiative 2009), available at <https://www.oecd.org/global-relations/46341460.pdf>. Furthermore, international efforts and instruments address misconduct commonly linked with such criminal activities as money laundering, transnational organized crime, and the illicit trafficking of narcotics. *Id.* The Egyptian Prosecutor General reported that “the corrupt practices of the twenty-first century are difficult to investigate and prosecute due to their interregional and international nexus, considers that the legal framework complies with Egypt's obligations under the UNCAC.” *Id.* at 17.

Articles 103-112 should be clarified and simplified, with active and passive bribery acts being addressed and rewritten in distinct, parallel articles. The nature of the benefits accumulating from bribery should also be identified in detail to establish the line between what is acceptable and what is not. Egypt must also apply for accession to other universal instruments, such as the 1997 OECD Convention on Combating Bribery in International Business Transactions.³³⁹ Finally, the bribery of foreign public officials must be made very obvious as a criminal offense in compliance with the UNCAC.³⁴⁰

2. *Legislation on the Protection of Witnesses and Reporters*

Witnesses and reporters are not public officials and sometimes are exploited in various ways.³⁴¹ The detection, investigation, and prosecution of corrupt practices can be challenging, as corruption often includes influential public officials, business leaders, and firms with several measures to disguise their fraud and corruption.³⁴² Additionally, witnesses may decline to testify in corruption cases because they fear that presenting truthful and honest testimony might threaten and endanger them.³⁴³ To successfully fight corruption, the general public and employees who become conscious of corrupt and dishonest practices are encouraged to report such actions and to act as witnesses when necessary.³⁴⁴ Article 33 of the UNCAC requires state parties to consider presenting procedures and techniques to defend individuals who report criminal offenses.³⁴⁵ Such persons must be protected and kept safe from all forms of retaliation for their collaboration.³⁴⁶

In criminal law and criminal procedure, it is notable that various countries have implemented different means for the protection of witnesses without any bias or discrimination against the rights of the defendant.³⁴⁷

³³⁹ See generally KHALED SULTAN, GARA'MM AL-RASHWA FI 'AKOUD AL-TIJARAH AL-DAWLIYAH: DERASSH MOUKRNAH [BRIBERY CRIMES IN INTERNATIONAL COMMERCIAL CONTRACTS: A COMPARATIVE STUDY], (2009).

³⁴⁰ See UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 17. In this context, Egyptian nationals charged with crimes in other countries may be prosecuted by domestic authorities under Egyptian law.

³⁴¹ See generally GERRY FERGUSON, GLOBAL CORRUPTION: ITS REGULATION UNDER INTERNATIONAL CONVENTIONS, US, UK, AND CANADIAN LAW AND PRACTICE 998-1000 (Unvi. of Victoria 4th ed. 2022).

³⁴² See generally *id.*

³⁴³ See generally *id.*

³⁴⁴ See generally *id.*

³⁴⁵ See generally *id.*

³⁴⁶ See, e.g., G.A. Res. 58/4, annex, United Nations Convention against Corruption, art. 33, at 26 (Oct. 31, 2003) ("Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.").

³⁴⁷ See generally FERGUSON, *supra* note 341, at 1005.

Examples include suspending disclosure of the identities of witnesses, excluding the general public from the courtroom, non-declaration of victim and witness identities, allowing testimony to be presented via communications technology such as video or other suitable means, testimony behind screens or outside of courtrooms, and penalizing acts of intimidation, torture, and reprisal against witnesses and informants.³⁴⁸

Unfortunately, in most Arab countries, including Egypt—for decades—there was *no* particular statute governing overall protection for witnesses as required by the UNCAC.³⁴⁹ On the other hand, the Egyptian government has recently considered it due to its necessity in protecting reporters and witnesses of corruption.³⁵⁰ However, more measures to fill technical gaps in the legislation on the protection of reporters and journalists have been recommended.³⁵¹

Moreover, under Egyptian anti-bribery law, trading on one's position is criminalized even if the requested or promised action was not within the public official's authority.³⁵² The "duties of the position" are inferred as any act within the legal scope of the official's position.³⁵³ Where the act is inside the official's duties, the law does not differentiate between whether or not the official's performing substantive action or abstention was correct, proper, and approved by internal service rules.³⁵⁴ This element of the crime is satisfied even if the official wrongly or incorrectly believes or claims that the requested or promised act is within the official's duties.³⁵⁵ Government

³⁴⁸ See G.A. Res. 58/4, annex, United Nations Convention against Corruption, art. 33, at 26 (Oct. 31, 2003). See also *id.* at art. 32. See generally U.N. OFF. ON DRUGS & CRIME, LEGISLATIVE GUIDE FOR THE IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION, UNITED NATIONS OFFICE ON DRUGS AND CRIME DIVISION FOR TREATY AFFAIRS (rev. 2nd ed. 2006). It is worth noting that the U.N. Legislative Guide for the Implementation of the UNCAC advocates that such actions should not be narrowly interpreted and should apply to all persons who collaborate in the criminal investigation and prosecution of corruption cases, whether or not they truly give testimony. *Id.* However, actual protection policies can be relatively expensive, and therefore, some countries lack such measures due to the absence of financial resources. *Id.*

³⁴⁹ See generally ABOU'AMER, *supra* note 294.

³⁵⁰ Law No. 58 of 1937 (Criminal Code), art. 22.

³⁵¹ See *Egypt: The Draft Law on Witness Protection Must Respect International Law*, ALKARAMA (June 3, 2013), <https://www.alkarama.org/en/articles/egypt-draft-law-witness-protection-must-respect-international-law>.

³⁵² Law No. 58 of 1937 (Criminal Code), art. 22.

³⁵³ *Id.*

³⁵⁴ See generally Ehab Yehia, *Egypt: Bribery Under Egyptian Law*, MONDAQ (Aug. 9, 2022), <https://www.mondaq.com/corporate-crime/1219438/bribery-under-egyptian-law>. For example, although a cook at a government hostel did not have a principal duty for scrutinizing the food delivered to the hostel, the cook—by virtue of his job—was in a situation to notify the proper authorities of any distasteful food delivered to the hostel. Therefore, a payment made to the cook—to persuade him to oversee and check the delivery of spoiled food—was bribery.

³⁵⁵ See, e.g., 18 U.S.C. § 201. According to 18 U.S.C. § 201 on bribery of public officials and witnesses, the term "official act" means "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit." *Id.*

interest will be equally harmed by this “illusory competency.”³⁵⁶ Not only should the integrity of the government’s work be protected, but also the administration’s reputation and the public’s trust in it.³⁵⁷ Thus, this element is established even if the appropriate relevant act is only indirectly related to the official’s duties.³⁵⁸ Therefore, it is necessary that public officials have competence (even in case of mistake), which permits them to perform administrative acts effectively.³⁵⁹

3. *Legal Entities Criminal Responsibility: What about Corporate Criminal Liability?*³⁶⁰

The current Penal Code does not cover the criminal responsibility of legal persons and entities.³⁶¹ Moreover, Egyptian law does not explicitly mention corporate liability.³⁶² Only natural persons acting as intermediaries may be convicted.³⁶³

It is problematic for the decision-maker to identify who may be engaged in bribing public officials, specifically with such complicated structures of

³⁵⁶ Law No. 58 of 1937 (Criminal Code), art. 22.

³⁵⁷ *Id.*

³⁵⁸ SULTAN, *supra* note 339, at 98-103; *Casier Criminel* [Criminal Case] case no. 575, session of 21 May 1999 (Fr.); *Casier Criminel* [Criminal Case] case no. 0209, session of 12 Dec. 1988 (Fr.). Concerning the notion of “Illusory Competency” including “Indirect, Temporal, and Partial Competence,” see André Vitu, LE DROIT PÉNAL SPECIAL [PENAL LAW: THE SPECIAL PART], 292 (Tome 1 1982). See also REVIEW OF IMPLEMENTATION OF THE CONVENTION AND 1997 RECOMMENDATION, available at <http://www.oecd.org/dataoecd/24/50/2076560.pdf>.

³⁵⁹ See C. pén. art. 177. Pursuant to Article 177 of French Penal Code provides “that while not arising directly from his/her duties expressly created by statute or regulation (règlements), is nonetheless derived from those duties . . .” *Id.*

³⁶⁰ To strengthen the Egyptian consultation process and stay in conformity with the modern international improvements regarding integrity and business regulations, the government should regulate multi-national corporations and international associations in order to further combat corruption in Egypt. Creating a sound and comprehensive business environment and spreading codes of ethics to the Egyptian market will intensify accountability, shrink economic risks, and decrease several businesses’ production costs. See MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., BUSINESS ETHICS AND ANTI-BRIBERY POLICIES IN SELECTED MIDDLE EAST AND NORTH AFRICAN COUNTRIES 21 (OECD & OCDE 2006).

³⁶¹ See *id.* at 28. In contrast, liability of legal persons (i.e., corporations) exists in some countries, such as Algeria, Bahrain, and Egypt, for other types of economic offenses which fall outside the scope of the bribery criminal act. *Id.*

³⁶² JEAN PRADEL, DROIT PENAL GENERAL [PENAL LAW: THE GENERAL PART], 571-72 (10th ed. 1995) ; Caroline Février, *La responsabilité pénale des personnes orales* [CRIMINAL LIABILITY OF LEGAL ENTITIES], COURS DE DROIT PENAL (2023), available at <https://aideauxtd.com/la-responsabilite-penale-des-personnes-morales/>; REV. DE DROIT PÉNALE ET DE CRIMINOLOGIE [PENAL LAW AND CRIMINOLOGY L. REV.], 2 (1954).

³⁶³ JEAN PRADEL, DROIT PENAL GENERAL [PENAL LAW: THE GENERAL PART], 180-83 (10th ed. 1995) (“[L]es personnes moral une volonté collective proper nee certes de la rencontre de volontés dvolontes née le bon déroulement de la réunion des volontés individuelles mais pouvant differer de la volonte de chacun des membres du groupement . . .”) (quoting Gaston Stefani, Gorges Levasseur, & Bernard Bouloc).

legal entities.³⁶⁴ Rules on the liability of legal persons for crimes are not universally stable due to the progression in techniques of corporate accountability for misconduct.³⁶⁵ Even after the uprising, it is unclear whether corporate liability might be implemented and applied in Egypt, as it is not explicitly provided under criminal law.³⁶⁶

In this regard, the Egyptian government representatives articulated that corporate responsibility might apply, even if they could not determine which article(s) addressed the liability of juristic persons or which type of accountability (criminal, civil, or administrative) applied.³⁶⁷ Three significant factors may weaken the liability concerning legal persons' bribery offenses: (a) liability is restricted to the acts of high-ranking officials such as senior managers, executive officers, and directors;³⁶⁸ (b) the identification, prosecution, and conviction of a natural individual are mandatory in order to initiate criminal proceedings against a juristic person;³⁶⁹ and (c) cases where a legal person pays on behalf of a correlated legal person (*e.g.*, a subsidiary) are not enclosed.³⁷⁰ As for this type of liability, it is unclear whether the punishments of debarment from public procurement deals or postponement from any future competitive bidding are possible under the current law.³⁷¹

Laws on corporate accounting, internal controls, and auditing, which exist in various Middle Eastern countries, might play a vital harmonizing role in dissuading bribery of public employees.³⁷² In particular, the obligation that businesses undergo regular independent auditing may provide a vital precaution for the deterrence system.³⁷³ In the same attitude, many countries have fashioned accounting and recordkeeping criteria to increase the transparency of commercial transactions.³⁷⁴

³⁶⁴ OECD et. al., ANTI-CORRUPTION ETHICS AND COMPLIANCE HANDBOOK FOR BUSINESS 49 (2013).

³⁶⁵ See generally Mohamed 'Arafa, *Battling Corruption within a Corporate Social Responsibility Strategy*, 21 IND. INT'L. & COMP. L. REV. 397 (2011).

³⁶⁶ See generally C. pén. art. 121/2.

³⁶⁷ See THIERRY DALMASSO, LA RESBONSABILITE PÉNALE DES PERSONNES MORALE [THE CRIMINAL LIABILITY OF MORAL PERSONS], 61 (1995).

³⁶⁸ See generally 'Arafa, *supra* note 365, at 399 ("In this regard, corporations must see themselves as having social responsibilities to enable meaningful progress towards fighting corruption.").

³⁶⁹ See generally *id.* at 400 ("By adopting specific codes of conduct, many companies have begun to promote integrity, transparency, and benevolent corporate citizenship both internally and externally.").

³⁷⁰ See generally *id.* at 400-01 ("[T]hey must also work toward removing corruption, bribery, and unethical behavior from corporate culture. Several corporations have argued that accountability and transparency reduce corruption, with administrative integrity being crucial to achieving better governance. Yet while the world realizes the importance of eliminating corruption, the problem of how to curb this phenomenon persists.").

³⁷¹ See, *e.g.*, Law No. 159 of 1981 (Corporate Law), *Al-Jarida Al-Rasmiyya*, 1981, vol. 40 (Egypt).

³⁷² See, *e.g.*, *id.*

³⁷³ See, *e.g.*, *id.*

³⁷⁴ See, *e.g.*, Law No. 95 of 1992 (Capital Market Law), *Al-Jarida Al-Rasmiyya*, 1992 (Egypt) (explaining that such countries include Egypt, Lebanon, and Jordan. These countries have engaged in notable efforts in enhancing transparency and corporate financial reporting requirements with

In Egypt, all companies, along with commercial firms registered and listed under the Corporate Law No. 159 of 1981, have an obligation to prepare and present annual audited financial reports consistent with the accounting, disclosure, and auditing standards in the Accounting Practice Law No. 133 of 1951.³⁷⁵ In some countries, the inadequacy of bookkeeping and auditing conditions may involve severe punishment.³⁷⁶

As a result, recent assessments by Egypt's Capital Market Authority publicized that a number of Egypt's listed enterprises had not fulfilled the disclosure requirements and audit reports in compliance with the requisite reporting format.³⁷⁷ It is understood from the *IMF Report on the Observance of Standards and Codes: Accounting and Auditing in Egypt*, issued in August 2002, that due to some uncertainty in the legal provisions regarding the civil and criminal responsibilities of parties in charge of bringing misleading or improper information in audited financial reports, Egyptian accountants and auditors had effective immunity for professional wrongdoing which opens the door to escape impunity.³⁷⁸ In this context, it is highly recommended that corporations consider bribery, fraud, non-compliance with registration, disclosure requirements, and wrongful intermediation reasonable grounds for ineligibility for future competitive commercial dealings.³⁷⁹

Under some Middle Eastern jurisdictions, while workers of a corporation that bribes a public official may be sanctioned for their conduct, the company may not.³⁸⁰ Some Middle Eastern courts have delivered decisions holding that "corporate entities are *not* criminally responsible for bribery criminalities committed by their officials."³⁸¹ For instance, the Egyptian Supreme Court has long held that "the individual servants who commit the crime of bribery, *not* their corporate employer, are personally responsible."³⁸²

international accounting and audit standards. Further, in Egypt, pursuant to the Capital Market Law No. 95 of 1992 requires all registered enterprises to prepare financial declarations in compliance with IAS).

³⁷⁵ SULTAN, *supra* note 339, at 98-102.

³⁷⁶ *See generally* CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE, EGYPTIAN CITIZENS' PERCEPTIONS OF TRANSPARENCY AND CORRUPTION (2009) (stating that these measures advance the transparency values of commercial operations in order to achieve credibility only when an adequate managerial controlling mechanism is in place to implement them effectively. For instance, in Egypt, no operative devices exist for imposing sanctions on auditors and inspectors who fail to comply).

³⁷⁷ *See generally id.*

³⁷⁸ SULTAN, *supra* note 339, at 98-103.

³⁷⁹ *Id.* at 102-03.

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 29 ("The Egyptian Court of Cassation has long ruled that Juridical persons are not criminally responsible for crimes committed by their representatives. The persons who commit the crime are the ones who are personally responsible . . ."). It should be noted that it could be argued that there

In Egypt, under Article 16 of Law No. 80 of 2002 on money laundering, in cases where money laundering is committed by a legal entity, this entity shall be *jointly* liable for the payment of any monetary sanctions and damages if the crime was committed by a servant on behalf of the legal entity.³⁸³ Efforts to avoid and detect money laundering in connection with the bribery of public officials can attain actual outcomes only when anti-money laundering laws explicitly list bribery as a *predicate* criminal offense.³⁸⁴

4. Codes of Conduct for Public Officials

To erect barriers against corruption, it is vital to ensure that ethical standards are well-established and familiar to public officials and employees. Public officers should be subject to definite standards and ideals, such as integrity, honesty, and the correct, impartial, honorable, and proper performance of their offices.³⁸⁵ To accomplish this, domestic statutes must

is no uniform definition of the public official in the criminal code corresponds to the agreed concept of administrative law scholars. *See id.* at 25. As the term of public official in administrative law is not general or comprehensive, to apply to the meaning of the public employee regarding the public interest's crimes stated in the penal code, as these sorts of criminal acts represents—in the eyes of law—breach, trafficking or exploitation of the employee's position, and duties of public office as set out in law. *See id.*

³⁸³ Law No. 80 of 2002 (Anti-Money Laundering Law “AMLL”), *Hosni Mubarak*, 2002, art. 16 (Egypt), as amended by Law No. 78 of 2003, *rahea al akhar*, 2003 (Egypt). Furthermore, according to Law No. 3/2005, promulgating the Law on the Protection of Competition and the Prohibition of Monopolistic Practices, “[m]anaging persons of the legal entity are separately criminally liable under Article 25 if they had *knowledge* of the acts. The legal person is also *jointly* liable if the breach was committed by an employee acting in the name of the legal person or on its behalf.” Law No. 3 of 2005 (Protection of Competition & the Prohibition of Monopolist Practices), 2005 (Egypt), available at <https://www.gafi.gov.eg/English/StartaBusiness/Laws-and-Regulations/Publishing Images/Pages/TradeLaws/Law%20No%203%20of%202005%20Promulgating%20the%20law%20on%20Protection%20of%20Competition%20and%20Prohibition%20of%20Monopolistic%20Practices.pdf>.

³⁸⁴ *See* EXECUTIVE REGULATIONS OF THE ANTI-MONEY LAUNDERING LAW, art. 2 (Egypt), available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjrk5Pl07eCAxV8C0QIHRFCD0IQFnoECA0QAQ&url=https%3A%2F%2Fwww.antimoneylaundering.org%2Fdocument%2Fdefault.aspx%3FdocumentUId%3DA19810E2-AFC9-4185B856B5B8088BB2B1&usg=AOvVaw1J3oNTaCzhr75fxR3dMmi8&opi=89978449>. Also, this statute governs the “Know-Your Customer” policy and obliges banks to report suspicious operations to Egyptian financial institutions, especially the newly-created financial intelligence unit set up at the Central Bank. *Id.* It should be noted that in the United Kingdom, the UK Bribery Act 2010 not only makes bribery and corrupt deeds illegitimate, but also holds UK corporations liable for failing to apply suitable procedures to prevent such acts by those employed for the firm or on its behalf, no matter where in the world the performance takes place. *The UK Bribery Act 2010: principles, offences, and penalties*, PINSENT MASONS (Aug. 18, 2023), <https://www.pinsentmasons.com/out-law/guides/the-uk-bribery-act-2010-principles-offences-and-penalties>.

³⁸⁵ ‘Arafa, *supra* note 365, at 397, 410 (“Most codes contain a statement of the corporation’s major philosophical principles and values and articulate the ethical parameters in guiding employees’ actions and behaviors. . . . Codes of ethics represent an important part of corporate culture and constitute an essential CSR tool. They should provide a supportive, moral framework for employees rather than constitute a repressive, dictatorial method of control over them.”).

include guidance on how public officials should conduct themselves in relation to those rules and norms and how they may be held liable for their activities and decisions.³⁸⁶

Experience shows that it is significant that the principles and ethical values be acknowledged and accepted by public officials.³⁸⁷ Best practices include improving guidelines through open discussion, consultation, and contribution rather than a top-down approach, supplementing moral norms to employment contracts, and systematic awareness-raising creativities.³⁸⁸ Many codes of conduct have anti-bribery and anti-corruption provisions.³⁸⁹ These provisions are stated either directly or indirectly, stressing the values of honesty, trust, integrity, transparency, accountability, and through rules governing gifts and hospitality.³⁹⁰

The advantage of such codes is that they coach public employees about the behavior to embrace in their day-to-day performance and update and inform citizens about the conduct they are entitled to assume from those who occupy public office.³⁹¹ Codes of conduct with detailed guidelines and rules promote practicality, making identifying and reporting violations easier.³⁹²

Having a code of conduct is *not* mandatory under current Egyptian law.³⁹³ However, it is a requirement under the UNCAC.³⁹⁴ Some public bodies, such as schools, universities, hospitals, banks, unions, and others, have voluntarily decided to have their own ethical codes.³⁹⁵ In the absence of such a code, conduct may diverge enormously from one public institute to another.³⁹⁶ Unlike other governmental administrative bodies, local public

³⁸⁶ See generally Charlotte Durrant, *What Are the Advantages and Disadvantages of Codes of Conduct in Regulating Moral Behavior in Business?* (2008) (unpublished student paper, 2008 Institute of Business Ethics essay competition postgraduate category winner) (on file with author).

³⁸⁷ See generally *id.*

³⁸⁸ 'Arafa, *supra* note 365, at 411 ("Ethical leadership is essential if codes of conduct are to be adhered to and are to be used to successfully regulate the moral behavior of employees. If employees consider corporate leadership unethical, codes of conduct will fall into contempt. Therefore, codes are only as good as the leaders who advocate for them.").

³⁸⁹ *Id.*

³⁹⁰ *Id.*

³⁹¹ See generally Durrant, *supra* note 386.

³⁹² See generally *id.* See also UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 33.

³⁹³ See generally SOFIA WICKBERG, OVERVIEW OF CORRUPTION AND ANTI-CORRUPTION IN EGYPT (Transparency Int'l 2015), available at https://knowledgehub.transparency.org/assets/uploads/helpdesk/Country_profile_Egypt_2015.pdf.

³⁹⁴ See UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 8.

³⁹⁵ See, e.g., IESBA CODE OF ETHICS PROHIBITIONS APPLICABLE TO AUDITS OF PUBLIC INTEREST ENTITIES, INT'L ETHICS STANDARDS Bd. FOR ACCT. (2009), https://www.ethicsboard.org/_flysystem/azure-private/meetings/files/6013_0.pdf.

³⁹⁶ See generally *Ethics Codes: How they can curb corruption in public service if part of a smart anti-corruption infrastructure*, ANTI-CORRUPTION EVIDENCE RSCH. PROGRAMME (Sept. 30, 2020), <https://ace.globalintegrity.org/ethics-codes-how-they-can-curb-corruption-in-public-service-if-part-of-a-smart-anti-corruption-infrastructure/>. Concerning the public officials at lower ranking, the law leaves all the sanctions imposing on them to the State Civil Servants Law that entirely states

employees do not have a law requiring local public governmental establishments to have codes of conduct.³⁹⁷ Thus, local bureaucrats have not established such codes.³⁹⁸

5. *The Actus Reus (Material Element)*

a. *Bribery Criminal Activity*

Active bribery provisions are very concise and only consider active bribery as it is related to passive offenses.³⁹⁹ For instance, Article 107/b states, “The briber and mediator shall be punished with the penalty prescribed for the bribe taker.” Articles 109/b-1 and 103-105/b take a similar approach.⁴⁰⁰ It is not apparent whether active bribery is penalized in line with the sanction incurred by the public servant or with the punishment effectively pronounced.⁴⁰¹ On the other hand, the crime of passive corruption for actions in compliance with the public employee’s ordinary duties is penalized under Article 103 of the Penal Code and Article 18 of Law No. 62 of 1975 on illegal profit-making.⁴⁰² According to this statute, any person’s wealth should reflect their legitimate sources of income, meaning that their wealth should be proportionate to their income, and a *fortiori* notion should be applied to public officials because of the power and trust delegated to them by the public.

Consequently, there should not be any discrepancy between the genuine sources of income of a public employee and the extent of assets under their control.⁴⁰³ In case of incongruity, competent authorities should thoroughly examine the discrepancy.⁴⁰⁴ The public official should also provide a

the sanctions but not the forbidden conduct. *See, e.g.*, Law No. 81 of 2016 (promulgating the Civil Service Law), 2016 (Egypt). Thus, a specific code of conduct should be launched to govern such types of relationships. *Id.*

³⁹⁷ *See generally* Law No. 62 of 1975 (Illegal Profit-Making), *Al-Jarida Al-Rasmiyya*, 1975, art. 18 (Egypt); *cf. id.* at art. 2.

³⁹⁸ *See generally* WICKBERG, *supra* note 393. In this sense, TIC underscored the importance to adjust and modernize the standing law governing State Civil Servants to guarantee the protection of the individual along with the community rights and sets obvious foundations for punishment and reward through decentralization of public administration, evolving disciplinary procedures, stimulate transparency, accountability, and fight administrative corruption. *Id.*

³⁹⁹ *See generally* MOHAMMAD Z. ABOU‘AMER, KANOUN AL-IJRA‘AT AL-JINA‘IYAH [CRIMINAL PROCEDURAL LAW], (2008).

⁴⁰⁰ *Id.*

⁴⁰¹ *See* ABOU ‘AMER, *supra* note 294. In other words, active corruption—the giving of bribes or any other undue advantage—to public officials, is equally penalized. *Id.*

⁴⁰² *See id.*; *see also* Law No. 62 of 1975 (Illegal Profit-Making), *Al-Jarida Al-Rasmiyya*, 1975, art. 18 (Egypt).

⁴⁰³ *Cf. id.* at art. 2.

⁴⁰⁴ *See id.* at arts. 5-6.

reasonable legal ground for it.⁴⁰⁵ If he cannot justify the difference, he should be convicted of illicit enrichment because the wealth he cannot prove or clarify might result from a bribe, embezzlement, or other corrupt practice.⁴⁰⁶ However, for the crime to be proven, it must be shown that it was “intentionally” committed according to the general principles of the Egyptian Penal Law.⁴⁰⁷

Therefore, the *actus reus* of a passive bribery offense entails requesting or soliciting a bribe when an official indicates to another person that the latter must pay a bribe for the official to act or refrain from acting.⁴⁰⁸ Articles 103-105/b covers such circumstances.⁴⁰⁹ The soliciting of a bribe must be in consideration of one of the following acts achieved by a public servant:

1. Performing an act that falls within the scope of their duties;⁴¹⁰
2. Performing an act that is wrongfully considered as falling within the scope of their competencies;⁴¹¹
3. Abstaining from carrying out an act falling within the scope of their duties or committing a violation of any of their duties;⁴¹²
4. Carrying out unintentionally an act that falls within the scope of their duties or which is wrongly assumed to fall within their scope of duty, pretending that it falls within their scope of work, abstaining from carrying it out, or committing a breach of their duties;⁴¹³
5. Accepting a gift from a person in return for rendering a service (benefit) that falls within the scope of their duties;⁴¹⁴ and
6. Performing or abstaining from carrying out an obligation falling within the scope of their work or committing a breach of his duties due to a request, recommendation, or intermediation.⁴¹⁵

⁴⁰⁵ See *id.* at art. 2.

⁴⁰⁶ *Id.*; see also ABOU ‘AMER, *supra* note 294.

⁴⁰⁷ ABOU ‘AMER, *supra* note 294.

⁴⁰⁸ *Id.*; see also Egyptian Penal Code Egyptian Crim. Code, arts. 103-105/b (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf.

⁴⁰⁹ *Id.*

⁴¹⁰ See Egyptian Penal Code Egyptian Crim. Code, arts. 103 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf.

⁴¹¹ See *id.* at art. 103(b). See generally AMMAL ‘OSMAN, SAHRAH KANUN AL-‘UQUBAT—AL-KSEM AL-KHAS [EXPLANATION OF THE PENAL LAW: THE SPECIAL PART], (1990) (explaining the definition of bribery and its elements).

⁴¹² See Egyptian Penal Code Egyptian Crim. Code, arts. 104 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf.

⁴¹³ *Id.*

⁴¹⁴ *Id.* at art. 105.

⁴¹⁵ *Id.*

In this regard, the act of soliciting a bribe is complete once a public official requests or solicits the bribe.⁴¹⁶ There need *not* be an agreement between the briber and the official or evidence of agreement of the corrupt act.⁴¹⁷ However, “receiving”⁴¹⁸ or “accepting”⁴¹⁹ a kickback can occur only when an official actually receives a bribe *after* an agreement pursuant to Articles 103-105/b, which does not create any of the differences mentioned above.⁴²⁰

Further, “offering” occurs when a briber designates that they are ready to give a payoff.⁴²¹ Under Article 109/b-1 of the Penal Code, “imprisonment and a fine . . . shall be imposed on whoever offers a bribe, even when not accepted.”⁴²² “Promising” refers to a briber who agrees with a public employee to provide a bribe (*e.g.*, where the briber enters an agreement with a public servant).⁴²³ Under Articles 107 and 107bis, an illicit promise is generated by any advantage or benefit gained or accepted by the public official.⁴²⁴ “Giving” occurs when the briber actually transfers the bribe.⁴²⁵ These acts constitute active bribery.⁴²⁶ By the same token, under Article 107bis, an illegal gift is any benefit obtained or accepted by a public official.⁴²⁷

⁴¹⁶ See NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 146.

⁴¹⁷ ‘AMMAL ‘OSMAN, SAHRAH KANUN AL-‘UQUBAT—AL-KSEM AL-KHAS [EXPLANATION OF THE PENAL LAW: THE SPECIAL PART], (1990).

⁴¹⁸ *Id.* at 278. This is an act in which the employee receives the advantage through bribery. *Id.* The subject of this promise represents the cornerstone of the material element as the most serious images of bribery are directly preceded by a promised bribe. *See id.* at 290-99.

⁴¹⁹ *Id.* In this context, the court can determine whether there was an acceptance from all the circumstances surrounding the incident, including circumstantial evidence prior to the acceptance. *Id.* The acceptance may also be made verbally or in writing, explicitly or implicitly. ‘AMMAL ‘OSMAN, SAHRAH KANUN AL-‘UQUBAT—AL-KSEM AL-KHAS [EXPLANATION OF THE PENAL LAW: THE SPECIAL PART], 290-99 (1990). According to the Egyptian jurisprudence, the *tacit* acceptance is required to be in a serious act of free will and in a full conscious. *Id.*

⁴²⁰ *See generally* ABOU‘AMER, *supra* note 294.

⁴²¹ *Id.*

⁴²² *Id.* Attempted bribery also constitutes an offense under Article 109/b-1, when a bribe is offered but not accepted and subject to imprisonment and a fine of EGP 500 to 1,000. *See generally id.*

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ MOHAMMAD ZAKY ABOU‘AMER, KANUN AL-‘UQUBAT, AL-KSEM AL-KHAS, AL-GOZ‘E AL‘AWEL: AL-GRA‘MM AL-MODRAA BELMASLAHA AL-‘AMA, AL-RASHWA WA AL-GRA‘MM AL-MOLHKA BEHA [THE EGYPTIAN PENAL LAW—THE SPECIAL PART, PART I: THE CRIMINAL OFFENCES AGAINST PUBLIC INTEREST, BRIBERY AND THE RELATED-CRIMINAL OFFENCES], 617-21 (1983).

⁴²⁶ *Id.*

⁴²⁷ *Id.* For instance, two high-ranking Egyptian officials were arrested on charges of taking bribes from building firms seeking contracts in a multi-million-dollar restoration project in Cairo. Both defendants were being investigated about the criminal charges against them, but no details were given on the companies or on the amounts of money that allegedly changed hands. *Id.*

Regarding criminal complicity (aiding and abetting) under Egyptian criminal law, the *mere* offer of a bribe could not be criminally punished.⁴²⁸ Thus, the first paragraph of Article 41 of the Penal Code provides that “[e]xcept in cases where the law specially provides otherwise, an accessory to an offence shall incur the penalty prescribed by law for the offence.”⁴²⁹ From this provision, the legislation appears to endorse the same sentence for both the principal and accomplice.⁴³⁰ On the other hand, an attempt to bribe a public official would not be penalized if it did not result in the official’s acceptance of the bribe.⁴³¹ In a remarkable decision regarding bribery criminalization, the Egyptian Supreme Court held:

Bribery has not been committed by the briber unless the public official seriously intends to accept it, but not when he pretends to accept the inducement, since then—as in the categorical refusal—there is not a [r]eal

⁴²⁸ Accordingly, Article 39 of the Penal Code defines “principal” as follows: “A person is concerned as a principal in the commission of an offense: (1) who [commits] such offense whether alone or in conjunction with others; or (2) who in the case of an offence consisting of two or more acts, [knowingly] participates in such offence by doing one or more such acts . . .” Egyptian Penal Code Egyptian Crim. Code, arts. 39 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf. On the other hand, Article 40 of the same code defines “accomplice” as follows: “A person is concerned as an accessory in the [c]ommission of an offense: (1) who instigates to the commission of the act constituting the offense, provided that the act is the consequence of such instigation; or (2) who is a party to an arrangement having for its object the commission of the offense, provided that the offense is the consequence of such arrangement, or (3) who [knowingly] supplies weapons or other implements or means employed in the commission of the offense, or in any manner aids the principal or principals concerned in the offense in the preparation, facilitation, or commission thereof.” *Id.* at art. 40. Also, Article 42 of the same code stipulates that: “An accessory shall be liable to the penalties prescribed by law, even though the [principal] may exempt from all penalty by reason of some ground of justification or by reason of the absence of criminal intent on his part or by reason of any other circumstances personal to himself.” *Id.* at art. 42. With respect to the criminal participation of the criminal offense rules in Egyptian law, *See generally id.* at arts. 39–40, 42. *See generally* AHMAD ‘AWAD BELAL, MABAD’E KANUN AL-‘UQUBAT AL-MASRY: AL-KESM AL-‘AMM [PRINCIPLES OF EGYPTIAN CRIMINAL LAW, THE GENERAL PART, BOOK I: THE THEORY OF CRIMINAL OFFENCES], 295–347 (2004). For further discussion on accomplice criminal liability in the Egyptian legal system, *see generally* Mohamed ‘Arafa, *Criminal Complicity, Accomplice Criminal Liability to the Criminal Offences: A Comparative Analysis between the Egyptian Criminal Law System and the Criminal Law System of the United States of America*, 67 REVISTAS JURÍDICAS SÍNTESE REVISTA DE ESTUDOS CRIMINAIS [PONTIFICAL CATHOLIC U. CRIM. STUD. L. J.] (2018).

⁴²⁹ Law No. 58 of 1937 (Criminal Code), art. 22.

⁴³⁰ *See id.* Accomplices, including third-party beneficiaries—any person who is assigned to receive the payoffs or benefit, or learns of it, and is agreed to by the bribe-taker—are sentenced to one-year in jail and a fine equal to the amount of the bribe under Article 108/b, if they are *knowingly* involved in the bribe. *Id.*

⁴³¹ *See id.*

trading or peddling by the official of his position . . . and the abuse of the official's position and trust does not exist⁴³²

b. Forms of Bribes

Bribes can take the form of both fiscal and non-fiscal advantages.⁴³³ Article 107 defines inducement as “any benefit obtained, accepted, or learned of by the bribe-taker or by the person he appoints to that end, shall be considered as a promise or donation, whatever its name or kind, or whether that benefit is physical or non-physical.”⁴³⁴

A review of anti-bribery provisions proposes a broad interpretation of what constitutes a bribe.⁴³⁵ Many such provisions apply to any benefit or advantage granted.⁴³⁶ Accordingly, it may be tangible, such as a gift in cash or loans, or intangible, such as obtaining employment or a promotion for the official's relative or entertainment of a sexual or similarly inappropriate nature.⁴³⁷ By the same token, the benefit may be inferred from the terms of a

⁴³² ‘OSMAN, *supra* note 417, at 98-100. As a result, the Egyptian Penal Law was amended to prohibit offering a bribe. George Sadek, *Egypt: Ninth UN Anti-corruption Conference held in Sharm El-Sheikh*, LIBR. OF CONG. (Jan. 3, 2022), [https://www.loc.gov/item/global-legal-monitor/2022-01-03/egypt-ninth-un-anti-corruption-conference-held-in-sharm-el-sheikh/#:~:text=Article%20107\(b\)%20prohibits%20the,the%20bribe%20is%20not%20accepted](https://www.loc.gov/item/global-legal-monitor/2022-01-03/egypt-ninth-un-anti-corruption-conference-held-in-sharm-el-sheikh/#:~:text=Article%20107(b)%20prohibits%20the,the%20bribe%20is%20not%20accepted).

For further discussion on the criminalization of attempted offenses in Egyptian criminal law, see AHMAD ‘AWAD BELAL, MABAD’E KANUN AL-‘UQUBAT AL-MASRY: AL-KESM AL-‘AMM [PRINCIPLES OF EGYPTIAN CRIMINAL LAW, THE GENERAL PART, BOOK I: THE THEORY OF CRIMINAL OFFENCES], 265-69 (2004). In this context, Article 45 of the Egyptian Penal Code defines attempt as being “[t]he commencement of execution of an act with the intent to commit a felony or a misdemeanor if [c]ompletion thereof has been interrupted or has failed of effect owing to [c]ircumstances [independent] of the will of the party. Further, shall constitute an attempt neither the determination to commit the offense nor the preparatory acts for its commission.” See Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Jarida Al-Rasmiyya*, 1973, art. 45 (Egypt). See generally Albaer Sheron, *The Objective and Subjective Perspectives in the Theory of Criminal Attempt*, 7 L. J. L. & ECON. 254 (1974); ‘Arafa, *supra* note 365, at 399.

⁴³³ See AHMAD ‘AWAD BELAL, MABAD’E KANUN AL-‘UQUBAT AL-MASRY: AL-KESM AL-‘AMM [PRINCIPLES OF EGYPTIAN CRIMINAL LAW, THE GENERAL PART, BOOK I: THE THEORY OF CRIMINAL OFFENCES], 265-69 (2004). In other words, bribes can take on several diverse shapes and forms, but typically they entail corrupt intent. *Id.* There will usually be a *quid pro quo* transaction that both parties will benefit. *Id.* A bribe could be the direct or indirect promise, offering, or authorization, of anything of value, offer or receipt of any kickback, loan, fee, reward or other advantage, or giving of aid, donations or voting designed to exert improper influence. *Id.*

⁴³⁴ See Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Jarida Al-Rasmiyya*, 1973, art. 45 (Egypt); see also ABOU‘AMER, *supra* note 294, at 74-76, 110-14, 152.

⁴³⁵ ABOU‘AMER, *supra* note 294, at 82-88.

⁴³⁶ *Id.* at 85-86.

⁴³⁷ *Id.* The Egyptian Anti-Bribery laws generally do not expressly allow promotional gifts, good-will presents, or loyal courtesies. *Id.* However, in practice and sometimes in the eyes of the law, socially accepted gifts are permitted, on certain occasions (*e.g.* the feast gift, the Islamic New Year or the end of Ramadan), tokens of appreciation or gratitude, invitations to events and if such gifts or activities are of minor and nominal value and falling within reasonable bounds of value and occurrence. *Id.* In addition, the size of the gift and its value may have significance in the decision of a public prosecutor to initiate or not the criminal motion and proceedings. *Id.*

contract.⁴³⁸ Thus, any special benefit an official obtains—for example, by selling his personal property for a price higher than its actual value or by purchasing property at a price less than its actual value—is considered a “benefit.”⁴³⁹ Egyptian law also does not distinguish between a benefit that an official personally receives and a benefit obtained for another party.⁴⁴⁰ For example, Articles 103, 103bis, 104, and 104bis apply to “every public official requesting [a benefit] for himself or for another,”⁴⁴¹ and Article 107 states that “any benefit obtained by the recipient of the bribe, or by the person designated by him [to receive the bribe] or knowing and agreeing to it, shall be considered a promise or a gift.”⁴⁴²

The Egyptian anti-bribery provisions are so broadly drafted as to reach virtually any attempt to trade on a government position, trust, or its duties, regardless of the timing of the benefit.⁴⁴³ Therefore, an official may be deemed the recipient of a bribe even though he did not actually accept a payment.⁴⁴⁴ The Egyptian anti-bribery law considers an official’s *mere* request to be a completed crime, even if such request was not accepted by the other party, since an official who offers his or her position for trade is not in an inferior degree of criminality than the one who actually completes the bribery transaction.⁴⁴⁵

In summary, the recipient of the bribe obtains a sum in advance in exchange for performing or abstaining from an action.⁴⁴⁶ However, even if the recipient does not receive a benefit in advance, the crime is deemed complete when the recipient accepts the briber’s promise to pay a benefit at a later time.⁴⁴⁷ In this respect, it is worth noting that the crime of bribery is *not* “conditional” on the briber’s subsequent payment of the bribe because the official’s *mere* agreement to a later payment has already exploited their position and the public interest and trust have already been threatened by the official’s abuse of their position.⁴⁴⁸

⁴³⁸ MOHAMMAD ZAKY ABOU’AMER, KANUN AL-’UQUBAT, AL-KSEM AL-KHAS, AL-GOZ’E AL’AWEL: AL-GRA’MM AL-MODRAA BELMASLAHA AL-’AMA, AL-RASHWA WA AL-GRA’MM AL-MOLHKA BEHA [THE EGYPTIAN PENAL LAW—THE SPECIAL PART, PART I: THE CRIMINAL OFFENCES AGAINST PUBLIC INTEREST, BRIBERY AND THE RELATED-CRIMINAL OFFENCES], 85-86 (1983).

⁴³⁹ *Id.*

⁴⁴⁰ *Id.* at 82.

⁴⁴¹ *Id.*

⁴⁴² ‘OSMAN, *supra* note 417, at 300-03.

⁴⁴³ *Id.* at 304-06.

⁴⁴⁴ *Id.* at 308-10.

⁴⁴⁵ ABOU’AMER, *supra* note 394.

⁴⁴⁶ *Id.*

⁴⁴⁷ ‘OSMAN, *supra* note 417.

⁴⁴⁸ *Id.*

c. The Problem of “Facilitation Payments”

In many countries, including Egypt,⁴⁴⁹ it is a customary business practice to make gifts of small amounts to low-ranking government officials to facilitate or expedite a routine action or process.⁴⁵⁰ Egyptian penal law contains *no* provisions covering this type of payment, leaving considerable doubt.⁴⁵¹ Generally speaking, facilitation payments are “a form of bribery made for the purpose of expediting or facilitating the performance by a public official of a routine governmental action, and not to obtain or retain business or any other improper advantage.”⁴⁵² Although there are regulations governing facilitation payments to civil servants, the regulations are not effective in practice.⁴⁵³ Traditions and conventions developed over the past decades have firmly established and recognized this practice.⁴⁵⁴

⁴⁴⁹ Efforts of the European Union (EU) Member States’ self-governing national laws should not be ignored as they were committed to creating or drafting new laws, adapting these rules to fulfill the conditions and guidelines requisite under other adopted statutes. *See generally* Claudius O. Sokenu, *Bribery Act is Not Perfect but Brings UK into Line with OECD*, THE GUARDIAN (Feb. 4, 2011, 8:48 AM), <https://www.theguardian.com/law/2011/feb/04/bribery-act-delay>. A noticeable recent statute that has been gaining attention is the United Kingdom (UK) Bribery Act. *Id.* It has been described overbroad and more comprehensive than the Foreign Corrupt Practices Act (FCPA), a United States statute on corruption, because of its wide scope of application. *Id.* However, it is said to be bringing the UK in line with what is expected under the Organization for Economic Co-operation and Development (OECD) treaty. *Id.* This echoes that the UK Bribery Act is one of the most inclusive anti-corruption policies. *Id.* The UK Bribery Act 2010 makes no division between facilitation payments and complete bribery and corruption irrespective of size or domestic cultural prospects, even if that is “how business is done here.” *Id.* On the other hand, in case the facilitation payments are made under the use of force (duress, safety or security issues, or harm), the victim must contact the Group Compliance Officer and record the basic transaction within the consultant. Claudius O. Sokenu, *Bribery Act is Not Perfect but Brings UK into Line with OECD*, THE GUARDIAN (Feb. 4, 2011, 8:48 AM), <https://www.theguardian.com/law/2011/feb/04/bribery-act-delay>. For further details regarding the UK Bribery Act, *see generally* EOIN O’ SHEA, THE BRIBERY ACT 2010: A PRACTICAL GUIDE (Jordan Publ’g Ltd. 2011).

⁴⁵⁰ *See* Barry & Richard, *Doing business in Egypt? Corruption Risks Before & After the Bribery Act*, THEBRIBERYACT.COM (May 26, 2011, 2:56 AM), <https://thebriberyact.com/2011/05/26/doing-business-in-egypt-corruption-risks-before-after-the-bribery-act/#:~:text=Corporates%20and%20individuals%20involved%20directly,force%20of%20the%20Bribery%20Act.&text=Egyptian%20law%20has%20a%20wide,the%20breadth%20of%20the%20law>.

⁴⁵¹ *See* Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Jarida Al-Rasmiyya*, 1973 (Egypt).

⁴⁵² *Id.* Facilitation payments are prohibited by Egyptian Civil Servants Law. *Id.* Facilitation payments are normally needed by low-level and low-income bureaucrats in order to attain ranks of service to which one would formally be authorized without such payments. *Id.*

⁴⁵³ *See* Mike Koehler, *The Payments...Would Not Constitute Facilitation Payments for Routine Governmental Actions Within the Meaning of the FCPA*, FCPA PROFESSOR (Nov. 10, 2010), <https://fcpaproffessor.com/the-payments-would-not-constitute-facilitation-payments-for-routine-governmental-actions-within-the-meaning-of-the-fcpa/>.

⁴⁵⁴ *See* Egypt Risk Report, GAN INTEGRITY (Sept. 30, 2020), <https://www.ganintegrity.com/country-profiles/egypt/#:~:text=EG%20Egypt%20risk%20report&text=Corruption%20is%20an%20obstacle%20for,the%20forms%20of%20corruption%20encountered>. These conventions became stronger than the laws criminalizing such corrupt practices. *Id.* This report cites that “facilitation payments

The practice of facilitation is illegal in most countries.⁴⁵⁵ To combat the practice, the Egyptian government should specify a subsection within the bribery statute to include facilitation payments that follows the United States Foreign Corrupt Practices Act of 1977.⁴⁵⁶ It must provide guidance on what is and is not permissible, emphasizing how to evaluate what is acceptable, and also specifying what is never acceptable, what is usually permissible, and under which circumstances the evaluation criteria should apply from the legal point of view.

6. *The Mens Rea (Moral Element) - Corruption and Criminal Intent—Faute Intentionnelle*⁴⁵⁷

In order to have culpability, an offender must have knowledge of all elements creating the crime and a free will directed towards their realization.⁴⁵⁸ Knowledge and free will must be present for the accused's criminal to be found guilty.⁴⁵⁹ Otherwise, the *mens rea* will fail.⁴⁶⁰

A corruption pact appears to be required.⁴⁶¹ In other words, there must be a meeting of minds between the briber and the recipient of the bribe.⁴⁶² Even though this pact is not a definite agreement, it indicates that the briber knew and recognized that the purpose of their proposal was to *bargain* for a public decision or omission and that the public official was mindful and aware that they would receive an illegal gain in return.⁴⁶³ Therefore, the *mere* offer of a bribe is prohibited explicitly and, thus, punishable under the Penal Statute.⁴⁶⁴ Accordingly, for the payor to be guilty of bribery, they must have

and gifts are an established part of 'getting things done,' despite these practices being criminalized under Egyptian law." *Id.*

⁴⁵⁵ See GLOBAL INTEGRITY REPORT 2008 (Glob. Integrity 2019), available at https://www.globalintegrity.org/wp-content/uploads/2019/08/GIRScorecard2008_Egypt_comments.pdf.

⁴⁵⁶ See generally Mike Koehler, *The Payments...Would Not Constitute Facilitation Payments for Routine Governmental Actions Within the Meaning of the FCPA*, FCPA PROFESSOR (Nov. 10, 2010), <https://fcpprofessor.com/the-payments-would-not-constitute-facilitation-payments-for-routine-governmental-actions-within-the-meaning-of-the-fcpa/>; Mike Koehler, *The Story of the Foreign Corrupt Practices Act*, 73 OHIO ST. L. J. 929, 1003 (2012).

⁴⁵⁷ 'OSMAN, *supra* note 417, at 286 in "LES MOTIVATIONS EN DROIT PENAL" [MOTIVATIONS IN PENAL LAW], ("L'intérêt personnelle a agir de l'acteur de l'infraction de, la cause psychologique particuliere qui a détermine son acte.").

⁴⁵⁸ See BELAL, *supra* note 433, at 135.

⁴⁵⁹ *Id.* at 136-40.

⁴⁶⁰ *Id.* at 192. Consequently, gifts, promises or gratification which have been offered or taken without consideration in line with mutual practice, are not considered an illegal inducement. ABOU'AMER, *supra* note, 399, at 179; SULTAN, *supra* note 339, at 108-09.

⁴⁶¹ ABOU'AMER, *supra* note 399, at 102-07.

⁴⁶² *Id.*

⁴⁶³ *Id.* at 104-06.

⁴⁶⁴ *Id.* An official's acceptance of the bribe must be serious and correct; thus, if he pretends to accept the bribe in order to assist the authorities' apprehension of the offeror *flagrante delicto*, then the

intended to reward the employee for a previous act, induce the official to perform or abstain from performing an act, or misuse his office.⁴⁶⁵

Criminal intent may be proven in various ways, including circumstantial evidence.⁴⁶⁶ It is not necessary that intent be expressly declared by the recipient of the bribe or by the briber, orally or in writing.⁴⁶⁷ Rather, courts are guided by the circumstances surrounding the accusation.⁴⁶⁸ Of course, the burden of proving the criminal intent—as a general principle—is placed on the state’s public prosecution.⁴⁶⁹

Lastly, Egyptian laws illustrate that proof of criminal intent can be a delicate problem.⁴⁷⁰ For this reason, many Middle Eastern countries have an incentive to amend their criminal statutes to allow evidence of both the offer of bribery and the purpose behind the bribe to convict someone of a felony.⁴⁷¹ The intent of the public servant regarding the promises or offers does not need to be analyzed.⁴⁷²

VI. PRIVATE SECTOR (“BUSINESS-TO-BUSINESS”) CORRUPTION AND OTHER RELATED CORRUPTION OFFENSES

Except for the largest enterprises, business ethics still seem to be unfamiliar or uncertain for many in Egypt, even after the ousting of President Mubarak.⁴⁷³ Typically, there is no mutual concept or term used in Arabic for

correct acceptance does not exist, and the matter is merely an offer without acceptance, for which only the offeror of the bribe is penalized, under Article 109bis of the Egyptian Penal Law. *See* Egyptian Penal Code Egyptian Crim. Code, art. 109 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf. In this respect, it should be noted that pursuant to Article 30 of the Egyptian Criminal Procedural Code No. 150 of 1950 “[a] crime is *flagrante delicto* during its commission or just afterwards, when the victim chases the offender or the public raises a shout and cry immediately after it, or the offender is found nearby with weapons, implements, documents, or other items that suggest he or she committed or participated in the offense; or there are other signs or indications of his guilt.” *See id.* at art. 30.

⁴⁶⁵ Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Jarida Al-Rasmiyya*, 1973 (Egypt).

⁴⁶⁶ ABOU’AMER, *supra* note 399, at 107.

⁴⁶⁷ *Id.* at 107-09.

⁴⁶⁸ *Id.* at 110-15.

⁴⁶⁹ *See* Ferial Aboushoka, *Nearly 20 Years of Legal Limbo: Egypt’s Illicit Gains Framework*, GLOB. ANTICORRUPTION BLOG (Feb. 20, 2023), <https://globalanticorruptionblog.com/2023/02/20/nearly-20-years-in-legal-limbo-egypts-illicit-gains-framework/>. For further discussion on the availability of specific criminal intent and general intent required by some criminal scholars, *see* ABOU’AMER, *supra* note 399, at 102, 106, 152-53.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.* at 154-57.

⁴⁷² *Id.* at 159-60.

⁴⁷³ *See generally* Marc Michael, *Tackling Corruption in Revolutionary Egypt*, OPEN DEMOCRACY (Mar. 29, 2011), <https://www.opendemocracy.net/en/tackling-corruption-in-revolutionary-egypt/> (“Corruption is the word on every Egyptian’s lips as the misuse of public funds and office is exposed

the notion of business morals.⁴⁷⁴ The Arabic term “*akhlak el-maha’ne*” (professional morality) is an adaptation of the extensively used stance for “religious morality.”⁴⁷⁵ The current Penal Code does not explicitly cover private corruption.⁴⁷⁶ Nevertheless, it seems from the interpretation of the language of Article 109bis of the criminal code that corruption between two private individuals or entities could be penalized.⁴⁷⁷ The Penal Code states, “If the offer is made to [someone] other than a public official/civil servant, the penalty shall be detention for a period not exceeding two years or paying a fine not exceeding two hundred pounds.”⁴⁷⁸ However, this language could be interpreted by the courts and different jurisdictions as applying to two private persons.

Historically, former President Nasser’s nationalization policy of most large enterprises and commercial businesses in 1961, including various Egyptian joint stock syndicates, momentarily extended the prominence of government-owned companies.⁴⁷⁹ Accordingly, the promotion of business ethics and corporate governance would enhance the development of moral codes and other corporate measures along with their social responsibility aimed at precluding private-sector bribery.⁴⁸⁰ For instance,⁴⁸¹ a forum

from Mubarak downwards. The answer is to repeal the semi-privatization of the state bureaucracy and introduce a minimum wage.”).

⁴⁷⁴ See generally *id.*

⁴⁷⁵ See generally Areej Abdullah Algumzi, *The Impact of Islamic Culture on Business Ethics: Saudi Arabia and the Practice of Wasta* (Aug. 2017) (Ph.D. thesis, Lancaster University) (on file with Lancaster University). With robust emphasis on the public service’s integrity or from a broader corporate governance perspective, most governments appear to have a goal on the fight against bribery. See generally Marc Michael, *Tackling Corruption in Revolutionary Egypt*, OPEN DEMOCRACY (Mar. 29, 2011), <https://www.opendemocracy.net/en/tackling-corruption-in-revolutionary-egypt/>. In Egypt, the administration has fortified the development of good performs, including values of conduct among their own corporate sector along with barring corruption, bribery, and other related dishonest practices in business transactions. See generally *id.*

⁴⁷⁶ See generally Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Jarida Al-Rasmiyya, 1973* (Egypt).

⁴⁷⁷ *Id.*

⁴⁷⁸ See *id.*

⁴⁷⁹ ABOU’AMER, *supra* note 399, at 157-58. As a result, the Penal Law was amended in 1962, adding Article 106bis/A to cover the acts of management and employees of joint stock companies. *Id.* The explanatory memorandum for this 1962’s amendment stated that: “[Article 106bis/A] was added to fit the development of a new society and harmonize with its requirements. Thus, it explicitly states that bribery involving shareholding companies shall be punished in the same manner as bribery involving public positions.” *Id.* Although this amendment made bribery a *felony* for employees of joint stock companies, there is some opposition among Egyptian jurists on whether the felony’s provision applies only if the joint stock company is providing services for public benefit. *Id.* The legislative history of Article 106bis/A reveals the intention of the legislator to apply that felony’s provision of the Penal Law to public officials, albeit including employees in—at least some—government-owned companies. *Id.*

⁴⁸⁰ See generally NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12.

⁴⁸¹ There was also great efforts accomplished in the region by the Centre for International Private Enterprise, a Washington-based non-profit governmental organization. See *Egypt: Socio-Economic*

discussion about good governance and integrity standards was held in ‘Amman, Jordan on October 6, 2002.⁴⁸² The forum targeted building public-private partnerships in Middle Eastern countries, including Egypt, Tunisia, and Morocco, in order to promote economic growth and social progress in the Arab region.⁴⁸³

A. Implementing New Strategies: Anti-Corruption Provisions Including Private Codes of Conduct and Compliance Programs

Corporations, business organizations, and industry partnerships may engage in the battle against corrupt conduct.⁴⁸⁴ They may fight corruption through individual strategy or collective movements, whether special sector or multi-industry, and they may combat corruption at the local, national, or global levels.⁴⁸⁵ Codes of conduct replicate the ethical values of corporations.⁴⁸⁶ Compliance plans and procedures guarantee that the moral ideals of an establishment are implemented effectively and that they indicate any threats that may arise in the course of business dealings.⁴⁸⁷ Each firm defines the measures that are most beneficial to its compliance philosophy.⁴⁸⁸ One critical component is the spreading of the norms comprised in codes of ethics and compliance policies to all employees and workers, along with a clear punitive policy for non-conformity.⁴⁸⁹

In Egypt, prevailing corporate governance principles and codes of conduct do not commonly contain anti-corruption or anti-bribery provisions.⁴⁹⁰ In light of Article 12 of the UNCAC, government organizations have recently made efforts to engage the private sector in the fight against

Development Through Inclusive Decision-Making and Private Sector Reform, CTR. FOR INT’L PRIV. ENTER., <https://www.cipe.org/projects/egypt/> (last visited Nov. 29, 2023).

⁴⁸² See MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 19.

⁴⁸³ *See id.*

⁴⁸⁴ *See id.*

⁴⁸⁵ NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 144.

⁴⁸⁶ *Id.* at 157.

⁴⁸⁷ *Id.* at 149-50. *See generally* Ahmad A. Alshorbagy & Radwa S. Elsaman, *Doing Business in Egypt after the January Revolution: Capital Market and Investment Laws*, 11 RICHMOND J. OF GLOB. L. & BUS. 43, reprinted in [2011] 4 J. AFRICAN & INT’L. L. 2) (“surveys the economic activity in Egypt from a legal perspective. It evaluates Egyptian laws affecting economic activity by analyzing the effectiveness and shortcomings of relevant laws and proposing the necessary amendments to those laws in light of the Revolution’s impact.”).

⁴⁸⁸ NATIONAL INTEGRITY SYSTEM STUDY: EGYPT 2009, *supra* note 12, at 149-50.

⁴⁸⁹ *Id.* at 153-54. Further, the major Egyptian corporations have recognized codes of conduct and corporate governance guidelines. However, only transnational businesses seem motivated to design codes of conduct and compliance programs under the pressure from their chief international stakeholders. *Id.* at 149-50.

⁴⁹⁰ *See generally* Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Jarida Al-Rasmiyya*, 1973 (Egypt).

corruption, and there has been a growing number of private creativities to come to terms with corruption via preventive procedures.⁴⁹¹

However, the United Nations Global Compact (UNGC) was introduced in 2004.⁴⁹² This initiative asks businesses around the globe to voluntarily commit to internalizing principles⁴⁹³ in the areas of human rights, labor, environment, and anti-corruption⁴⁹⁴ and to enter into partnerships that assist in advancing United Nations (UN) goals such as the Millennium Development Goals (UNMDG).⁴⁹⁵

It is highly recommended that large Egyptian national corporations, as well as other significant government agencies and NGOs, participate in a national dialogue.⁴⁹⁶ Furthermore, they should seek to attain extensive information on international standards aimed at evolving private integrity ideologies and advancing investment opportunities.⁴⁹⁷ For instance, the OECD Guidelines for Multinational Enterprises could establish an agenda to include useful values for national corporations.⁴⁹⁸ This framework could contain anti-bribery canons linked to managing and controlling subsidiaries, joint ventures, agents, contractors, and suppliers, as well as rules overriding political contributions, charitable donations, sponsorships, facilitation payments, gifts, and hospitality.⁴⁹⁹ Such guiding principles inspiring

⁴⁹¹ UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197. For an in-depth analysis concerning private sector actions to stem corruption, see G.A. Res. 58/4, annex, United Nations Convention against Corruption, art. 12, at 349 (Oct. 31, 2003).

⁴⁹² *Our Governance*, U.N. GLOB. COMPACT, <https://unglobalcompact.org/about/governance> (last visited Nov. 29, 2023). However, enterprises have made no special efforts to advance corporate compliance programs. *Id.*

⁴⁹³ *Id.* Based on some recent research, several Egyptian companies have joined the Global Compact. *Id.* The corporations have combined on a *voluntary* basis and are working to translate the Global Compact's nine principles into positive effective actions. *Id.* The Egyptian network is currently working to launch what so-called the National Corporate Governance (NCG) and CSR foundation in Egypt. *Id.*

⁴⁹⁴ See generally *Our Governance*, U.N. GLOB. COMPACT, <https://unglobalcompact.org/about/governance> (last visited Nov. 29, 2023) (explaining that principle 10 recommends “[b]usinesses should work against corruption in all its forms, including extortion and bribery.”).

⁴⁹⁵ See generally *Global partnership key to achieving Millenium Development Goals by 2015 – UN report* (2012), U.N. (July 12, 2012), <https://news.un.org/en/story/2012/07/414572>. See also *Anti-Corruption*, U.N. GLOB. COMPACT, <https://unglobalcompact.org/about/governance> (last visited Nov. 29, 2023) (discussing the processes and the reasons that led to the addition of the anti-corruption principle).

⁴⁹⁶ See generally *Principle Ten: Anti-Corruption*, U.N. GLOB. COMPACT, <https://unglobalcompact.org/what-is-gc/mission/principles/principle-10> (last visited Nov. 29, 2023).

⁴⁹⁷ See generally *id.*

⁴⁹⁸ See generally *2023 update of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD, <https://mneguidelines.oecd.org/targeted-update-of-the-oecd-guidelines-for-multinational-enterprises.htm> (last visited Nov. 29, 2023) (outlining the OECD Guidelines and eleven particular policies behind them).

⁴⁹⁹ For instance, Orange (previously known as Mobinil), the country's leading cell phone operator designed a code of conduct for employees in 2005. It stated:

The first objective of these guidelines is to ensure that our employees do not participate in corrupt acts such as offering bribes with the aim of circumventing or breaking

employee awareness and disseminating business policies against bribery have not yet been fulfilled.⁵⁰⁰

Furthermore, corporate social responsibility (CSR)⁵⁰¹ is becoming pervasive in the business sector, as many companies are beginning to recognize that practicing CSR is vital for their public image.⁵⁰² This is imperative if they want to conduct business in Egypt or elsewhere with foreign corporations.⁵⁰³ Within the current Egyptian corporate culture, two non-binding strategies have formalized the exposure of non-financial

Egyptian laws, regulations, and ethical standards. The second objective is to ensure that our employees do not receive gifts in return for illegal or illegitimate favors.

YVES GAUTHIER, CODE OF CONDUCT: OUR COMPANY VALUES AND COMMITMENTS 17 (MOBINIL 2005), available at <https://www.orange.eg/en/about/company-overview/Documents/CodeofConductEn-2012.pdf#:~:text=The%20Code%20of%20Conduct%20outlines%20the%20shared%20set,teams%2C%20departments%2C%20and%20the%20company%20as%20a%20whole>. Some of the most nationally advanced provisions include rules relating to gifts, hospitality or advantages, conflicts of interest, and specific provisions regarding the whistle-blowing channels through an internal audit control, recordkeeping, and fraud department. As a result, the non-compliance may end in disciplinary action. *See generally id.* *See also* Ahmad A. Alshorbagy, *Orascom Telecom Versus France Telecom: A Case Study on Egyptian Takeover Law*, 20 INFO. AND COMM. TECH. L. (2011).

⁵⁰⁰ *See generally* ‘Arafa, *supra* note 365.

⁵⁰¹ *Id.* at 399.

⁵⁰² *Id.* at 398-99. *See also* Mohamed ‘Arafa, *Corporate Social Responsibility and the Fight against Corruption: Towards the Concept of CSR in Egypt after the January Revolution*, 9 CORP. SOC. RESP. IN COMPAR. PERSP. 222, 199 (2014) (“CSR is slowly becoming a prominent theme in Egypt because of the country’s aggregate openness to the global and free-market economic system along with the boosted role of the private sector. As a result, the promotion of local business will play an imperative role in helping Egyptian corporations adapt to global markets. Moreover, the essential rationale is to use CSR as a means of building upon traditional values in order to balance and mediate between philanthropic traditions and modern economic structures.”).

⁵⁰³ ‘Arafa, *supra* note 365, at 398-99. *See also* Ahmad A. Alshorbagy, *CSR and the Arab Spring Revolutions: How is CSR Not Applied in Egypt?*, 34 WIS. INT’L L. J. 1 (2016) (explaining the CSR principles’ relationship to the Arab Spring uprisings, providing several examples on corporations’ ineffective social role in Egypt and their failure to mitigate the Revolution’s causes, describing CSR legal framework in Egypt, and analyzing CSR legal framework in order to demonstrate how corporations misuse CSR principles to promote private interests over social interests, which defeats CSR declared goals) (“[T]he importance of the CSR legal framework evolution and suggests broader perceptive of development; one that exceeds mere reasonable GDP rates and includes other social, cultural, and political aspects.”) (“Not only did corporations ignore CSR notions, but they also harnessed all of their abilities to exploit the fragile legal framework in all possible ways that extend to all aspects of CSR . . .”).

information.⁵⁰⁴ Both reports and booklets were published by the Egyptian Institute for Directors, chaired by the Ministry of Investment.⁵⁰⁵

The Guide to Corporate Governance Principles in Egypt (2005) counsels businesses in Egypt to comply for the benefit of the whole business climate.⁵⁰⁶ This document contains a contribution from the International Finance Corporation (World Bank Group) concerning the disclosure of social plans on transparency, integrity, credibility, and common interest dealings with the community.⁵⁰⁷ Anti-corruption policies are not directly incorporated into the corporate governance program in the private sector, but most corporate governance doctrines are anticipated to combat corrupt and fraudulent acts through rules regarding disclosure, transparency, internal auditing, supervising controls, protecting shareholders' rights, and conflicts of interest.⁵⁰⁸ In this context, "[g]ood corporate governance is a counterbalance to corrupt practices in the private business. Sound corporate governance practices attack the supply side of corrupt relationships by increasing transparency, reducing discretionary power, and holding decision-

⁵⁰⁴ 'Arafa, *supra* note 365, at 200-01 ("The motivation for CSR in Egypt differs from that of businesses operating internationally, as CSR is powerfully influenced by Egypt's religious beliefs. As such, Egypt has a powerful culture of giving, practiced in both its Islamic tradition of *zakāh* . . . CSR in Egypt is still observed as a non-institutionalized phenomenon and is understood mainly as a philanthropic concept. Egyptian businesses operate in an atmosphere where CSR compliance is mostly voluntary and many lacks the indispensable consistency and significance of purpose in their social responsibilities. After the revolution, several marketing campaigns focused on CSR to support ongoing societal development and sustainable economic improvement. The National Anti-Corruption Commission combats corruption, deals with conflicts of interest, promotes and defines the standards of integrity and transparency, develops the national strategy concerned with such matters, ensures the implementation of said strategy in coordination with other independent bodies, and supervises the concerned agencies specified by law. The Central Auditing Organization has control over state funds and any other body specified by law. . ."). *Id.* at 207.

⁵⁰⁵ See BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 37. The Egyptian Institute of Directors designs and delivers a wide variety of training courses and certificate programs covering all areas of corporate governance and integrity values. *Id.* These courses and programs are targeted not only at directors; board members and managers, but also at other interested parties. Generally, training is designed and delivered to specifically meet the practical needs of contributors from companies, smaller owned enterprises and State-owned enterprises. *Id.*

⁵⁰⁶ ZEYAD BAHAA EL DIN ET AL., GUIDE TO CORPORATE GOVERNANCE PRINCIPLES IN EGYPT 4 (OECD), available at https://www.ecgi.global/sites/default/files/codes/documents/egyptiancodeofcorporategovernance_en.pdf.

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.* Regarding the shareholders protection, see AHMAD A. ALSHORBAGY, PROTECTING MINORITY SHAREHOLDER RIGHTS IN EGYPTIAN PUBLIC CORPORATIONS: A COMPARATIVE STUDY IN CORPORATE GOVERNANCE AND SECURITIES REGULATION (LAP LAMBERT Acad. Publ'g 2012).

makers accountable.”⁵⁰⁹ Moreover, the Code of Corporate Governance⁵¹⁰ for the Public Enterprise Sector (2006) encompasses provisions from the OECD Guidelines on State-Owned Enterprises, even though it does not suggest any practical proposals concerning fraud and corruption.⁵¹¹ On the other hand, small and medium-sized enterprises (SMEs) suffer from corrupt practices as they encumber their businesses.⁵¹² As a result, entrepreneurs face countless difficulties, including bribes, kickbacks, and other time and asset-consuming conflicts.⁵¹³

B. Other Related-Corruption Offenses

Other corruption-related offenses include obstruction of justice,⁵¹⁴ which needs to be criminalized in Egypt as it is in the United States.⁵¹⁵ Furthermore, embezzlement, misappropriation, and diversion of property are criminalized in Article 112 *et seq* of the Penal Code.⁵¹⁶ Penalties are life

⁵⁰⁹ Todor Yalomov and Boyan Belev, *Examples/lessons learned in Bulgaria and transition countries*, in 1 CORPORATE GOVERNANCE: AN ANTIDOTE TO CORRUPTION (Shkolnikoy ed. 2002), available at http://pdc.ceu.hu/archive/00001434/01/Corporate_Governance.pdf.

According to the UNGC website:

The rapid development of rules of corporate governance is also prompting companies to focus on anti-corruption measures as part of their mechanisms to protect their reputation and the interests of their shareholders. Their internal controls are increasingly being extended to a range of ethics and integrity issues, and a growing number of investment managers are looking to these controls as evidence that companies undertake good business practices and are well managed.

Principle Ten: Anti-Corruption, U.N. GLOB. COMPACT, <https://unglobalcompact.org/what-is-gc/mission/principles/principle-10> (last visited Nov. 29, 2023).

⁵¹⁰ See generally Khaled Dahawy, *Developing Nations and Corporate Governance: The Story of Egypt*, RESEARCHGATE, Jan. 2007 (examining the importance of corporate governance in its required economic restructure, measuring the implementation and/or defiance of corporate government disclosures, and asking for an urgent need to educate and train Egyptian stakeholders about corporate governance focusing mainly on the benefits of corporate governance).

⁵¹¹ See generally *id.*

⁵¹² PETER WILKINSON, BUSINESS PRINCIPLES FOR COUNTERING BRIBERY COMMENTARY 1 (Susan Côté-Freeman 2008).

⁵¹³ See generally ‘Arafa, *supra* note 365, at 399.

⁵¹⁴ *Obstruction of Justice*, CORNELL L. SCH., https://www.law.cornell.edu/wex/obstruction_of_justice (last visited Nov. 9, 2023). Obstruction of justice by definition is an attempt to intervene with the administration of the courts, the judicial system or law enforcement executives. *Id.* It may comprise intimidating, hiding evidence or interfering with an arrest. *Id.* It is something a person does to hinder the administration of a court process or proper discharge of a legal duty. *Id.* In general, this crime is committed in order to delay a proper achievement of the rule of law. *Id.*

⁵¹⁵ See, e.g., U.S. Att’y Off. N. Dist. of Ohio, *Egyptian Nationals Found Guilty of Obstruction of Justice*, THE FBI (Oct. 5, 2009), <https://archives.fbi.gov/archives/cleveland/press-releases/2009/cl100509.htm#:~:text=Steven%20M.%20Dettelbach%2C%20United%20States%20Attorney%20for%20the,Court%20Judge%20Solomon%20Oliver%2C%20Jr.%20in%20Cleveland%2C%20Ohio>.

⁵¹⁶ MOHAMMAD ZAKY ABOU‘AMER, KANUN AL-‘UQUBAT, AL-KSEM AL-KHAS, AL-GOZ‘E AL‘AWEL: AL-GRA‘MM AL-MODRAA BELMASLAHA AL-‘AMA, AL-RASHWA WA AL-GRA‘MM AL-MOLHKA BEHA [THE EGYPTIAN PENAL LAW—THE SPECIAL PART, PART I: THE CRIMINAL

imprisonment and detention, which can be either for a limited duration or the duration of the prison term.⁵¹⁷ The most significant of these crimes is the crime of trading in influence.

1. *Trading or Peddling in Influence*⁵¹⁸

One scholar stated, “[t]he extent of corruption at the local level led a top official in the former President’s office to say: ‘Corruption in local government has reached our knees.’ The disagreement built upon this statement to develop one of its own: ‘Corruption at local government has reached our throats.’”⁵¹⁹ There is an immense difference between these two phrases. While both acknowledge that there is corruption at the lower level among junior officials, the former outlook on resolving corruption is easier than the latter, but the latter is more accurate.

In the same vein, Article 106/b criminalizes the use of real or fake authority to obtain, or attempt to obtain, any official order, decision, emblem, delivery order, construction contract, employment, favor, or advantage of any kind.⁵²⁰ Strictly speaking, the offense specifically targets the act of influencing public officials through a triangular linkage between the bribee,

OFFENCES AGAINST THE PUBLIC INTEREST, BRIBERY AND THE RELATED-CRIMINAL OFFENCES], 165-244 (1983).

⁵¹⁷ *Id.* at 163-244.

⁵¹⁸ In other words, the action of receiving or giving rewards to public officials for the purpose of influencing the official’s decision-making in the discharge of his or her public function usually called “influence peddling,” “trading in influence,” or “influence-trafficking.” Yet some countries restrict this criminal offense to civil servants. Such is the case in Bahrain under Articles 202 and 203 of the Penal Code. *See* PENAL CODE OF THE KINGDOM OF BAHRAIN, *Al-Jarida Al-Rasmiyya*, 1976, at arts. 202-03 (Bahrain), available at https://sherloc.unodc.org/cld/uploads/res/document/bhr/1976/penalcode_html/Bahrain_Penal_Code_Decree_No_15_of_1976_EN_translation_-_non_official.pdf.

⁵¹⁹ *See, e.g.*, Al-Masry Al-Youm, *Court sentences former presidential chief of staff to 7 years in prison*, EGYPT INDEP. (May, 27, 2012), <https://www.egyptindependent.com/ex-chief-presidential-staff-sentenced-7-years-imprisonmentn1/> (“Cairo Criminal Court sentenced former presidential Chief of Staff [the late] Zakariya ‘Azmy to seven years in prison and fined him L.E. 36 million for abusing power to generate illicit gains of more than L.E. 42.6 million during his time in office.”). In this sense, ‘Azmi charged with implant and political influence for the unjust enrichment based on gaining money, gifts, and obtaining donations by foreign heads of state as well as by senior foreign business officials, and property to abuse his position (peddling in office) resulted in the non-suitability with the financial disclosure statements provided. *See, e.g.*, Law No. 62 of 1975 (Illicit Enrichment Apparatus “IEA”), *Al-Jarida Al-Rasmiyya*, 7 July 1975, art. 2 (Egypt). For further details on this crime, *see also*, ‘Arafa, *supra* note 6, at 13-15. (“[A] few years ago, a law concerning illegal profit-making was challenged before the Supreme Court, which held it was suspected of being *unconstitutional* because it reverses the presumption of innocence which is protected by the 1971 abrogated constitution [and the 2012 Constitution] and by the United Nations ICCPR. . . . [H]owever, a retrial would not be possible as it contradicts the general rule of the criminal procedure, which embodies the presumption of innocence and places the initial burden of proof on the public prosecution and then shifting it to the *accused*.”).

⁵²⁰ ABOU‘AMER, *supra* note 516, at 148-56.

the trader in influence—who actually receives the bribe in order to obtain a favorable public decision—and the public official who grants an advantage to the briber.⁵²¹ This may include intermediation, where an agent indicates to the company that they are willing to give valuable advantages in order to exercise influence on a public official to obtain a decision favorable to the corporation.⁵²²

On the other hand, the punishment for influence trafficking is imprisonment for up to two years for the briber or a fine as a pecuniary sanction of EGP 200 and up to EGP 500 or one of both sanctions.⁵²³ The same penalties apply to bribe-takers acting in ways outlined in Article 104, *i.e.*, refraining from performing their work or defaulting on their duties.⁵²⁴

2. *Tax and Customs Administration as an Example of Trafficking in Influence*

The tax and customs sector represents one of the significant portions of the Egyptian economy and is subject to many acts of corruption.⁵²⁵ Both the tax authorities and customs administration play a fundamental role in the security and the public welfare of the citizens and are one of the primary sources of the state's national income.⁵²⁶ Bribery opportunities are widely prevalent as officers may be interested in misusing their public trust and exploiting their positions for personal benefits and private interests, while

⁵²¹ *Id.*

⁵²² *Id.* at 150-54.

⁵²³ *Id.* at 155.

⁵²⁴ *Id.* at 153-54.

⁵²⁵ *See, e.g., Egypt arrests tax authority chief on charges of receiving bribes*, REUTERS (Jan. 4, 2020), <https://www.reuters.com/article/us-egypt-corruption-idUSKBN1Z3085> (“The head of Egypt’s tax authority . . . has been arrested on charges of receiving bribes . . . ‘[I]t was proved through recorded phone calls and meetings that he received money and gifts as bribes’ . . . ‘[T]he (finance) minister affirmed that there is no one above law, and that there can be no covering up of any corruption’ . . . [E]gyptian authorities have made notable efforts [recently] to improve tax collection and curb tax evasion, tightening laws and launching public campaigns to encourage people to settle their tax affairs.”).

⁵²⁶ *See generally* GILLES MONTAGNAT-RENTIER, THE MULTIFACETED ROLE OF CUSTOMS AND ITS IMPORTANCE FOR THE ECONOMIC SOCIETY (IMF eLibrary), available at <https://www.elibrary.imf.org/display/book/9798400200120/CH001.xml>. On February 28, 2002, the biggest bribery scandal of 2002 in Egypt is an example. The Supreme State Security Court imprisoned the former Finance Minister Mohi El-din El-Gharib for nine years. El-Gharib, three customs officials, and three businessmen tycoons were found guilty of profiteering and receiving bribes from three tycoon importers, in return for permitting them to avoid the payment of the required customs fees. *See generally* Gamal Essam El-Din, *The Business of Bribery*, ALAHRAM WEEKLY (June 13/19, 2002), <https://english.ahram.org.eg/WriterArticles/Gamal-Essam-ElDin/289/0.aspx> (“In the second harshest verdict handed down to an official charged with corruption . . . Maher El-Guindi, a former governor, was sentenced to seven years.”).

businesses or customers may search for an illicit way to avoid paying taxes or expediting customs measures through the payment of bribes.⁵²⁷

In this event, various aspects contribute to the rampant corrupt acts in tax and customs administration, such as the complexity of laws, rules, and procedures, as well as the level of control and discretionary power granted to public servants in the decision-making process.⁵²⁸ Thus, accountability and reliability within the tax and customs system require enhancement through more clarification and simplification of the tax and customs systems. This may be accomplished by reducing personal contact between public officials and taxpayers and implementing a method for assessing potential risk. Further, the administration should consider creating integrity measures, staff norms, reporting procedures (including self-assessment, direct submission, and reducing bureaucracy), and punishment instruments, which are suggested to enhance accountability and reliability in the tax system.

The Egyptian government, NGOs, and civil society have attempted to address corruption and bribery as a rampant cultural phenomenon.⁵²⁹ The following section sheds light on the defects of certain criminal provisions regarding the criminal sanctioning policy of corruption and proposes reforms in the criminal justice policy based on the UNCAC.

VII. THE PUNISHMENT, SENTENCING GUIDELINES AND THE PROSECUTORIAL JURISDICTION

A. Criminal Punishments of Corruption: Bribery Watchdogs Bite Selectively

Corruption and bribery are fraught matters, and several individuals are restrained from joining the war against them unless stimulated to do so by a

⁵²⁷ See generally Gamal Essam El-Din, *The Business of Bribery*, ALAHRAM WEEKLY (June 13/19, 2002), <https://english.ahram.org.eg/WriterArticles/Gamal-Essam-ElDin/289/0.aspx>; see also *Egypt Sentences Ex-minister Youssef Boutros Ghali*, BBC NEWS (June 4, 2011), <https://www.bbc.com/news/world-middle-east-13654926> (“Egypt’s former Finance Minister Youssef Boutros Ghali has been given a 30-year jail sentence over corruption charges and to pay back 60 million L.E.”); see also *id.* (“The court found him guilty of having used 102 cars waiting in customs—including six luxury cars for personal benefit—in an action which ‘greatly harmed the financial interests, violated bidding procedures laws, and cost the state treasury,’ court said.”). Additionally, he was found guilty of having exploited the Ministry of Finance’s assets for his personal electoral campaign, and printing materials at the expense of the ministry. *Id.* Right now, Ghali is on the Interpol’s wanted list based on a red-warrant issued against him. *Id.*

⁵²⁸ See generally RITA RAMAHLI, EGYPT: ADDING A MILLION TAXPAYERS (Celebrating Reforms 2007).

⁵²⁹ See generally *Egypt risk report*, GAN INTEGRITY (Sept. 30, 2020), <https://www.ganintegrity.com/country-profiles/egypt/#:~:text=Bribery%2C%20embezzlement%2C%20tampering%20with%20official,part%20of%20Egyptians%27%20everyday%20life>.

central government.⁵³⁰ The corruption expert Ahmad Shaker ‘Ashour wrote, “[t]he state investigates corruption but usually only after officials are out of office, and only with the green light from above. We need to prosecute these officials while they are in office and abusing power.”⁵³¹

On the surface, Egypt appears to be making progress in confronting corruption.⁵³² In recent years, especially after the resignation of President Hosni Mubarak, state investigations have caught corrupt government officials and leading businesspeople, including prominent members of the former ruling NDP.⁵³³

In order to fight corruption, the law must create effective, proportionate, dissuasive, and adequate penalties for bribery. Sentences should be severe and equivalent to those applicable for other grave criminal acts.⁵³⁴ Criminal sanctions should be similar for both active and passive corruption and applicable to all persons engaged in the crime. In this respect, agents and their corporations should be held responsible for active corruption. Some jurisdictions hold companies liable to complementary civil and disciplinary penalties instead of criminal punishments.⁵³⁵ The majority trend, however, is to make such companies subject to corporate criminal liability.⁵³⁶

⁵³⁰ See generally Global Programme against Corruption et al., U.N. Manual on Anti-Corruption Policy 1, 5 (2001) (unpublished manual) (on file with author), available at <https://www.unodc.org/pdf/crime/gpacpublications/manual.pdf>. A cultural factor is that Egyptians are individualistic *per se* and prefer to work alone rather than in groups or teams. See generally Tarek Radwan, *Individualism versus Community in the Egyptian Psyche*, ATL. COUNCIL (Sept. 19, 2012), <https://www.atlanticcouncil.org/blogs/menasource/individualism-versus-community-in-the-egyptian-psyche/>.

⁵³¹ Cam McGrath, *Egypt: Corruption Watchdogs Bite Selectively*, GLOB. ISSUES (July 8, 2010), <https://www.globalissues.org/news/2010/07/08/6232>.

⁵³² See generally BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338.

⁵³³ Cam McGrath, *Egypt: Corruption Watchdogs Bite Selectively*, GLOB. ISSUES (July 8, 2010), <https://www.globalissues.org/news/2010/07/08/6232>. The latest big catch is Ibrahim Suleiman, a former housing minister and Ex-NDP ex-parliamentary representative, found of profiteering and misappropriating public funds during time in office. See, e.g., Reuters Staff, *Egypt ex-housing minister gets 8 years jail for graft*, REUTERS (March 29, 2001, 7:16 AM), <https://www.reuters.com/article/egypt-verdict/egypt-ex-housing-minister-gets-8-yrs-jail-for-graft-idUKL6E8ET5GC20120329>.

⁵³⁴ Penal sanctions are always linked with the provisions regulating the giving or receiving of bribes. MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 25. Punishments primarily include custodial terms along with fines in countries such as Bahrain and Egypt, in addition to the confiscation of the bribe. *Id.* The level of sanctions applicable to the offenders diverges greatly among countries, so it might be an extremely harsh or severe sanction, such as a prison term of up to twenty-five years as in Egypt. *Id.*

⁵³⁵ Edward B. Diskant, *Comparative Corporate Criminal Liability: Exploring the Uniquely American Doctrine Through Comparative Criminal Procedure*, 118 YALE L.J., 126, 130 (2008).

⁵³⁶ See *Corporate Criminal Liability*, FRESHFIELDS, <https://www.freshfields.us/insights/campaigns/global-enforcement-outlook/corporate-criminal-liability/> (last visited Nov. 29, 2023). Further, the tender, bids, and auction laws of many countries like Egypt—as stated before—provide for the disqualification of bidders who have been guilty of bribery crimes. See, e.g., Law No. 89 of 1998 (Tenders and Auctions Law), *monakasat* [debates], 1998 (Egypt).

Furthermore, statutes need intermediate measures to identify, trace, recover, freeze, and seize the proceeds and instruments of corruption.⁵³⁷ Remarkably, due to the communal historical and ethical concerns shared by various nations who anticipated taking a strong stand against corrupt practices in public services, the Egyptian bribery law penalizes recipient public officials more often than their bribers.⁵³⁸ Even though many criminal jurists have critiqued this, it is still ubiquitous in Egypt.⁵³⁹

B. Penalties for Bribed Public Officials and Third-Party Beneficiaries

Under Articles 103 and 103bis of the Penal Law, sanctions in the form of life imprisonment and fines of at least EGP 1,000 and not exceeding the donation or the promise given⁵⁴⁰ may apply to a civil servant having acted within the duties of their office.⁵⁴¹ In contrast, if the bribe was anticipated to

⁵³⁷ In other words, bribes and any profit therefrom must be confiscated. Confiscated proceeds may be monies, physical objects (possibly purchased with the proceeds of a bribe), or intangible assets (e.g. shares in a company).

⁵³⁸ ABOU'AMER, *supra* note 516, at 107-11.

⁵³⁹ *Id.*

⁵⁴⁰ *Id.* at 108-10. In practice, bribery charges do not entail more than three years' imprisonment. Article 14 of Law No. 80 of 2002 on money laundering provides for imprisonment of up to seven years and a fine twice the value of the property involved in the offense. Fiscal sanctions for subsequent offenses range between EGP 100 and 500. *See* Egyptian Crim. Code, art. 44 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf. *See also* C. pén. arts. 132/17, 131/26 (following a similar approach). The French Penal Code states: "No penalty may be enforced where the court has not expressly imposed it. The court may decide to impose only one of the penalties applicable to the offense before it." Article 231/26 reads:

Forfeiture of civic, and family rights covers: (1) the right to vote; (2) the right to be elected; (3) the right to hold a judicial office, or to give an expert opinion before a court, or to represent or assist a party before a court of law; (4) the right to make a witness statement in court other than a simple declaration; (5) the right to be tutor or curator. . . . [F]or forfeitures of civic, civil, and family rights may not exceed a maximum period of ten years in the case of a sentence imposed for a felony and a maximum period of five years in the case of a sentence inflicted for a misdemeanor. The court may impose forfeiture of all or part of these rights. The forfeiture of the right to vote or to be elected imposed pursuant to the present Article also entails prohibition or in capacity to hold public office.

Further, Article 131/27 of the same code reads:

Where it is incurred as an additional penalty for a felony or a misdemeanor, the prohibition to exercise a public office or a professional or social activity is either permanent or temporary. In the latter case, the prohibition may not exceed a term of five years

Article 121/7 of the same statute provides:

The accomplice to a felony or a misdemeanor is the person who knowingly, by aiding and abetting, facilitates its preparation or commission. Any person who, by means of a gift, promise, threat, order, or an abuse of authority or powers, provokes the commission of an offence or gives instructions to commit it, is also an accomplice. *See id.* at arts. 131/27, 121/7.

⁵⁴¹ ABOU'AMER, *supra* note 516, at 107-11.

make the official refrain from a function of their position or to act “outside the scope of his/her duty or competence,” then Articles 104 and 104bis provide that, in addition to the prison sentence, the public official will be penalized by a doubled fine.⁵⁴²

The law also contains a set of particularly deterrent ancillary penalties,⁵⁴³ such as the stripping of rights and privileges relating to official duties, dismissal from office for up to ten years under Article 24, disbarment from any public position or any public procurement opportunity, hindering of any decorations and medals, banning from eligibility under Article 25,⁵⁴⁴ and disbarment from holding a government position under Article 26.⁵⁴⁵

Thus, bribes that induce an official act within their responsibilities are punished less severely than bribes that infringe on their duties.⁵⁴⁶ This is because the latter offense is considered to involve not only the reception of an unjustified reward by a public official but also to be intended to cause such an official to breach the duties of the office and public trust.⁵⁴⁷ It may be considered as an aggravating circumstance.⁵⁴⁸ Under Article 108, if the purpose of a bribe is to commit an act that the law punishes more severely,

⁵⁴² *Id.* at 112.

⁵⁴³ *Id.* In any event, a public official who commits bribery is also subject to disciplinary penalties, essentially a matter of administrative law rather than criminal law. *Id.* at 114-15.

⁵⁴⁴ Egyptian Penal Code Egyptian Crim. Code, art. 25 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf. If the judge imposes the felony punishment on the official receiving the bribe, the official must be deprived of his rights and privileges as provided in Article 25 of the Penal Law. *Id.* Thus, if the official is dismissed from membership in public or local legislative bodies, the official may be shown leniency and convicted to a misdemeanor jail sentence in lieu of the felony penalty, in which case, under Article 27, he/she is banned from membership in legislative bodies for a period of not less than twice the period of the applicable misdemeanor jail term. *See id.* at arts. 25, 27.

⁵⁴⁵ *Id.* at arts. 24, 26. Accomplices, including third-party beneficiaries—an agent who is assigned or hired to take the donation or benefit and is agreed to by the bribee—are criminally liable and subject to a one-year imprisonment and a fine equal to the amount of the bribe under Article 108bis, if they are knowingly or purposely engaged in the bribe. *Id.*

⁵⁴⁶ ABOU'AMER, *supra* note 516, at 108.

⁵⁴⁷ *Id.*

⁵⁴⁸ *Id.* On the other hand, some Arabic statutes make a distinction depending on whether or not the public servant who takes the payoff holds and exercises judicial duties. In those countries, the offense in regard to a judge or any member of the judicial authority is punished more severely than bribery of other public employees. MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 26.

such as treason,⁵⁴⁹ then the recipient of the bribe shall receive that punishment in addition to a fine for bribery.⁵⁵⁰

C. Penalties for Bribers and Intermediaries

Under Article 107bis of the Egyptian Penal Code, the briber and the intermediary are considered accomplices in the crime of bribery and shall receive the same punishment as the bribee.⁵⁵¹ Except for ancillary punishments, penalties for bribers and intermediaries are identical to sentences passed and inflicted on public officials.⁵⁵² However, the financial sanctions seem extremely low when measured against the amount of money that may be earned in winning a contract, for instance.⁵⁵³

D. Seizure and Confiscation and the Exemption from Criminal Liability

Because confiscation divests bribers of the proceeds of bribery transactions, it is one of the most effective measures for thwarting and sanctioning the bribery of government officials.⁵⁵⁴ Egyptian law provides for the seizure and confiscation of bribes, proceeds, and all advantages resulting from bribery.⁵⁵⁵ However, Article 107 provides that “[t]he briber or the

⁵⁴⁹ See, e.g., Egyptian Penal Code Egyptian Crim. Code, art. 80 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf. More significant punishments will occur if the purpose of the gift or the promise received by the bribe-taker is to commit a serious or grave felony related to the national security of the state, such as treason or spying as these criminal acts incriminated by death penalty. *Id.*

⁵⁵⁰ *Id.* at art. 17. Further, Article 17 of the Egyptian Penal Code gives judges the authority to reduce punishment sentences if they decide that a condition of the accused—such as age, personality, health status, or a crime coupled with extenuating circumstances—requires such reduction, without needing to provide justification. *Id.*

⁵⁵¹ *Id.*; see also ABOU'AMER, *supra* note 516.

⁵⁵² Egyptian Penal Code Egyptian Crim. Code, art. 107 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf.

⁵⁵³ SULTAN, *supra* note 339, at 150-56.

⁵⁵⁴ BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 15.

⁵⁵⁵ See Egyptian Penal Code Egyptian Crim. Code, art. 110, 30/1 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf. Article 110 of the EPC requires judges to order the confiscation of bribes as it provides that “[i]n all cases, confiscation will be ordered for what the briber or the intermediary paid as a bribe, in accordance with the preceding articles.” *Id.* Thus, confiscation is a “supplementary” punishment, and a “mandatory” one at the same time. *Id.* In all other cases, the confiscation is subject to the general rule of Article 30/1 of the same law which provides for the seizure and confiscation of all proceeds and equipment used in the act of corruption. See *id.* at art. 30/1. Thus, the rights of an innocent third party will be safeguarded. *Id.* (“In this respect, an innocent third party is an individual who does not participate in the bribery and who had an in-kind claim to the gift presented.”).

intermediary shall be exempted from punishment . . . if he/she reports the crime to the authorities or confesses [to the crime].”⁵⁵⁶ From the philosophical and moral perspective, the goal of this clause is to protect the public interest, enhance public trust, and assist the government in proving acts of corruption, as bribery represents a crime of dark numbers⁵⁵⁷ by improving the efficiency of criminal prosecution.⁵⁵⁸ Although this provision applies only to the active briber, it creates some grounds for concern because it may lead to serious law enforcement gaps in cases of grand corruption.⁵⁵⁹

Egyptian law provides two methods for obtaining an exemption from punishment and prosecution of bribery: one may either report bribery or confess to it.⁵⁶⁰ Reporting bribery to the administrative and judicial authorities occurs before the discovery of the offense, whereas confessing to bribery occurs after the discovery, the apprehension of the defendants, and the initiation of criminal proceedings.⁵⁶¹ The exemption is reserved for the briber or the intermediary.⁵⁶² The recipient of the bribe may not utilize this exemption.⁵⁶³ Egyptian Penal Law does not establish any formal or specific conditions relating to a confession of a bribe; there are no restrictions in terms of time, place, or manner.⁵⁶⁴ Hence, the judge should not place any restrictions on it but simply examine the confession to confirm its meaning and verify that the admission⁵⁶⁵ is authentic, clear, unambiguous, detailed, and from a mature individual before a judicial authority.⁵⁶⁶ However, it is still

⁵⁵⁶ See *id.* at art. 107.

⁵⁵⁷ The dark number or figure of a crime is a term used by criminologists and sociologists to describe the amount of unreported and undiscovered crimes, which calls into question the reliability of official crimes statistics. For further explanation on the dark number of the crime, see generally SUE TUS REID, *CRIME AND CRIMINOLOGY* (McGraw-Hill Humanities/Soc. Sci./Language 9th ed. 1999).

⁵⁵⁸ SULTAN, *supra* note 339, at 171-75.

⁵⁵⁹ BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 20; see also GEORGE MOODY-STUART, *THE COSTS OF GRAND CORRUPTION* (Inst. of Econ. Aff. 1996).

⁵⁶⁰ ABOU'AMER, *supra* note 516, at 128-32.

⁵⁶¹ *Id.*

⁵⁶² *Id.* In other words, such exemption from punishment goes beyond the general defenses in penal codes and can be used to circumvent liability by a defendant. *Id.* For further discussion concerning the general and specific defenses in penal law, see generally BELAL, *supra* note 433, at 265-69.

⁵⁶³ *Id.* at 267-68.

⁵⁶⁴ ABOU'AMER, *supra* note 516, at 129-30.

⁵⁶⁵ *Id.* The government should verify the confession by presenting precise evidence of proof, correct documents, and essential information about the crime and the perpetrators which lead to their conviction. See Egyptian Penal Code Egyptian Crim. Code, art. 84 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf.

⁵⁶⁶ *Id.* In addition, the confession must not to be under coercion. Noor Mahdy, *Invalidity of A Confession*, ANDERSON (March 7, 2023), <https://eg.andersen.com/invalidity-of-a-confession/#:~:text=Despite%20this%2C%20a%20confession%20given,cannot%20legally%20be%20relied%20upon>. For further discussion on the legal requirements for confessions in criminal cases, see YASSER FAROUK, AL'ITRAF AL-MA'FY MN 'UQUBAT AL-RASHWA: FALSAFATOH,

debatable whether perpetrators frequently use this provision for their own benefit.⁵⁶⁷ If they do, it may explain the relatively small number of individuals who are criminally prosecuted for active corruption and bribery.⁵⁶⁸ When investigations are initiated, corporate employees or representatives accused of bribing seem to succeed in negotiating immunities in return for their collaboration, while corrupt public officials are convicted.⁵⁶⁹

Overall, the deterrent value of criminal sanctions has been questionable.⁵⁷⁰ In addition, there are some uncertainties over the implementation of corporate liability.⁵⁷¹ Therefore, it is highly recommended that the Egyptian government assess, review, and amend its provisions concerning criminal liability and punishment involving corruption, specifically, the provision allowing exemption from bribery.⁵⁷² The criminal sentence should fit the crime in cases of natural and legal persons engaged in active and passive bribery.⁵⁷³ The legislation needs to consider both petty and grand corruption.⁵⁷⁴ The majority of criminal bribery offenses in Egypt are petty and involve low-ranking officials, but after the revolution, it seems that the rule of law will be respected, but it still needs to be revised.⁵⁷⁵ Such crimes need not be penalized by severe fines.⁵⁷⁶ Grand corruption, however, should be sanctioned by heavy financial penalties that reflect the seriousness of the offense (*e.g.*, breach of competition provisions or money laundering).⁵⁷⁷ Moreover, because arguments for the defense offer much room for debate, the general lines of defense should be permitted, and any fraud, corruption, or bribery-specific defense should be obliterated.⁵⁷⁸

E. Immunity, Privileges, and Statute of Limitations

Several gaps persist in Egypt's legal framework that undermines the anti-corruption fight.⁵⁷⁹ One significant gap in the law relates to conflicts of

MAHIYATOH, DAWABTOH, ATHAROH [THE IMPUNITY FROM BRIBERY OFFENCE BY CONFESSION: LEGISLATIVE HISTORY, DEFINITION, REQUIREMENTS, AND EFFECTS], 232-56 (2011).

⁵⁶⁷ BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 27.

⁵⁶⁸ *Id.*

⁵⁶⁹ *Id.*

⁵⁷⁰ *Id.* at 6.

⁵⁷¹ *Id.* at 20.

⁵⁷² *Id.* at 21.

⁵⁷³ BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT 21 (MENA-OECD Initiative 2009), available at <https://www.oecd.org/global-relations/46341460.pdf>.

⁵⁷⁴ *Id.*

⁵⁷⁵ *Id.*

⁵⁷⁶ *Id.*

⁵⁷⁷ *Id.*

⁵⁷⁸ *Id.*

⁵⁷⁹ ABOU'AMER, *supra* note 516, at 251-53.

interest faced by public officials and public figures in the business community.⁵⁸⁰ Some high-ranking officials enjoy absolute immunity from criminal investigation, prosecution, and trial based on their positions as cabinet ministers or parliamentarians and, consequently, escape criminal culpability.⁵⁸¹ This leads to extensive public suspicion concerning state bodies.⁵⁸² Moreover, when leaders and elites engage in criminal practices in the private and public spheres, it destabilizes government legitimacy and weakens the rule of law.⁵⁸³ Because of the hidden and secret nature of corruption crimes, particularly bribery, and the obstacles that often arise from investigating corrupt acts, it is crucial that criminal laws provide public anti-corruption actors with a better understanding of who is subject to criminal liability.⁵⁸⁴

There may be exemptions, at least temporarily, through immunities or privileges.⁵⁸⁵ Pursuant to the Egyptian Constitution, immunities apply to several public officials, including the President, members of Parliament, judges, provincial governors, cabinet ministers, and their deputies.⁵⁸⁶ However, the President's immunity may be lifted if one-third of Parliament votes in favor.⁵⁸⁷ As for ministers and members of Parliament, two-thirds of

⁵⁸⁰ *Id.* at 256.

⁵⁸¹ *Id.* at 254.

⁵⁸² *Id.*

⁵⁸³ *Id.* at 256.

⁵⁸⁴ MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 18, 19.

⁵⁸⁵ *Id.*

⁵⁸⁶ *Id.* at 19.

⁵⁸⁷ *Id.* See also ABROGATED EGYPT CONSTITUTION, art. 85 (Egypt). Article 85 of the Abrogated Egypt Constitution states, "Any charge against the President of high treason or of committing a criminal act shall be made upon a proposal by at least one third of the members of the People's Assembly. No impeachment shall be issued except upon the approval of a majority of two-thirds of the Assembly members." On the other hand, the new text states,

A charge of violating the provisions of the Constitution, high treason or any other felony against the President of the Republic is to be based on a motion signed by at least a majority of the members of the House of Representatives. An impeachment is to be issued only by a two-thirds majority of the members of the House of Representatives and after an investigation to be carried out by the Prosecutor General. If there is an impediment, he is to be replaced by one of his assistants. As soon as an impeachment decision has been issued, the President of the Republic ceases all work; this is treated as a temporary impediment preventing the President from carrying out presidential duties until a verdict is reached in the case. The President of the Republic is tried before a special court headed by the president of the Supreme Judicial Council, and with the membership of the most senior deputy of the president of the Supreme Constitutional Court, the most senior deputy of the president of the State Council, and the two most senior presidents of the Court of Appeals; the prosecution to be carried out before such court by the Prosecutor General. If an impediment exists for any of the foregoing individuals, they are replaced by order of seniority. The court verdicts are irrevocable and not subject to challenge. The law organizes the investigation and the trial procedures. In the case of conviction, the President of the Republic is relieved of his

Parliament must approve the lifting of their immunity in order to be subjected to criminal investigation and trial.⁵⁸⁸ In the same vein, members of the judiciary are immune under Article 65 of the *de facto* 1971 Constitution and enjoy the same invulnerability under the 2012 constitutional document.⁵⁸⁹ Although they may be subject to punitive or disciplinary actions, Article 168 states that they may not be removed or impeached.⁵⁹⁰

It is necessary for there to be explicit provisions regarding the circumstances in which immunity applies and the conditions under which it may be lifted.⁵⁹¹ This would be particularly useful in evaluating the degree to which bribery prosecutions may be abused as a political tool against opponents.⁵⁹² It is also crucial that the periods of limitation do not expire during the term of office of a high-ranking official, which may require reform of the immunity provisions.⁵⁹³ Otherwise, the statute of limitations may make criminal prosecution impossible.⁵⁹⁴ Egyptian law has statutes of limitations of three years for misdemeanors and ten years for felonies.⁵⁹⁵ Accordingly, many officials enjoy immunity due to their terms of office.⁵⁹⁶ However, rules are vague and unclear regarding statutes of limitation and investigation standards beyond the immunity period.⁵⁹⁷

post, without prejudice to other penalties. *See id.*; CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 159 (providing on the prosecution).

⁵⁸⁸ *See* ABROGATED EGYPT CONSTITUTION, art. 96 (Egypt). Article 96 of the *de facto* Constitution provides that “[n]o membership in the People’s Assembly shall be revoked except on the grounds of loss of confidence or status or loss of one of the conditions of membership” Moreover Article 159 states, “The President of the Republic and the People’s Assembly shall have the right to bring a Minister to trial for crimes committed by him in the performance of his duties or due to them. . . . [N]o indictment shall be issued except by a majority of two-thirds of the members of the Assembly.” *See id.* at art. 159.

⁵⁸⁹ *Compare* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, art. 65, available at <https://constitutionnet.org/sites/default/files/Egypt%20Constitution.pdf> (stating that “[t]he State shall be subject to law. The independence and immunity of the judiciary are two basic guarantees to safeguard rights and liberties.”), *with* TEMPORAL CONSTITUTIONAL DECLARATION, 30 March 2011, art. 47 (Egypt), available at https://constitutionnet.org/sites/default/files/egypt_provisional_constitution_of_the_arab_republic_of_egypt_or_constitutional_declaration_of_2011_2011-12_0.pdf. (“Judges are independent and not subject to removal. The law regulates disciplinary actions against them. There is no authority over them except that of the law, and it is not permissible for any authority to interfere in their issues or matters of justice.”).

⁵⁹⁰ *See* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, art. 168, available at <https://constitutionnet.org/sites/default/files/Egypt%20Constitution.pdf>.

⁵⁹¹ MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 19. This will be the situation in which the crime is in the case of *flagrante delicto*. *See generally* ABOU’AMER, *supra* note 294.

⁵⁹² MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 19.

⁵⁹³ *Id.*

⁵⁹⁴ *Id.*

⁵⁹⁵ *Id.*

⁵⁹⁶ *Id.*

⁵⁹⁷ *Id.* There has been no actual or accurate studies conducted to determine whether immunity privileges have permitted any public officials to escape investigation or prosecution. MENA TASK

It is highly encouraged that the Egyptian government establish clear, unambiguous rules on when immunity applies and create clearly defined provisions for lifting such immunity.⁵⁹⁸ The government should also ensure criminal misconduct may be investigated and prosecuted upon lifting immunity.⁵⁹⁹ This means that periods of limitation should be sufficiently long to allow for proper investigations and should be suspended during the immunity period.⁶⁰⁰

F. Prosecuting Bribery of Public Officials

The late Hafez AbouSe'eda, an expert on human rights, corruption, and white-collar crimes, reported, “[w]e’re fighting ghosts. It is clear that there’s corruption. You can smell it, touch it, and feel it. Everything indicates that there are big fat cats, but [citizens] have no power to catch them or bring them to court.”⁶⁰¹ This is mainly because, in Egypt, the Public Prosecution is the sole body responsible for investigating crimes, indicting individuals, and referring cases to trial.⁶⁰²

As a general rule, it is considered mandatory for the prosecution to investigate criminal complaints within the Egyptian justice system.⁶⁰³ The principle of “mandatory prosecution” means all criminal offenses that come to the consideration of the prosecuting authorities should be automatically prosecuted.⁶⁰⁴ However, there is an exception to this rule, which is allowed

FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., BUSINESS ETHICS AND ANTI-BRIBERY POLICIES IN SELECTED MIDDLE EAST AND NORTH AFRICAN COUNTRIES 19 (OECD & OCDE 2006), available at <https://www.oecd.org/mena/competitiveness/36086689.pdf>. Secret remunerations, the use of false or forged documents, statements, or reports, and multiple intermediaries may make it very difficult to unmask this sort of sensibly obscured criminal behavior.
Id.

⁵⁹⁸ See BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 19.

⁵⁹⁹ *Id.*

⁶⁰⁰ *Id.*

⁶⁰¹ *Id.* Cam McGrath, *EGYPT: Corruption Watchdogs Bite Selectively*, GLOB. ISSUES (July 8, 2010), <https://www.globalissues.org/news/2010/07/08/6232> (quoting Hafez AbouSe'eda, the former Chairman of the Egyptian Organization for Human Rights).

⁶⁰² Nourhan Fahmy, *The Egyptian Prosecution: A Fact Sheet*, TAHRIR INST. (May 4, 2020), <https://timep.org/2020/05/04/the-egyptian-prosecution-a-fact-sheet/>. The Egyptian Criminal Procedural Law and its recent amendments states, “The Public Prosecutor is the only [competent] authority and [n]o other power initiates the criminal procedural action except [by the virtue of law] or within the circumstances prescribed by law.” See Law No. 150 of 1950 (promulgating the Law of Legal Proceedings), *al-Waqā’i al-Misriyah*, 1950, art. 1 (Egypt).

⁶⁰³ *Public Prosecution Office*, EGYPT JUST., <https://egyptjustice.com/public-prosecution-office> (last visited Nov. 29, 2023); see also ABOU’AMER, *supra* note 399.

⁶⁰⁴ ABOU’AMER, *supra* note 399. Frankly, some Arab Criminal Procedural legislations do not contain any provisions relating to the principle of either discretionary prosecution or mandatory prosecution. *Id.*

under the principle of “discretionary prosecution.”⁶⁰⁵ Under this principle, the prosecuting authorities decide whether to bring a charge against the individual or pause proceedings.⁶⁰⁶ However, prosecutorial discretion must be exercised independently and be free from any political interference.⁶⁰⁷

Concerning investigative methods and support mechanisms, Egyptian Criminal Procedural Law provides numerous procedures for criminal investigation and prosecution.⁶⁰⁸ These procedures include methods intended to obtain information from individuals, including interrogatories, questioning and reporting,⁶⁰⁹ direct interviews, hearing of witnesses, the use of experts to make technical findings and provide testimonies, and cross-examination.⁶¹⁰ In addition to measures designed to safeguard evidence that has been gathered and preserved, procedures such as preventive detention, release on bail, and police supervision are also used.⁶¹¹ However, there is no specific reporting obligation outside the general rule of Articles 25 and 26 of the Egyptian Code of Criminal Procedure allowing or requiring public officials to report information on a criminal offense.⁶¹²

⁶⁰⁵ *Id.* Under this principle, the prosecuting authorities decide whether to bring a prosecution or pause proceedings. *Id.* Prosecution means “initiating public proceedings and referring the case to an investigating magistrate where they exist, or to a court.” *Id.* On the other hand, it means “placing a termination to the procedure that might have been started and results in no public proceedings.” *Id.* Also, the absence of a direct victim, the nonexistence of serious and reliable evidence, and the irrelevance of the harm done in addition to other discretionary concerns surrounding the case itself may result in a decision to postpone a case. *Id.*

⁶⁰⁶ MOHAMMAD ZAKY ABOU’AMER, KANOUN AL-IRRA’AT AL-JINA’IYAH [CRIMINAL PROCEDURAL LAW], (2008).

⁶⁰⁷ *Public Prosecution Office*, EGYPT JUST., <https://egyptjustice.com/public-prosecution-office> (last visited Nov. 9, 2023).

⁶⁰⁸ ABOU’AMER, *supra* note 399. With strong political leadership, it should be possible to move the agenda further in order to achieve concrete results. *Id.*

⁶⁰⁹ *Id.* The effectiveness of reporting system in the criminal justice policy usually depends on reporters and informers feeling secure that they will benefit from adequate and suitable protection from acts of reprisals or any threats of retaliations. *See generally* RESOURCE GUIDE ON GOOD PRACTICE IN THE PROTECTION OF REPORTING PERSONS, U.N. NATIONS CONVENTION AGAINST CORRUPTION 59-61 (U.N. Off. of Drugs & Crime 2015).

⁶¹⁰ ABOU’AMER, *supra* note 399. Collaboration among policy makers and scholars contributes not only to better institutional values but also to better understanding of anticorruption dynamics.

⁶¹¹ *Id.*

⁶¹² *See* BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 25. Article 25 of this law established reporting as a right: “Whoever has information about the occurrence of a crime of which the public prosecution may file a lawsuit without a complaint or a request may report such information to the public prosecution or any of the judicial officers.” *Id.* at 51. Further, Article 26 mandates public officials to report “any public official or person assigned a public service who knows during or due to the work thereof of a crime that the public prosecution may pursue without a complaint, or a request shall report such crime immediately to the public prosecution of the nearest judicial officer.” *Id.* *See also* Law No. 150 of 1950 (promulgating the Law of Legal Proceedings), *al-Waqā’i’al-Misriyah*, 1950, arts. 25-6 (Egypt).

Furthermore, collecting and distributing statistics on corruption and bribery is imperative for several reasons.⁶¹³ Statistics allow a country to demonstrate its commitment to fighting bribery and corruption, while also enabling effective assessment of the application and execution of domestic anti-corruption provisions.⁶¹⁴ Furthermore, accurate facts, data, and information about the number of cases that evolve beyond preliminary investigation to the phase of formal charges offer specifically valuable information about enforcement.⁶¹⁵ As a signatory to the UNCAC, accurate and comprehensive statistical data collection would assist Egypt to live up to its international obligations.⁶¹⁶

It should be noted that banks are prohibited from providing—directly or indirectly—any information concerning their client’s accounts, deposits, trusts, and safe deposit boxes, except upon an order of a competent judicial authority.⁶¹⁷ In some countries, legal provisions have been modified with respect to access to bank accounts because bank confidentiality⁶¹⁸ regulations can seriously hinder criminal investigation and prosecution.⁶¹⁹

⁶¹³ See BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 26.

⁶¹⁴ See *id.*

⁶¹⁵ See *id.* In order to develop this sort of investigating mechanism, the Egyptian authorities are asked to gather data that (i) distinguishes between economic and corruption crimes in order to accurately define what sorts of criminal acts are committed; (ii) separated into economic division and civil service groups; and (iii) contains implementation decisions and sanctions policy. *Id.*

⁶¹⁶ See *id.* at 27. The UNCAC advocates that the worsening of the corruption *status quo* in Egypt is intensified by the non-enforcement or inadequate application of the law. *Id.* In case of deficiency of any data on law implementation—corruption offenses that are indicted or penalized—it is problematic to evaluate or measure the level to which anti-bribery and anti-corruption laws are actually executed in Egypt. BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT 27 (MENA-OECD Initiative 2009), available at <https://www.oecd.org/global-relations/46341460.pdf>.

⁶¹⁷ See Merna G. Saad, *Banking Laws in Egypt*, YOUSSEY SALEH & PARTNERS (July 10, 2016), <https://yousseysaleh.com/Investment-in-Egypt/banking-laws-egypt/>.

⁶¹⁸ See BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 22. Bank secrecy is lifted only in cases related to money laundering. *Id.* The law on money laundering also explicitly provides for mutual legal assistance and international cooperation, pursuant to Article 13 of the United Nations Convention Against Transnational Organized Crime. *Id.* See also G.A. Res. 55/25, annex, United Nations Convention Against Transnational Organized Crime, art. 12&13. (Dec. 2000).

⁶¹⁹ In these countries, professional secrecy is no longer an obstacle to legal proceedings. See generally, Law Number 28 of 2000 (Banking Law of The Hashemite Kingdom of Jordan), *Al-Jarida Al-Rasmiyya*, 2000, as amended Law No. 46 of 2003 (Temporary Law), *Al-Jarida Al-Rasmiyya*, 2003 (Jordan), available at <https://www.cbj.gov.jo/EchoBusV3.0/SystemAssets/2f75d7af-5465-4e1f-90dd-8b825037edbd.pdf>; See also Law No. 3 of 1956 (Bank Secrecy), 1956 (Lebanon), available at https://www.bdl.gov.lb/CB%20Com/Laws%20And%20Regulations/Laws/Law_3956_EN%20%A72_3.pdf. In support of this, Article 40 of the UNCAC states, “Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of [bank secrecy] laws.” See UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 40.

Enforcement of corruption is inadequate due to insufficient investigation and prosecution of economic crimes, such as bribery of public officials.⁶²⁰ In Egypt, the effective administration of legal systems needs to develop anti-corruption standards comparable to international practices and obtain additional experience with economic crimes to achieve desirable levels of professionalism at the judicial level.⁶²¹ Egyptian authorities should be more transparent and accountable in order to present a clear image of the effectiveness of laws on bribery and corruption.⁶²² Entities responsible for curbing bribery and corruption should also conduct regular analyses of corruption offenses that are prosecuted, the sanctions imposed, and the efficiency of their enforcement.⁶²³ Further, they should also communicate the outcomes of their assessments.⁶²⁴

G. International Judicial Cooperation: Extradition and Mutual Legal Assistance⁶²⁵

International cooperation frequently plays an essential role in securing evidence of bribery with respect to government officials.⁶²⁶ In particular, tracing funds and assets abroad is often an indispensable means for investigating and prosecuting numerous cases of bribery in business operations.⁶²⁷ By the same token, courts and judges may be asked by foreign

⁶²⁰ Arafa, *supra* note 142, at 197 n.78.

⁶²¹ See generally BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 22. For example, in many Arab countries, the determination of judicial police training still needs to improve its aggressive model of policing. MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 36. Training necessities are often concerned with the achievement of political stability and internal security rather than towards professional law application and economic crime deterrence. *Id.* Another feature of police and judicial training is that it tends to rely on classical techniques of instruction, focusing on theory and acquiring information rather than practice and advanced professional skills. *Id.*

⁶²² BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 27.

⁶²³ *Id.*

⁶²⁴ *Id.*

⁶²⁵ *Id.* at 22. It is essential for national authorities in the State to coordinate together to eliminate corruption. *Id.* Also, Article 38 of the UNCAC reassures cooperation between its public authorities, as well as its public officials, and, on the other hand, its powers in charge of investigating and prosecuting criminal offenses. Numerous corruption circumstances are very complicated and hidden; early notice to appropriate public bodies along with early support at the request of investigative agencies is a good standard for good practice. See UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at arts. 38-39 (explaining the co-operation between the national authorities together and the private sector).

⁶²⁶ MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 36.

⁶²⁷ *Id.* See generally Mahmoud C. Bassiouni, *Ideologically Motivated Offenses and the Political Offenses Exception in Extradition: A Proposed Juridical Standard for an Unruly Problem*, 19 DEPAUL L. REV. 217 (1969).

authorities to investigate bribery offenses that have ties to their countries.⁶²⁸ However, systematic barriers often prevent the effective sharing and exchange of information with third countries.⁶²⁹ Except when an agreement provides for direct exchange of documents between judicial authorities, many countries' legal systems do not permit enforcement authorities to share information directly with law enforcement authorities in other countries.⁶³⁰

Under the Code of Egyptian Criminal Procedure, executive authorities must send their requests for mutual and technical assistance via diplomatic channels; reports from third countries follow a similar route.⁶³¹ Requiring documents or requests to be transmitted through diplomatic channels may cause delays in assisting other countries with their investigation and prosecution of corruption offenses and hinder international cooperation.⁶³²

International instruments and customary practices on the process of information exchange have launched a set of general norms that must be present to achieve an inclusive awareness of the circumstances within a country and its institutions.⁶³³ The most central of these are the complete and

⁶²⁸ See generally UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197.

⁶²⁹ MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 36; *Breaking down Barriers: International Cooperation in Combatting Foreign Bribery*, OECD, <https://www.oecd.org/daf/anti-bribery/Anti-Bribery-Ministerial-International-Cooperation-Discussion-Paper.pdf> (last visited Nov. 30, 2023). According to Article 10 of the UNCAC, the public should have actual access to the decision-making process and decision-makers through simplified administrative measures and the right to request public information. Moreover, the last paragraph of the Article 10 requires states to distribute public information, which may comprise periodic reports on the threats of corruption in its public administration. See UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at art. 10.

⁶³⁰ See generally *id.*

⁶³¹ MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 36. Also, it is important to note that information exchange with third countries is subject to the condition of reciprocity, which "means to give and take mutually; to return in kind or even in another kind or degree." See, e.g., CRIMINAL PROCEDURAL LAW OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA (AL JUMHURIYAH AL JAZA'IRIYAH AD DIMUQRATIYAH ASH SHA'BIYAH) [KANUN AL-IJRA'AT AL-JINA'IYAH AL-GAZA'RI], *Al-Jarida Al-Rasmiyya*, 6 Aug.1966, art. 725 (Algeria). Some countries may reject to execute or issue a request for assistance from a foreign country on the basis of national economic interest and security, the probable effect upon connections with another State, the identity of the natural or legal individuals engaged, or of "any other consideration" as under Article 723 of Algeria's Criminal Procedural Code and Article 333 of Tunisia's Criminal Procedural Code. See generally *id.* at arts. 723, 725; see also CRIMINAL PROCEDURAL LAW OF THE REPUBLIC OF TUNISIA [KANUN AL-IJRA'AT AL-JINA'IYAH AL-TOUNSY], *Al-Jarida Al-Rasmiyya*, 24 July1968, art. 333 (Tunisia).

⁶³² MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 36. See also Mahmoud C. Bassiouni, *Theories of Jurisdiction and Their Application in Extradition Law and Practice*, 5 CAL. W. INT'L. L.J. 1, 2 (1974) ("It is universally recognized that every state has the power to regulate conduct within its territory and, beyond it, such other conduct which affects its legitimate interests. The power of a state to proscribe conduct within its territory and such other conduct which affects its interests is a concomitant to the principle of sovereignty.").

⁶³³ See generally Mahmoud C. Bassiouni, *Theories of Jurisdiction and Their Application in Extradition Law and Practice*, 5 CAL. W. INT'L. L.J. 1, 10 (1974) ("However, the Supreme Court of the United States, noted that '[a] sovereign nation has exclusive jurisdiction to punish offenses against its laws

unconditional disclosure and automatic posting of information, the smooth attainment of data, regulated costs, and restricted exceptions.⁶³⁴ Over and over again, large-scale corruption has transnational aspects, perhaps because the briber or bribee is domiciled abroad, the offense is planned or committed wholly or partially in one or more foreign countries,⁶³⁵ the proceeds of the criminal act have been transferred, or the offender has escaped the country.⁶³⁶ International collaboration and mutual legal assistance are increasingly necessary to detect global corruption channels and secure evidence.⁶³⁷ Judges may need to make representations or delegations to foreign nations in cases of bribery involving foreign countries.⁶³⁸ Parties should use well-suited

committed within its borders, unless it expressly or impliedly consents to surrender its jurisdiction”).

⁶³⁴ See generally *id.* (report translated in to Arabic by the author). See also Isabel Esterman, *An Opening*, AM. CHAMBER OF COM. IN EGYPT (2012), <https://www.amcham.org.eg/publications/business-monthly/issues/196/April-2012/2819/an-opening> (explaining that if the People’s Assembly passes a new draft bill on freedom of information, it could end decades of government secrecy in Egypt. But advocates for greater transparency would still have a long road ahead of them).

⁶³⁵ See generally Mahmoud C. Bassiouni, *Penal Characteristics of Conventional International Criminal Law*, 15 CASE W. RES. J. INT’L. L. 27, 29 (1983) (“Under such a scheme, international crimes established by conventional or customary international law must be enforced by the national criminal laws of the states. The concomitant duty to prosecute or extradite and to cooperate with other states in the prevention and suppression of such conduct is imposed upon the signatory states.”).

⁶³⁶ See generally *id.*

⁶³⁷ BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 22. For further explanation on the international co-operation to fight transnational criminality, see generally Mahmoud C. Bassiouni, *Comprehensive Strategic Approach on International Cooperation for the Prevention, Control and Suppression of International and Transnational Criminality*, 15 NOVA L. REV. 353 (1991).

⁶³⁸ BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 22; see generally Bassiouni, *supra* note 635, at 30 (“A textual analysis of some relevant treaty provisions in the twenty categories of international crimes reveals that the objectives of an international criminal law convention are: (1) to explicitly or implicitly declare certain conduct a crime under international law; (2) to criminalize the conduct under national law; (3) to provide for the prosecution or extradition of the alleged perpetrator; (4) to punish the person found guilty; (5) to cooperate through the various modalities of judicial assistance in the enforcement of the convention; (6) to establish a priority in theories of jurisdiction and perhaps recognize the applicability of universal jurisdiction; (7) to refer to an international criminal jurisdiction; and (8) to exclude the defense of superior orders.”).

international standards, extradition,⁶³⁹ and mutual legal assistance (MLA) provisions.⁶⁴⁰

In this respect, the former Egyptian Prosecutor General stated,

Egypt had a weak legal basis on which to engage in international co-operation [sic], as it is party to only a very few bilateral agreements allowing it to do so. . . . [C]o-operation [sic] is refused if the requesting state investigates an offense that doesn't exist in the state to which it makes its request. . . . [A]ll requests have to follow the formal co-operation procedure. . . . [C]omity—deferral out of courtesy or goodwill and outside any international obligation—had been used once in an important Egyptian case where assistance had been sought from an OECD country that had provided information on money flows.⁶⁴¹

⁶³⁹ Countries may provide extradition policy and MLA in corruption cases through various sorts of arrangements, such as bilateral and multilateral treaties and conventions. *See* UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at arts. 43-50 on extradition; transfer of sentenced persons; mutual legal assistance; transfer of criminal proceedings; law enforcement co-operation; joint investigations; and special investigative techniques. *Id.* at arts. 51-59, 60-62. For further discussion on extradition, *see generally* MAHMOUD C. BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE (5th ed. 2007); Mahmoud C. Bassiouni, *International Extradition: A Summary of the Contemporary American Practice and a Proposed Formula*, 15 WAYNE L. REV. 733 (1968); Mahmoud C. Bassiouni, *International Extradition in American Practice and World Public Order*, 36 TENN. L. REV. 1, 2 (1968) (“The history of international extradition in the western world has in no sense of the word paralleled that found in the eastern world. . . . [I]n *United States v. Rauscher*, the Supreme Court of the United States stated, ‘It is only in modern times that the nations of the earth have imposed upon themselves the obligation of delivering up these fugitives from justice to the states where their crimes were committed, for trial and punishment. This has been done generally by treaties. . . . Prior to these treaties, and apart from them there was no well-defined obligation on one country to deliver up such fugitives to another; and, though such delivery was often made, it was upon the principle of comity; . . . and it has never been recognized as among those obligations of one government towards another which rest upon established principles of international law.’”).

⁶⁴⁰ BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 22. M. CHERIF BASSIOUNI & KHALED MOHY EL-DIN, AL-WASA'EK AL-DAWLIYAH WA AL-EKLYIMIA AL-MA'ANIYA BEL AL-'ADALAH AL-JINAA'YAH: AL-GOZ'E AL-THANY: AL-GRA'MM AL-JINAA'YAH WA AL-TA'AWN FI AL-MAS'AEAL AL-JINAA'YAH [INTERNATIONAL AND REGIONAL INSTRUMENTS ON CRIMINAL JUSTICE, PART II: INTERNATIONAL CRIMES AND CO-OPERATION IN CRIMINAL MATTERS], (2006).

⁶⁴¹ BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 22. According to a recent study, the Egyptian Attorney General has a special office for international cooperation. *Id.* As Egypt does not have enough experience concerning the area of freezing assets from corruption acts; it is highly recommended to assign an inter-agency task force containing experts from the Ministry of Justice, the Ministry of Interior, the Central Bank, the Ministry of Finance, the Prosecutor's General Office, the private banking sector, and others as well as to request external and foreign consultants and investigators to track assets abroad, as Egypt lacks enough experts to address this question. *See, e.g., Attorney General proposes anti-corruption committee*, EGYPT INDEP. (Oct. 9, 2010), <https://www.egyptindependent.com/attorney-general-proposes-anti-corruption-committee/> (“the committee will work on implementing the United Nations Convention against Corruption, conduct studies, carry out awareness raising campaigns, and bolster cooperation with NGOs that fight corruption.”).

Furthermore, the Legislative Committee of the National Council for Human Rights (NCHR) concluded that Egyptian law was ineffective in matters relating to international cooperation, access to information, and recovery of funds.⁶⁴² The Prosecutor General's report on international cooperation with other countries regarding anti-corruption issues found that the Egyptian government has not yet placed the UNCAC provisions on international coordination and extradition of criminals into domestic law⁶⁴³ and that Egypt's current provisions are unable to address grand corruption with any kind of foreign component adequately.⁶⁴⁴ Accordingly, Egypt does not have an adequate legal foundation on which it can cooperate globally to fight international fiscal crimes.⁶⁴⁵

It is recommended that Egypt publicize mandatory international agreements regulating mutual legal assistance and extradition and conduct a statistical study based on accurate data with the Ministry of Justice on their implementation.⁶⁴⁶ The finding of such a study could incentivize the Egyptian government to amend and adjust its existing provisions to live up to Egypt's international commitment to battling corruption and fraud.⁶⁴⁷

VIII. CONCLUSION

This article underscored several cases of corruption and cronyism under Mubarak and the current administration. The corruption cases were used to renovate the networks that linked power with wealth and the state with business. The main argument is that Egypt faced a prolonged case of weak state institutions combined with deregulation and liberalization. The strong, well-positioned actors, whether within the state circles or their business associates, exploited and maximized their gains by grabbing public assets and occupying beneficial market positions.⁶⁴⁸ These initial conditions were replicated, transforming the economy into a cronyistic, non-market-based

⁶⁴² BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 22. See *Third Annual Report Human Rights Situation in Egypt 2006/2007*, THE NAT'L COUNCIL FOR HUM. RTS. (Jan. 18, 2007), <https://nchr.eg/Uploads/publication/en/annualreport3E1672581881.pdf>; see also Hesham Nasr et. al., *Criminal Justice and Prosecution in the Arab World*, (Oct. 2004), <http://www.pogar.org/publications/judiciary/criminaljustice-brown-e.pdf>; see generally Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Jarida Al-Rasmiyya*, 1973 (Egypt).

⁶⁴³ See *id.*

⁶⁴⁴ See *id.*

⁶⁴⁵ *UNODC and Egypt sign agreement to strengthen cooperation against crime*, U.N. OFF. DRUGS & CRIME, <https://www.unodc.org/unodc/en/frontpage/2018/October/unodc-and-egypt-sign-agreement-to-strengthen-cooperation-against-crime.html> (last visited Nov. 30, 2023).

⁶⁴⁶ BUSINESS CLIMATE DEVELOPMENT STRATEGY PHASE 1 POLICY ASSESSMENT EGYPT, *supra* note 338, at 22.

⁶⁴⁷ *Id.*

⁶⁴⁸ See generally Adly, *supra* note 39.

political economy.⁶⁴⁹ This situation persisted for many decades because of the dictatorial nature of the current military regime, together with the weak status of civil society.⁶⁵⁰ The challenge that faces Egyptians after the expulsion of Mubarak is to redefine and modernize the institutional relations between the state and the economy with more robust regulatory and market-upholding foundations.

Corruption and bribery have been recognized as serious issues for business processes in Egypt.⁶⁵¹ Thus, a comprehensive legal system will not eliminate corruption, but the proper, fair management of such a legal framework is required to overthrow corruption. This should be done by implementing practical legal foundations that are capable of imposing the laws and regulations that are the pillars of the framework. Also, the Egyptian legal agenda must include accountability devices that can avert and overwhelm corruption if effectively operated.⁶⁵² However, this framework needs to be rationalized and updated to be consistent with modern international goals, especially in the UNCAC, by enacting new laws on the protection of witnesses and informants in grave criminal cases.

In adopting the essential legal framework for combating corruption, consideration should be given to deterrent procedures concerning public office and the better handling of public finances, *e.g.*, in the area of employment, appointment, retention, promotion, and retirement of public officials.⁶⁵³ Further, this article has illustrated that the presence of codes of conduct for public employees and other executives, efficient laws, effective reporting appliances, and actual investigation and prosecution, as well as harmonization among national authorities, are essential components of a sound legal framework capable of curbing corruption. Such measures increase detection rates, enrich transparency, ensure accountability and integrity, and maintain public confidence in implementing general anti-corruption philosophies.

⁶⁴⁹ See generally Sufyan Alissa, *The Political Economy of Reform in Egypt*, CARNEGIE ENDOWMENT FOR INT'L PEACE, Oct. 2007, at 5.

⁶⁵⁰ See, *e.g.*, STIFTUNG, *supra* note 15.

⁶⁵¹ See generally Law No. 62 of 1975 (Illicit Enrichment Apparatus "IEA"), *Al-Jarida Al-Rasmiyya*, 7 July 1975, art. 2 (Egypt); see generally Mahmoud C. Bassiouni, *Ideologically Motivated Offenses and the Political Offenses Exception in Extradition: A Proposed Juridical Standard for an Unruly Problem*, 19 DEPAUL L. REV. 217 (1969). See also TINA SOEIDE, DRIVERS OF CORRUPTION: A BRIEF REVIEW (World Bank 2014) ("Political corruption, weak state legitimacy, and fragile state structures impede efficient reform; efficient solutions must therefore often involve international players. Lack of political will is not only a developing country's concern, however. In all categories of countries, anticorruption progress is being pushed by international collaboration, and the ability to control the most entrenched corruption depends on the willingness of governments in the most developed economies to participate with developing countries in anticorruption campaigns.").

⁶⁵² See Egyptian Penal Code Egyptian Crim. Code, arts. 103-11 (Egypt), available at https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf.

⁶⁵³ See, *e.g.*, UNITED NATIONS CONVENTION AGAINST CORRUPTION, *supra* note 197, at 41, art. 7.

Moreover, anti-corruption laws must enjoy common support and address the idiosyncrasies of the environments to which they apply. A fruitful legal framework must comply with the most recent international norms, adopt an inclusive and multi-disciplinary attitude, and allow Interpol and judicial international assistance in inhibiting and eliminating corruption.⁶⁵⁴

Finally, it is crucial to focus on threats to the financial system, particularly financial institutions that engage in self-dealing, corrupt practices, and fraud. Such threats, however, are complex and manifest themselves at many levels.⁶⁵⁵ For instance, considerable emphasis is placed on the problems that confront those who operate in the financial world, primarily because regulatory and enforcement actions are designed to address specific criminal issues, such as the disruption of highly profitable crimes or terrorism.⁶⁵⁶ Therefore, programs should be developed by those working in enforcement, compliance, and the financial sector to focus on practical issues and provide, on a truly international scale, better approaches and greater cooperation to fight global corruption.⁶⁵⁷

Consequently, if a new regulatory framework is established, both domestically and internationally, it will inevitably place much greater emphasis on ensuring integrity and sanctioning those who abuse positions of trust. There are also deep concerns by governments and financial institutions as to the extent corruption impacts the stability and security of the nation, specifically the impact of money laundering and organized crime.⁶⁵⁸ Therefore, it is essential to get a better understanding of the fundamental issues involved in preventing and controlling economic crime.⁶⁵⁹ Designing compliance programs will also be useful in gaining global insights and an in-depth understanding of matters pertaining to corporate regulations and enforcement in cases where organizations fall victim to massive fraud, reckless input of funds, failure to manage risk, over-zealous trading on corporate debt products, and rogue trading.⁶⁶⁰

⁶⁵⁴ See, e.g., Timothy M. Phelps, *Revolution might not be a cure for Egypt's extreme poverty*, L.A. TIMES (Feb. 20, 2011), <https://www.latimes.com/archives/la-xpm-2011-feb-20-la-fg-egypt-return-20110220-story.html>; *Egypt: A Nation in Waiting*, DOCUMENTARY STORM, <http://documentarystorm.com/politics/a-nation-in-waiting/> (last visited Nov. 30, 2023); *Hosni Mubarak*, N.Y. TIMES, <https://www.nytimes.com/topic/person/hosni-mubarak> (last visited Nov. 30, 2023); Alia Allana, *History's crossroads*, THE INDIAN EXPRESS (Feb. 10, 2011), <http://www.indianexpress.com/news/History-s-crossroads/748326>.

⁶⁵⁵ See, e.g., *id.*

⁶⁵⁶ See, e.g., *id.*

⁶⁵⁷ See, e.g., *id.*

⁶⁵⁸ See, e.g., *id.*

⁶⁵⁹ See, e.g., *id.*

⁶⁶⁰ See, e.g., Timothy M. Phelps, *Revolution might not be a cure for Egypt's extreme poverty*, L.A. TIMES (Feb. 20, 2011), <https://www.latimes.com/archives/la-xpm-2011-feb-20-la-fg-egypt-return-20110220-story.html>; *Egypt: A Nation in Waiting*, DOCUMENTARY STORM, <http://documentarystorm.com/politics/a-nation-in-waiting/> (last visited Nov. 30, 2023); *Hosni Mubarak*, N.Y. TIMES, <https://www.nytimes.com/topic/person/hosni-mubarak> (last visited Nov. 30,

This article attempts to go beyond the classical bounds of the study of unethical behavior in business and describe the link between corruption and economic development. Understanding this relationship is vital because when economic policies reflect the desires of public officials and their partners, the economically trained bureaucracy's role in modeling economic strategy is eclipsed. The recent events in Egypt after the 2011 Revolution slowly revealed the extent of the corruption of former President Hosni Mubarak.⁶⁶¹ Moreover, following the more recent victories of Islamist parties, it has become increasingly important for Egypt to focus on financial and economic crimes, including corruption.⁶⁶² This is especially relevant in light of the current corruption trials of the previous regime.⁶⁶³

Widespread corruption may have roots in culture and history, but it is, nevertheless, an economic and political problem.⁶⁶⁴ Corruption causes inefficiency and inequity.⁶⁶⁵ Corruption indicates that the political system is operating with little concern for the broader public interest.⁶⁶⁶ An efficient anti-bribery legal system is an essential basis for attracting investors and for a functioning economy at the national and international levels.⁶⁶⁷ This effective system depends on the quality and consistency of the laws and regulations,⁶⁶⁸ the means of enforcement, and, of course, a genuine political

2023); Alia Allana, *History's crossroads*, THE INDIAN EXPRESS (Feb. 10, 2011), <http://www.indianexpress.com/news/History-s-crossroads/748326>.

⁶⁶¹ See Khalil Al-Anani, *Ten Years Later: Reflections on Egypt's 2011 Uprising*, ARAB CTR. WASH. D.C. (Feb. 19, 2021), <https://arabcenterdc.org/resource/ten-years-later-reflections-on-egypts-2011-uprising>; see generally Mahmoud C. Bassiouni, *Ideologically Motivated Offenses and the Political Offenses Exception in Extradition: A Proposed Juridical Standard for an Unruly Problem*, 19 DEPAUL L. REV. 217 (1969).

⁶⁶² See *id.*

⁶⁶³ See Khalil Al-Anani, *Ten Years Later: Reflections on Egypt's 2011 Uprising*, ARAB CTR. WASH. D.C. (Feb. 19, 2021), <https://arabcenterdc.org/resource/ten-years-later-reflections-on-egypts-2011-uprising>.

⁶⁶⁴ See *Corruption*, U.N. NATIONS, <https://www.unodc.org/romena/en/corruption.html#:~:text=Corruption%20is%20a%20complex%20social,and%20contributes%20to%20governmental%20in%20stability> (last visited Nov. 30, 2023).

⁶⁶⁵ See generally *id.*

⁶⁶⁶ See generally *What Is Corruption?*, TRANSPARENCY INT'L, <https://www.transparency.org/en/what-is-corruption> (last visited Nov. 30, 2023).

⁶⁶⁷ See, e.g., Timothy M. Phelps, *Revolution might not be a cure for Egypt's extreme poverty*, L.A. TIMES (Feb. 20, 2011), <https://www.latimes.com/archives/la-xpm-2011-feb-20-la-fg-egypt-return-20110220-story.html>; *Egypt: A Nation in Waiting*, DOCUMENTARY STORM, <http://documentarystorm.com/politics/a-nation-in-waiting/> (last visited Nov. 30, 2023); *Hosni Mubarak*, N.Y. TIMES, <https://www.nytimes.com/topic/person/hosni-mubarak> (last visited Nov. 30, 2023); Alia Allana, *History's crossroads*, THE INDIAN EXPRESS (Feb. 10, 2011), <http://www.indianexpress.com/news/History-s-crossroads/748326>. MENA TASK FORCE ON BUS. INTEGRITY & COMBATING BRIBERY OF PUB. OFFS., *supra* note 360, at 36. Governments should actively encourage and support business efforts in promoting business ethics. *Id.*

⁶⁶⁸ See, e.g., Timothy M. Phelps, *Revolution might not be a cure for Egypt's extreme poverty*, L.A. TIMES (Feb. 20, 2011), <https://www.latimes.com/archives/la-xpm-2011-feb-20-la-fg-egypt-return-20110220-story.html>; *Egypt: A Nation in Waiting*, DOCUMENTARY STORM, <http://documentarystorm.com/politics/a-nation-in-waiting/> (last visited Nov. 10, 2023); *Hosni*

will.⁶⁶⁹ Developing efficient policy mechanisms and problem control, if the international community recognizes the dilemma, will help battle this phenomenon. Corruption erodes political legitimacy and the protection of rights.⁶⁷⁰ Decades into the global fight against corruption, there has been progress in both policy research and legal efforts, but much remains to be done. Widespread corruption may have roots in culture and history, but it is a symptom that the political system is operating with little concern for the broader public interest.⁶⁷¹

Mubarak, N.Y. TIMES, <https://www.nytimes.com/topic/person/hosni-mubarak> (last visited Nov. 10, 2023); Alia Allana, *History's crossroads*, THE INDIAN EXPRESS (Feb. 10, 2011), <http://www.indianexpress.com/news/History-s-crossroads/748326>.

⁶⁶⁹ See, e.g., *id.* Apart from that, a growing number of countries are engaged in a reform process to improve and adjust the prevailing laws on corruption.

⁶⁷⁰ See generally *What Is Corruption?*, TRANSPARENCY INT'L, <https://www.transparency.org/en/what-is-corruption> (last visited Nov. 10, 2023).

⁶⁷¹ See generally *id.*