Egypt's Anti-Corruption Program and the United Nations Convention Against Corruption

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Spring 2010
Independent Research Paper
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I. Introduction:

From November 9 to November 13, 2009, representatives of the 105 states parties to the United Nations Convention Against Corruption (UNCAC) met in Doha for the Third Session of the Conference of the States Parties to the UNCAC.[1] The event was the culmination of a two-year battle to determine the scope and procedures of the UNCAC's new implementation review mechanism. On one side of the battle, the members of the European Union urged acceptance of a mechanism that would require in-country visits by teams of experts that would be permitted to speak with civil society organizations (CSOs) and publish their findings. On the other side, Algeria, Angola, China, Egypt, Iran, Pakistan, Russian, Venezuela and Zimbabwe insisted on a stripped-down review mechanism that would make those three key features of the above plan optional. In the end, proponents of the stronger review mechanism failed to persuade their opponents to drop their objections and the Conference reached a consensus to adopt the weaker version. As a result, the Conference missed out on an opportunity to finally give the UNCAC some much-needed teeth to allow its provisions to become more than empty promises.

The Government of Egypt took a key leadership role in the effort to bring about this disappointing result. Both at the Third Session of the Conference and in the months leading up to it, Egypt vocally supported its position and consolidated support amongst those that shared its views. The main thrust of Egypt's argument against a review mechanism featuring mandatory country visits, access to NGOs, and published reports was that such a procedure would violate the sovereignty to host countries. To the extent that Egypt meant that imposing such a mechanism over the host country's objections would violate the host's sovereignty, Egypt undoubtedly would have been correct. However, given that even formal amendments to the

[1] See Final List of Participants, Conference of the States Parties to the United Nations Convention Against Corruption, 13 November 2009, CAC/COSP/2009/INF.2, *available at* http://www.unodc.org/documents/treaties/UNCAC/COSP/session3/LoP_CoSP3_FINAL.pdf.

UNCAC are only binding on those states parties which have expressed their consent to be bound by it,[2] this could not have been the meaning of Egypt's sovereignty argument. Instead, it seems Egypt meant that even if all states parties consented to a review mechanism featuring mandatory country visits, that mechanism would constitute an affront to national sovereignty. But this position would seem to be at odds with Egypt's previous stance on implementation monitoring procedures of other international standard-making bodies such as the Financial Action Task Force (FATF), which promotes anti-money laundering reforms both among its members and among countries seen as "non-cooperative."[3] When the FATF placed Egypt on its Non-Cooperative Countries and Territories list in June 2001, Egypt immediately went about instituting legislative and administrative reforms to bring its anti-money laundering regime up to FATF standards and permitted a FATF delegation to conduct surprise visits to Egyptian banks.[4]

Furthermore, in the years leading up to the Third Session of the Conference, Egypt had worked hard to polish its image as the Middle East's leader in implementing business regulation reforms, having been listed as a "top ten global reformer" four out of seven years between 2003 and 2009 in the IFC-World Bank's *Doing Business Report*.[5] In this effort, the Government of Egypt, led by the Minister of Investment Mahmoud Moheildin, welcomed visits from World Bank experts to analyze the country's progress in implementing a reform agenda focusing on the

[2] *See* UNCAC, Art. 69(5).
[3] High Risk and Non-Cooperative Jurisdictions, FATF-GAFI, http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236992_1_1_1_1_1,00.html; *Third Round of AML/CFT Mutual Obligations: Process and Procedures*, FATF-GAFI, October 2009, http://www.fatf-gafi.org/dataoecd/20/14/41563294.pdf.
[4] Gamal Essam El-Din, *Egypt So Fresh and So Clean*, AL-AHRAM WEEKLY ONLINE, 4 March 2004, http://weekly.ahram.org.eg/2004/680/ec4.htm.
[5] Nadine Ghannam, *Doing Business 2010: Governments Set New Record in Busienss Regulation Reform*, 9 September 2009, World Bank Press Release No. 2010/IFC/056, *available at* http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22305703~pagePK:64257043~piPK:437376~theSitePK:4607,00.html.

credit registry, property registry, and customs office.[6] Egypt's decision to block an effective UNCAC review mechanism at Doha thus stands in stark contrast to its previous openness to scrutiny of its financial reform measures, especially in light of the glowing reviews Egypt earned from inter-governmental organizations as a result.

The course Egypt took at Doha is all the more surprising for one more reason—Egypt would have performed quite well had it been subjected to the very same review mechanism that it so vehemently opposed at the Third Session. The version of the review mechanism that the European Union proposed at Doha was based on the model employed by a voluntary Pilot Review Program developed by the UNODC in response to the call in Resolution 1/1 of the First Session of the Conference for "an effective mechanism to assist in the review of the implementation of the Convention."[7] Twenty-nine countries agreed to participate in the program, which featured a review model based on a combined "self-assessment / group / expert review method" and focused on the eight articles of the UNCAC covering preventive anti-corruption policies and practices (Article 5); bribery of national public officials (Article 15); bribery of foreign public officials (Article 16); embezzlement (Article 17); obstruction of justice (Article 25); mutual legal assistance (Article 46); prevention and detection of the proceeds of crime (Article 52); and measures for the direct recovery of property (Article 53).[8] The methodology that the Pilot Review Program employed focused exclusively on the presence of legislation implementing the provisions of the UNCAC.[9] Unlike the OECD Working Group's

[6] Nehal El Kouseny, *Egypt Ranks Among Top Reformers in* Doing Business 2006, World Bank Egypt, http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/EGYPTEXTN/0,,contentMDK:20695118~menuPK:247804~pagePK:1497618~piPK:217854~theSitePK:256307,00.html, *accessed* 10 May 2010.
[7] Resolution 1/1, First Session of the Conference of the States Parties to the UNCAC, December 2006.
[8] *UNCAC Pilot Review Program*, UN Office on Drugs and Crime, http://www.unodc.org/unodc/en/treaties/CAC/pilot-review.html, *accessed* 10 May 2010.
[9] See, e .g., *Pilot Review Mechanism: Argentina*, UNODC, 2008, *available at* http://www.anticorrupcion.gov.ar/documentos/Argentina,%20country%20repor.pdf ; *Pilot Review Mechanism Country Report: The Plurinational State of Bolivia*, UNODC, 2009, *available at*

country reports on the implementation of the OECD Anti-Bribery Convention, the UNODC's Pilot Review Program for UNCAC implementation fails to examine the degree to which states parties are actually *enforcing* the legislation they adopt to comply with the UNCAC.[10] While Egypt struggles to effectively enforce its anti-corruption laws, it has passed laws implementing all of the UNCAC articles covered in a Pilot Review Program review. As a result, Egypt would have had little to fear from the stronger review mechanism proposed at Doha. Instead, in the context of Egypt's embrace of previous reviews of its financial regulations by the FATF and the World Bank-IFC as an opportunity to showcase its progress in implementing reforms, it might have seemed more likely that Egypt would have seen Doha as a chance to trumpet its legislative achievements in the anti-corruption field as well.

This state of affairs raises two questions. First, what inspired Egypt to object to the stronger UNCAC implementation review mechanism on national sovereignty grounds despite its previous acceptance of similar review procedures? Second, if Egypt would have performed well in an UNCAC implementation review based on the stronger Pilot Review Mechanism model, what would adopting the stronger model at Doha have accomplished anyway? After analyzing the two review mechanisms proposed at Doha in Part II; and applying an abbreviated version of the stronger version to Egypt's anti-corruption regime in Part III; this paper concludes in Part IV that Egypt's position at Doha was more the result of bureaucratic in-fighting than any coherent national policy counseling against permitting international scrutiny of its anti-corruption regime. Part V goes on to find that even the stronger version of the UNCAC implementation review

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http://www.transparencia.gob.bo/documentos_pagweb/Reporte%20Final%20Programa%20Piloto.pdf; *Pilot Review Mechanism; Mongolia*, UNODC, *Pilot Review Mechanism: Peru*, UNODC, 2008, *available at* http://www.pcm.gob.pe/Prensa/ActividadesPCM/2009/Febrero/Informe_Per%FA_Programa_Piloto.pdf.

[10] See, e.g., *United Kingdom: Follow-Up Report on the Implementation of the Phase 2 Recommendations*, OECD Working Group on Bribery in International Business Transactions, 21 June 2007, *available at* http://www.oecd.org/dataoecd/43/13/38962457.pdf (reviewing the discontinuance of a major foreign bribery investigation in the United Kingdom concerning BAE Systems).

mechanism would not have been capable of bringing about the same level of progress as the OECD Working Group's peer review mechanism. This last conclusion does not render the efforts of those proposing the stronger version of the review mechanism at Doha entirely quixotic—by forcing their opponents to take a public stand on the international stage, those efforts may contribute to more meaningful domestic reforms within those opposing countries.

Part II: The UNCAC and the Proposed Review Mechanisms

When it entered into force in 2005, the UNCAC enjoyed the distinction of becoming the first international convention exclusively dedicated to combating domestic corruption.[11] With provisions on the prevention and criminalization of corruption, international cooperation, and asset recovery,[12] the UNCAC had the potential to serve as a domestic anti-corruption complement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention), which imposed obligations on states parties to criminalize the bribery of *foreign* officials.[13] The OECD Convention established an OECD Working Group on Bribery in International Business Transactions "to monitor and promote full implementation of the Convention." Armed with a peer review mechanism described by Transparency International as the "gold standard" of monitoring, [14] the OECD Convention has enjoyed considerable success in pressuring states parties to draft, pass, and

[11] The United Nations Convention Against Transnational Organized Crime, which entered into force just one month before the General Assembly Resolution calling for the negotiation of the UNCAC, dedicated two of its thirteen substantive provisions to the criminalization of corruption.
[12] *Convention Highlights*, United Nations Office on Drugs and Crimes, http://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html, *accessed* 10 May 2010.
[13] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 2007, *available at* http://www.oecd.org/dataoecd/4/18/38028044.pdf.
[14] *Country Monitoring of the OECD Anti-Bribery Convention*, OECD Directorate for Financial and Enterprise Affairs, http://www.oecd.org/document/12/0,3343,en_2649_34859_35692940_1_1_1_1,00.html, *accessed* 10 May 2010.

enforce legislation criminalizing the bribery of foreign officials.[15] In comparison to the OECD Convention, which has thus far only been ratified by 38 countries, most of which would be considered developed, the UNCAC imposes significantly broader obligations on a much greater number of states parties on a wider spectrum of economic development. However, through 2009, the UNCAC contained no review mechanism analogous to the peer review mechanism of the OECD Working Group on Bribery.

Article 63 of the UNCAC required that each State Party provide the Conference of the States Parties (CoSP) with information on the programs, plans, legislation and administrative measures it had undertaken to implement the Convention.[16] Article 63 also paved the way for the establishment of "any appropriate mechanism or body to assist in the effective implementation of the Convention" that the CoSP might deem necessary.[17] In the first act of its first session, the Conference of the States Parties agreed that it was "necessary to establish an appropriate and effective mechanism to assist in the review of the implementation of the Convention."[18] Although the CoSP as a whole did not determine the exact contours of such a mechanism, the United Nations Office on Drugs and Crime (UNODC) responded to Article 63 and the CoSP resolution by developing a Pilot Review Program to test a specific method for implementation review.[19] The UNODC's Pilot Review Program drew heavily on the peer-driven monitoring system adopted by the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention). In particular, the Pilot

[15] Patrick Moulette, *Anti-Bribery Convention has Made a Difference*, 2009, http://www.america.gov/st/business-english/2009/December/20091204134521saikceinawz0.9326593.html&distid=ucs, *accessed* 10 May 2010.
[16] United Nations Convention Against Corruption, Art. 63(6).
[17] *Id*., art. 63(7).
[18] Resolution 1/1, First Session of States Parties to the United Nations Convention Against Corruption, 14 December 2006, *available at* http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session1-resolutions.html.
[19] United Nations Office on Drugs and Crime Project Proposal: Voluntary Pilot Programme, Review of Implementation of the United Nations Convention Against Corruption, *available at* http://www.unodc.org/documents/treaties/UNCAC/PilotReview/Pilot_Project_Document.pdf.

Review Program employed three key characteristics of the OECD Convention: (1) in-country visits by teams of experts from other states parties; (2) input from civil society organizations; and (3) publication of review team reports.

The Pilot Review Program Project Proposal as well as each of the reports were careful to state that the UNODC made the choice to use a combined "self-assessment / group / expert review" method in order to test the "effectiveness and efficiency of the approach, thus assisting the Conference to reach a decision on the establishment of a proper review mechanism."[20] However, in a Background Paper on "Good practices and lessons learned from the Pilot Review Program[ ]" that the Conference Secretariat presented at Doha, the Pilot Review Group stressed that the self-assessment alone was inadequate for "reviewing the implementation of legislation or regulation in practice."[21] Country visits, on the other hand, were an essential tool allowing reviewing experts to "not only pose questions, seek clarifications, request additional information or consider the practical implications of given provisions," but also providing opportunities for civil society and the private sector to "come together in considering the implementation of the provisions of the UNCAC and to also engage the wider community in the fight against corruption."[22]

The stronger review mechanism proposed at Doha clearly drew on the lessons learned by the Pilot Review Program. In the rolling text of the "Draft Terms of Reference of the Mechanism for Review of the Implementation of the UNCAC," Option 3 for Article 29 declared

[20] *Id*. at 2. *See also Pilot Review Mechanism: Argentina*, UNODC, 2008, *available at* http://www.anticorrupcion.gov.ar/documentos/Argentina,%20country%20repor.pdf; *Pilot Review Mechanism Country Report: The Plurinational State of Bolivia*, UNODC, 2009, *available at* http://www.transparencia.gob.bo/documentos_pagweb/Reporte%20Final%20Programa%20Piloto.pdf; *Pilot Review Mechanism; Mongolia*, UNODC, *Pilot Review Mechanism: Peru*, UNODC, 2008, *available at* http://www.pcm.gob.pe/Prensa/ActividadesPCM/2009/Febrero/Informe_Per%FA_Programa_Piloto.pdf.
[21] *Good Practices and Lessons Learned from Implementing the UNCAC Pilot Review Programme*, para. 15, Third Session of the Conference of the States Parties to the United Nations Convention Against Corruption, 9-13 November 2009, , *available at* http://www.unodc.org/documents/treaties/UNCAC/COSP/session3/V0987359e.pdf.
[22] *Id*. at para. 27.

that "the review team, in consultation with the secretariat, shall, on the basis of the draft report, complement the desk review with further means of direct dialogue such as a country visit using the uniform guidelines."[23] Option 1 for Article 34 specifies that the State party under review "shall ensure the presentation of the views of civil society and the private sector in the preparation of its country review report."[24] Lastly, Option 1 for Article 39 requires that the country review reports shall be made public in the six official languages of the United Nations.[25] Thus, the Third Session of the Conference of the States Parties had before it at Doha a proposal for a review mechanism that included three of the strongest features of the OECD Convention's peer review mechanism: mandatory country visits, input from civil society, and publication of reports. Due in large part to the efforts of Egypt, the final version of the review mechanism codified in Resolution 3/1 of the Conference of the States Parties makes all of these features optional.[26]

Despite these differences, even for countries that choose not to permit country visits or input from civil society, the review mechanism adopted at Doha will likely be carried out much like the self-assessment and desk review portions of the mechanism employed by the Pilot Review Program. While Resolution 3/1's review mechanism does not purport to limit its scope

[23] *Draft Terms of Reference of the Mechanism for the Review of Implementation of the United Nations Covnention Against Corruption: Rolling Text*, 8, Third Session of the Conference of the States Parties to the United Nations Convention, 9-13 November 2009, *available at* http://www.unodc.org/documents/treaties/UNCAC/COSP/session3/V0986376e.pdf.
[24] *Id*. at 9.
[25] *Id*. at 10.
[26] *See* Annex I to Resolution 3/1 of the Conference of the States Parties to the UNCAC, para. 29 ("If agreed by the State party under review, the desk review should be complemented with . . . a country visit"); Annex I to Resolution 3/1, para. 30 ("States parties are encouraged to facilitate engagement with all relevant national stakeholders in the course of a country visit"); Annex I to Resolution 3/1, para. 37 ("The country review reports shall remain confidential"). Report of the Conference of the States Parties to the United Nations Convention Against Corruption on its Third Session, held in Doha from 9 to 13 November 2009, Conference of the States Parties to the United Nations Convention Against Corruption, *available at* http://www.unodc.org/documents/treaties/UNCAC/COSP/session3/V0988538e.pdf.

to the eight UNCAC articles analyzed in the Pilot Review Programme,[27] the inclusion of additional articles in the review will be unlikely to change the overall character of the resulting country report because the review mechanism will continue to focus on the presence of legislation to the detriment of the enforcement of that legislation. Nothing else in Resolution 3/1 evinces intent on the part of the Conference to alter the Pilot Review Program's substantive focus. As a result, the country reviews undertaken by the Pilot Review Program should serve as reliable indicators of the level of scrutiny a party under review should expect to undergo under both the stronger review mechanism proposed at Doha and the mechanism actually adopted in Resolution 3/1.

An analysis of the Pilot Review Program country reports on Tanzania, Bolivia, Argentina, and Mongolia indicates countries under review should not expect to face a probing inquiry into the ability of their anti-corruption enforce the anti-corruption laws on the books.[28] As stated in Part I, each review team limited itself to an analysis of the implementation of only eight articles of the UNCAC covering preventive anti-corruption policies and practices (Article 5); bribery of national public officials (Article 15); bribery of foreign public officials (Article 16); embezzlement (Article 17); obstruction of justice (Article 25); mutual legal assistance (Article 46); prevention and detection of the proceeds of crime (Article 52); and measures for the

[27] The review is divided into two cycles. During the first cycle, chapters III (Criminalization and law enforcement) and IV (International cooperation) are covered. During the second cycle, chapters II (Preventive measures) and V (Asset Recovery) are covered. Resolution 3/1, para. 4. *See also* Annex I to Resolution 3/1, art. 12 ("The Mechanism…shall gradually cover the implementation of the entire Convention.").

[28] Nine Pilot Review Program country reports have been published. I chose to look specifically at Tanzania, Bolivia, Argentina, and Mongolia because they are the only four country report subjects that are ranked in the bottom half of Transparency International's 2009 Corruption Perceptions Index and thus most closely situated to Egypt in terms of public corruption rates. The other five reports cover the United States (ranked 19), Sweden (ranked 3), Austria (ranked 16), Poland (ranked 49), and Peru (ranked 75). *See* United Nations Convention Against Corruption Pilot Review Programme, UNODC, 2010, http://www.unodc.org/unodc/en/treaties/CAC/pilot-review.html, *accessed* 10 May 2010.

direct recovery of property (Article 53).[29] Articles 15, 16, 17, and 25 are extremely specific criminalization requirements that call on states parties to adopt legislative and other measures to establish certain corrupt acts as criminal offenses.[30] They impose no requirement that those measures be effectively enforced. Thus the sections of the country reports covering the implementation of these articles catalogue the laws in force on the given prohibited act but predictably do not engage in any analysis of the enforcement of those laws.[31] Articles 46 and 53 respectively require that states parties "afford one another the widest measure of legal assistance" and take measures to permit other states to take actions within the courts of the state party in order to procure property acquired through the commission of a corruption-related offense.[32] These provisions thus have little to say about a state party's ability to enforce corruption laws domestically. Only Article 5 and Article 52 provide a review team with the opportunity to undertake a more expansive analysis of the *effectiveness* of a State Party's anti-corruption programs.[33] Nevertheless, the country reports on Argentina, Bolivia, and Tanzania all largely forewent this opportunity and hewed to the common pattern of cataloguing the various policies, laws, and institutions dedicated to prevention of corruption generally and the prevention and detection of transfers of proceeds of crime specifically. The only country report to undertake any sort of quantitative analysis was the report on Mongolia, which utilized its section on Article 5 to provide impressive detail on the enforcement activities of the Mongolian Independent Authority Against Corruption (IAAC).[34] The Mongolia report also took the opportunity to use Article 5 as a vehicle to analyze more structural elements of Mongolia's anti-corruption regime

[29] *UNCAC Pilot Review Program*, UN Office on Drugs and Crime, http://www.unodc.org/unodc/en/treaties/CAC/pilot-review.html, *accessed* 10 May 2010.
[30] UNCAC arts. 15, 17, 25.
[31] *See Pilot Review Mechanism: Mongolia*, 8-14; *Pilot Review Mechanism: Plurinational State of Bolivia*, 13-19; *Pilot Review Mechanism: Argentina*, 10-16; *Pilot Review Mechanism: Tanzania*, 12-18.
[32] UNCAC arts. 46, 53.
[33] UNCAC arts. 5, 52.
[34] *Pilot Review Mechanism: Mongolia*, 5-6.

such as the political independence of civil servants.[35] None of the other reports chose to delve into deeper structural issues facilitating or impeding anti-corruption reforms.

Part III: Egypt's Anticorruption Regime

Had the Government of Egypt examined the Pilot Review Mechanism country reports, it should have been clear that as long as review teams continued to apply the same methodology, Egypt would have been found to be fully in compliance with all of the relevant provisions of the UNCAC. Egypt's array of enforcement agencies and legislation dedicated to addressing issues related to corruption is vast. The bulk of bureaucratic control over anti-corruption activities is housed in three agencies: the Central Auditing Organization, the Administrative Control Authority, and the Administrative Prosecution Authority.[36] The Central Auditing Organization (CAO), which reports directly to the President, monitors public funds and the personal finances of high public officers. [37] The Administrative Control Authority (ACA) is an independent organization affiliated with the Prime Minister that investigates fraud, waste, and incompetence in public projects and responds to citizen complaints.[38] The Administrative Prosecution Authority (APA) conducts investigations into public sector employees.[39] Outside of these three primary anti-corruption agencies, several other agencies hold more particularized roles. The Illegal Profiting Apparatus (IPA) investigates suspected illegal income of public officials. If it detects that a public official has received undisclosed income and it suspects the income may be related to acts of corruption, the IPA refers the matter to the APA. The Public Prosecution

[35] *Id.* at 7.
[36] *Second Report of the Transparency and Integrity Committee: Action Priorities and its Mechanisms*, Ministry of State for Administrative Development, 13, August 2008, *available at* http://www.ad.gov.eg/NR/rdonlyres/2B82B630-61D7-456D-B716-CA4BF373F1D9/1825/TransparencyandIntegrityCommittee2ndreportTheEngli.pdf.
[37] *National Integrity System Study: Egypt 2009*, Transparency International, 35, *available at* http://www.transparency.org/policy_research/nis/nis_reports_by_country.
[38] *Id*. at 120.
[39] *Second Report of the Transparency and Integrity Committee*, at 13.

represents the state in criminal trials, including trials against civil servants. The Complaints Committee of the National Council for Human Rights (NCHR) hears complaints of individual citizens regarding human rights violations, including violations of "the right to transparency."[40] The NCHR then exercises its discretion to send complaints to investigative bodies or advise the concerned parties of the legal aspects of the complaint.[41]

These investigation and enforcement agencies have at their disposal an even wider array of constitutional provisions and statutes providing for the accountability of high government officials and governing the use of public funds and the behavior of public officials. Article 85 of the Egyptian Constitution purports to extend accountability all the way to the top of the national bureaucracy by giving the People's Assembly, the lower house of parliament, the power to charge the President with "committing a criminal act" if at least one third of the members of the Assembly join in making the charge.[42] The President may then be impeached with the approval of two-thirds of the Assembly members, resulting in the President's suspension and trial before a special Tribunal. Article 158 of the Constitution prohibits ministers from practicing a commercial, financial or industrial occupation or conducting any business with the State during his term in office.[43] Article 159 permits the President of the Republic and the People's Assembly to bring a minister to trial for "crimes committed by him in the performance of his duties to them."[44] Article 127 allows the People's Assembly to institute a process to "determine the responsibility of the Prime Minister" on a proposal of one-tenth of the Assembly's members.[45] If the Prime Minister is eventually "found responsible" by the People's Assembly,

[40] *Third Annual Report: Human Rights Situation in Egypt 2006-2007*, National Council for Human Rights, 79, *available at* http://nchregypt.org/en/images/files/3rd%20Annual%20Report(1).pdf .
[41] *National Integrity System Study: Egypt 2009*, at 113.
[42] Article 85 of the Egyptian Constitution.
[43] Article 158 of the Egyptian Constitution.
[44] Article 159 of the Egyptian Constitution.
[45] Article 127 of the Egyptian Constitution.

he is required to submit his resignation to the President under Article 128.[46] While the Emergency Law of 1981 mitigates the effectiveness of the checks and balances in the above constitutional provisions, the mere enactment of the articles is sufficient to satisfy an inquiry of the type engaged in by the Pilot Review Program.

In addition to these constitutional provisions, several Egyptian laws and regulations provide regulators with ample authority to pursue corruption-related crimes. Law 62/1975 criminalizes "illicit profits" and requires that government officials fill out and submit regular asset disclosure forms that include all possessions of their immediate families.[47] Law 47/1978 prohibits state employees from accepting gifts for performing their duties.[48] Articles 103 to 111 of the Egyptian Penal Code, Penalty Law No. 58/1937, criminalize passive and active bribery by public employees, clergymen, and corporate directors.[49] Article 107 defines penalties for the civil servants who offer or accept bribes, as well as for intermediaries. Article 111 limits the scope of the bribery laws to civil servants, legislators, persons involved in judicial proceedings, and board members of public agencies. Articles 112 to 119 of the Penal Code criminalize the embezzlement of public funds.

Several constitutional and legislative proposals maintain the integrity of Egypt's notoriously opaque budgeting process. Article 86 of the Constitution requires that budget proposals should be presented to the People's Assembly at least three months before the beginning of the fiscal year. The Central Auditing Organization (CAO) oversees the implementation of the budget across national and local ministries. Government Accountability

[46] Article 128 of the Egyptian Constitution.
[47] *National Integrity System Study: Egypt 2009*, Transparency International, 40, *available at* http://www.transparency.org/policy_research/nis/nis_reports_by_country.
[48] *Id*.
[49] *Second Report of the Transparency and Integrity Committee*, at 11.

Act 1127/1981 sets rules for implementing the budget and imposes accounting standards for governmental financial transactions.[50]

Lastly, Egypt has developed a network of financial regulations and regulatory agencies with responsibility for maintaining integrity and transparency in the financial markets. Capital Market Law 95/1992 imposes prison sentences of up to five years for making intentionally material misstatements in securities disclosures and up to two years for divulging benefiting from insider information.[51] More recently, Law 10 of 2009 consolidated the Capital Markets Authority, the Mortgage Finance Authority and the Egyptian Insurance Supervisory Authority into the Egyptian Financial Services Authority (EFSA) and transferred to the EFSA responsibility for the enforcement of the Insurance Supervision and Control Law 10/1981, the Depository and Central Registry Law 93/2000, Mortgage Finance Law 148/2001 and Capital Market Law 95/1992.[52]

The decision to bring three major regulatory agencies under one roof in Law 10 of 2009 represents a shift away from a general trend of expanding the number of regulatory agencies and laws without taking time to work out how agencies should deal with areas of overlapping authority. According to the Ministry of State for Adminstrative Development, even though Egypt, "compared to other Arab and developing countries, is considered a pioneer in decreeing legislations and laws concerned with monitoring, investigation and penalizing" corruption, the country lacks "sufficient mechanisms . . . to mobilize the above mentioned efforts."[53] Furthermore, regulatory agencies face a "growing number of violations and a declining

[50] *Second Report of the Transparency and Integrity Committee*, at 12.
[51] Capital Market Law 95/1992 Arts. 63, 64, *available at* http://www.cma.gov.eg/cma/jtags/english/ch_en.jsp?itemId=UG1216&itemType=2&parentId=UG564&parentType=2#null.
[52] Law Regulating Non-Banking Financial Markets and Instruments 10/2009, *available at* http://www.efsa.gov.eg/content/EFSA_EN/pool_extra_efsa_en/law_10_en.htm.
[53] *Second Report of the Transparency and Integrity Committee*, at 7.

efficiency in resources management."[54] According to Dr. Ghada Moussa, Secretary-General of the Transparency and Integrity Committee of the Ministry of State for Administrative Development, the profusion of regulatory agencies with the ability to receive tips means that tipsters don't know who to talk to and enforcers don't know who is supposed to act.[55]

In addition to these bureaucratic inefficiencies, Egypt's anti-corruption program also faces obstacles rooted in the country's current political structure. First and foremost, Hosni Mubarak has served as Chairman of the National Democratic Party (NDP) and President of the Arab Republic of Egypt since 1981. During that period, the National Democratic Party has maintained dominant majorities in the People's Assembly. Partially as a result of this dominance, the People's Assembly has continued to renew every two years Egypt's Emergency Law, which permits derogation from constitutional guarantees of freedom from arbitrary detention, freedom of expression and freedom of assembly.[56] The lack of regime change over the last twenty-nine years has ensured that reforms occur incrementally if at all. Although the Egyptian Cabinet has enjoyed a much higher rate of turnover than the Presidency, nearly three decades under the same head of state has given lines of patronage within each ministry time to rigidify and entrench themselves. In such a context, attempts to bring wholesale changes to swollen bureaucracy without the direct support of the Presidency are unlikely to succeed.[57]

Egyptian NGO Law 84/2002 imposes restrictions on civil society organizations, curtailing the ability of Egyptian citizens to take actions to demand transparency and accountability from their government.[58] Under Law 84/2002, civil society organizations are

[54] *Id.*
[55] Interview with Dr. Ghada Moussa, Transparency and Integrity Committee of the Ministry of State for Administrative Development, 18 January 2010.
[56] Michael Slackman, *Egypt's Emergency Law Extended for Two Years*. NEW YORK TIMES, 11 May 2010.
[57] *International Conventions and Egyptian Legislation That Fight Corruption*, 11, Maat Center for Juridical and Constitutional Studies, http://www.maat-law.org/Reports/Reports_EN/Reports_EN.htm, *accessed* 10 May 2010.
[58] Law 84/2002.

required to register with the Ministry of Social Solidarity, which retains the right to deny or revoke registration based on grounds that have not been publicly delineated to any degree of specificity.[59] In practice, the Ministry of Social Solidarity often denies registration but permits civil society organizations to continue operations, all the while wielding the organization's lack of legal status as a powerful tool to ensure the organization doesn't cross certain "red lines" in its criticisms of the governmental, military, or religious institutions.[60] Furthermore, advance Ministry approval is required to receive funds from foreign organizations or governments. Once again, the Ministry often permits the receipt of such funds despite the failure to secure approval but uses the arrangement as leverage to secure compliance from organizations when it seeks to intervene in their activities. The Egyptian Government has subjected anti-corruption civil society organizations to a particularly high level of scrutiny and has suspended USAID-funded CSOs that it considered "too aggressive."[61]

Despite recent proposals to pass an Egyptian analogue to the United States' Freedom of Information Act,[62] several factors severely restrict the flow of governmental information to the public. First of all, Egypt does not provide a right of access to information in its Constitution and instead has passed laws prohibiting the publication of information or records related to the government,[63] restricting the use of official documents,[64] and prohibiting dissemination of news

[59] *See* Law 84/2002, art. 11 ("It is forbidden...to include the following among the group's aims: . . . (2) to threaten to undermine national unity, public order and morals.")
[60] *See Freedom of Association in the Euro-Mediterranean Region*, 24-27, Euro-Mediterranean Human Rights Network, 2009.
[61] *Audit of USAID/Egypt's Democracy and Governance Activities*, Office of the Inspector General of the U.S. Agency for International Development, 5, 10, Audit Report No. 6-263-10-001-P, 27 October 2009.
[62] *See, e.g.*, Project Document: Supporting the Ministry of Investment in Enhancing Transparency and Fighting Corruption, 8, Government of Arab Republic of Egypt and United Nations Development Program (providing assistance to the Ministry of Investment's legal department in the drafting of sections of a legal document on Freedom of Information).
[63] Law 35/1960.
[64] Law 121/1975.

of the armed forces.[65] Furthermore, civil servants who wish to make known to the public allegations of corruption currently enjoy no whistleblower protection and instead face potentially steep penalties if a court finds the allegations to lack merit.[66] While citizens do have the ability to bring suit against the government for infringements of their civil rights under Article 71 of the Constitution, the Supreme Constitutional Court recently banned the use of "*el-Hesba*" claims, which had previously permitted individual citizens to challenge public decisions, institutions, or figures in court.[67]

The Government of Egypt's failure to confront these obstacles to effective anti-corruption reform efforts has coincided with a recent downward slide in Egypt's rankings in NGO indexes of media freedom, corruption, civil liberties, political rights, and democracies. Egypt's ranking in Transparency International's Corruption Perceptions Index, which is based on surveys of individual perceptions of corruption levels in a given country, has fallen from 70 out of 163 countries in 2006 (raw score 3.3),[68] to 105 out of 180 counties in 2007 (raw score 2.9),[69] to 115 out of 180 countries in 2008 (raw score 2.8).[70] During the same period, Egypt's overall score in the Global Integrity Scorecard, which is based on objective governance indicators rather than public perceptions, has fallen from 57 in 2006 to 54 in 2008. [71] While recent investigations and prosecutions of high-ranking public officials and politically-connected businessmen

[65] Law 313/1956.
[66] Law 2/1977, which established the Illegal Profit Authority does not provide any protection against recrimination or other negative consequences if a civil servant informs authorities of corruption crimes. Instead, the law does impose fines and prison sentences on complaining civil servants if their claims are not verified by investigators.
[67] *National Integrity System Study: Egypt 2009*, 41.
[68] Corruption Perceptions Index 2006, Transparency International, http://www.transparency.org/policy_research/surveys_indices/cpi/2006, *accessed* 10 May 2010.
[69] Corruption Perceptions Index 2007, Transparency International, http://www.transparency.org/policy_research/surveys_indices/cpi/2007, *accessed* 10 May 2010.
[70] Corruption Perceptions Index 2008, Transparency International, http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table, *accessed* 10 May 2010.
[71] Egypt: Integrity Scorecard 2006, Global Integrity, http://www.globalintegrity.org/reports/2006/egypt/scorecard.cfm, *accessed* 10 May 2010; Egypt Integrity Scorecard 2008, Global Integrity, http://report.globalintegrity.org/Egypt/2008, *accessed* 10 May 2010.

demonstrate Egypt's capacity to enforce its anti-corruption legislation,[72] they may also indicate that preventive measures already in place have been ineffective.

Despite the many challenges that Egypt's anti-corruption program faces, in a Pilot Review Program such as the ones conducted in Tanzania, Argentina, and Bolivia, Egypt would have been found to be in compliance with all the UNCAC articles under review, with the sole exception of Article 16, which criminalizes bribery of foreign officials. Articles 15, 17, and 25 of the UNCAC require states parties to "adopt such legislative and other measures as may be necessary to establish as criminal offenses" bribery of national officials; embezzlement, misappropriation or other diversion of property by a public official; and obstruction of justice respectively.[73] By the time, the UNCAC entered into force, Egypt had adopted legislation criminalizing all of these offenses. Articles 103 to 111 of the Egyptian Penal Code, Penalty Law No. 58/1937, criminalize passive and active bribery by public employees.[74] Articles 112 to 119 of the Penal Code criminalize the embezzlement of public funds.[75] Article 25 of the UNCAC defines "obstruction of justice" as "the use of physical force, threats or intimidation" to interfere with the giving of testimony or production of evidence in a corruption-related proceeding or to interfere with "the exercise of official duties by a justice or law enforcement official" in relation to corruption-related activities. These offenses are covered by the broad

[72] *See, e.g.*, Yasmine Saleh, *MPS Demand an Investigation into the Blood Bags Scandal*, DAILY NEWS EGYPT, 11 January 2007 (describing 2007 investigation of member of the People's Assembly accused of selling polluted blood bags manufactured by his own medical equipment company to the Ministry of Health); Safaa Abdoun, *Lawyers Blame Ferry Verdict on Referral to Misdemeanor Court*, DAILY NEWS EGYPT, 3 August 2008 (reporting the acquittal of a member of Shura Council that owned unseaworthy and overcrowded ferry that sank in the Red Sea in 2006, claiming the lives of 1,034 people); Mohammed Mahmoud, *Former Egyptian Minister Faces Corruption Charges*, AL SHORFA, 2 March 2010 (reporting Public Prosecution investigation of former Minister of Housing (1993-2005) for allotting land to family members and permitting land sales to business associates for less than market value).

[73] UNCAC, arts. 15, 17, 25.

[74] *Second Report of the Transparency and Integrity Committee*, at 11.

[75] Mohamed Hashish, *Egyptian Legislation Relating to Anti-Corruption*, Arab Legal Portal, UNDP Programme on Governance in the Arab Region, 2010, *available at* http://www.arablegalportal.org/financial/legaldocs/anti-corruption/egypt/Egypt-anti-corruption-laws-inforce-en.pdf, *accessed* 10 May 2010.

reach of Article 86 of the Egyptian Penal Code, which prohibits acts "preventing the public authorities from carrying out their functions" and "acts impeding the implementation of the Constitution and the laws and regulations."[76]

Likewise, Article 8 of the Anti-Money Laundering Law 80/2002 satisfies the requirements of UNCAC Article 52 by requiring financial institutions to report to the Anti-Money Laundering Unit any suspicious financial transactions and to establish systems to ensure that the institution obtains the identification and legal status of customers and beneficial owners.[77] The Executive Regulations to the Anti-Money Laundering Law 80/2002 also bring Egypt into compliance with UNCAC Articles 53 and 46. Article 3(19) of the Executive Regulations requires the Anti-Money Laundering Unit to provide the means necessary for providing international criminal cooperation in general , especially judicial assistance and representation, extradition of accused convicted persons, and the enforcement of final criminal judgments rendered by competent foreign judicial authorities.[78] Article 3(20) of the Executive Regulations requires the Anti-Money Laundering Unit to cooperate with foreign countries on the disposal of proceeds deemed to be confiscated by virtue of a judicial Egyptian ruling.

The only UNCAC Article subject to Pilot Review Program review that Egypt has not yet implemented is Article 16, which essentially extends to UNCAC states parties the requirements of the OECD Anti-Bribery Convention by mandating that each state party adopt legislation to establish as a criminal offense the bribery of a foreign public official or an official of a public international organization. Although Egypt has taken a leadership role among Arab and African

[76] *Implementation of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, 48, Commission on Human Rights, Fiftieth Session, 20 January 1994, UN Doc. E/CN.4/1994/79, *available at* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G94/103/08/IMG/G9410308.pdf?OpenElement.
[77] Law 80/2002.
[78] Executive Regulations of the Anti-Money Laundering Law, Prime Minister Decree No. 951, *available at* http://www.cbe.org.eg/public/Banking%20Laws/executive%20regulations%20no.951%20of%20money%20laundering.pdf.

countries in signing on to other OECD agreements such as the OECD Declaration on International Investment and Multinational Enterprises,[79] Egypt has not signed the OECD Anti-Bribery Convention and it has not criminalized bribery of foreign officials through domestic legislation.

Based on its extensive arsenal of anti-corruption laws and enforcement agencies, a Pilot Review Program country report such as the ones performed on Bolivia, Argentina, and Tanzania probably would have found Egypt to be fully in compliance with Article 5 of the UNCAC as well. Article 5, however, does require more than steps to pass legislation and create agencies. Under paragraph 1, each state party is required to "maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability." For the most part,[80] however, Pilot Review Program country reports did not take advantage of this language to engage in a more in-depth analysis of the actual effectiveness of the anti-corruption programs they described. Thus, despite Egypt's major shortcomings in terms of both the effectiveness and coordination of its anti-corruption program, it had little reason to expect that an analysis of its implementation of Article 5 would consist of anything more than a laundry list of the Egyptian laws and enforcement agencies dedicated to corruption.

As a result, Egypt had little to fear from the stronger UNCAC implementation review mechanism proposed at Doha, which was modeled on the Pilot Review Program procedures for conducting country reports. Furthermore, even if Egypt had been subjected to a Pilot Review Program-style analysis of its implementation of all of the articles of the UNCAC, and not just the eight articles covered in the Pilot Review Program country reports, it is unlikely that Egypt

[79] *Egypt's New Era*, OECD OBSERVER, No. 262, July 2007, http://www.oecdobserver.org/news/fullstory.php/aid/2307/Egypt_92s_new_era.html, *accessed* 10 May 2010.
[80] *But see*, *Pilot Review Mechanism: Mongolia*, 5-6.

would have been subjected to serious criticism based on the failure of Pilot Review Program review teams to use the broad language of UNCAC Article 5 to launch into an analysis of the effectiveness of national anti-corruption programs.

Part IV: Explaining Doha

Egypt's decision to scuttle the stronger UNCAC review mechanism at the Third Session of the Conference of the States Parties could not seriously have been the result of a credible fear that an implementation review would label Egypt as non-compliant and failing to take effective action to combat corruption. Based on current perceptions of the level of corruption among the countries obstructing the adoption of the stronger review mechanism, however, it was tempting to see such a fear as an underlying motivation for taking the position. After all, out of Algeria, Angola, China, Iran, Pakistan, Russian, Venezuela and Zimbabwe, only China enjoyed a ranking on the 2009 Transparency International Corruption Perception Index higher than Egypt.[81] According to that same Index, Angola, Venezuela, and Iran enjoy the distinction of being on the list of the twenty most corrupt nations in the world. However, perceived levels of corruption have little to do with a country's compliance with the UNCAC as measured by the Pilot Review Program. As long as the state party has implemented the required legislation, it matters little whether they have actually begun to enforce that legislation effectively and consistently.

The official objection to the stronger review mechanism was that the mandatory country visits, input from civil society, and publication of reports represented a threat to national sovereignty and an opportunity to politically motivated states parties to sully the international reputations of their enemies.[82] Ahmed Ragab, Head of the Transparency Unit at the Egyptian

[81] *2009 Corruption Perceptions Index*, Transparency International, http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table.
[82] Report of the Conference of the States Parties to the United Nations Convention Against Corruption on its Third Session, held in Doha from 9 to 13 November 2009, 35, Conference of the States Parties to the United Nations

Ministry of Investment, explained in an interview that due to Egypt's currently tense relationship with some of its Middle Eastern neighbors, concerns regarding visits of foreign experts, especially those sent from neighboring countries, have become commonplace.[83] By highlighting the fact that Egypt's concerns are mostly limited to internal meddling by Middle Eastern neighbors, it may be possible to reconcile Egypt's objection to the country visit feature of the UNCAC review mechanism with its decision to welcome foreign experts in the effort to improve its standing before the Financial Action Task Force (FATF).[84] Of the 35 countries that are members of the FATF, none are located in the Middle East and only one, South Africa, is located in Africa. All of Egypt's neighbors are parties to the UNCAC and at least one of those countries would share in the responsibility of drafting Egypt's country report every time that Egypt came up for review.[85]

However, according to Dr. Ghada Moussa, the Secretary-General of the Transparency and Integrity Committee of the Ministry of State for Administrative Development, the same type of bureaucratic confusion that has hampered Egypt's anti-corruption reform efforts thus far may also have contributed to the position Egypt took in Doha.[86] While the Attorney-General of Egypt was present for the Third Session, according to Dr. Moussa, the Egyptian agenda was actually set by members of the Ministry of Foreign Affairs, which had little knowledge of Egypt's domestic anti-corruption programs. Furthermore, the Administrative Control Authority, Administrative Prosecution Authority, Ministry of Justice, Public Prosecution, Ministry of Interior, and Ministry

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Convention Against Corruption, *available at* http://www.unodc.org/documents/treaties/UNCAC/COSP/session3/V0988538e.pdf.

[83] Interview with Ahmed Ragab, Head of Transparency Unit, Ministry of Investment, 27 January 2010, notes on file with the author.

[84] *See supra* note 4.

[85] *See* Annex I to Resolution 3/1 of the Conference of the States Parties to the UNCAC, para. 19 ("One of the two reviewing States parties shall be from the same geographical region as the State party under review").

[86] Interview with Dr. Ghada Moussa, Transparency and Integrity Committee of the Ministry of State for Administrative Development, 18 January 2010.

of Administrative Development, which all sent representatives with the delegation,[87] were incapable of comparing notes and coming to the realization that Egypt actually stood to fare quite well under any of the review mechanisms proposed.

Part V: Implications for the UNCAC Review Mechanism

Whatever the actual motivations of the Egyptian delegation to the Third Session of the Conference of the States Parties were, it is clear that fear of being found to not be in compliance with the UNCAC should not have been one of them. Egypt's wealth of laws and enforcement agencies would have neatly filled the pages of a Pilot Review Program country report and would have deflected attention away from the obstacles Egypt's anti-corruption program must overcome to achieve effective enforcement and prevention. Country visits as carried out by Pilot Review Program teams, for the most part, did not lead to a more probing inquiry than the desk reviews that preceded them and that will characterize the official UNCAC implementation review mechanism going forward. The fact that Egypt would likely have fared well in an UNCAC implementation review, despite its struggles to effectively combat corruption, raises questions about the efficacy of both the Pilot Review Program review mechanism and the UNCAC itself.

Both the Pilot Review Program and the implementation review mechanism at Doha emphasize that the review process should embody a "progressive and comprehensive approach."[88] Rather than merely naming and shaming under-compliant states parties, the review

[87] See Final List of Participants, Conference of the States Parties to the United Nations Convention Against Corruption, 13 November 2009, CAC/COSP/2009/INF.2, *available at* http://www.unodc.org/documents/treaties/UNCAC/COSP/session3/LoP_CoSP3_FINAL.pdf.

[88] *See* Annex I to Resolution 3/1 of the Conference of the States Parties to the UNCAC, para. 9 ("The review of the implementation of the Convention is an ongoing and gradual process. Consequently, the Mechanism shall endeavor to adopt a progressive and gradual approach."); *Good Practices and Lessons Learned from Implementing the UNCAC Pilot Review Programme*, para. 20, Third Session of the Conference of the States Parties to the United

mechanisms seek to guide participants toward a higher level of compliance through a cooperative and interactive process. In practice, though, an "inherently positive approach" should not have to mean that states parties can claim that their steps to comply with the UNCAC consist of listing laws that predate their ratification of the Convention but are not yet effectively enforced. Instead, in the efforts to ensure that states parties are indeed taking steps forward, review teams should force countries under review to answer for decisions not to prosecute key cases or failures to take preventive measures to ensure major scandals do not repeat themselves. The OECD Working Group on Bribery in International Business Transactions showed that it is not afraid to engage in this type of questioning when it asked representatives of the United Kingdom why U.K. authorities had discontinued a major foreign bribery investigation concerning a BAE Systems defense contract with the Government of Saudi Arabia.[89] It is not clear what kept Pilot Review Program review teams from raising similar questions regarding effective enforcement in their country reports. However, to the extent that the reason was linked to some notion of the "inherently positive approach" of the UNCAC and its review mechanisms, it is clear that the UNCAC will never be capable of achieving the same progress in the fight against domestic corruption as the OECD Convention has achieved in the fight against bribery of foreign officials.

After all, the concept of a law dedicated exclusively to criminalizing the bribery of foreign officials is as new to the United Kingdom as the requirements of the UNCAC are to any

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Nations Convention Against Corruption, 9-13 November 2009, *available at* http://www.unodc.org/documents/treaties/UNCAC/COSP/session3/V0987359e.pdf ("The Pilot Review Program was built on the inherently positive approach of the Convention which the Conference has already incorporated into the attributes of the review mechanism outlined in its resolution 1/1.").

[89] United Kingdom: Follow-Up Report on the Implementation of the Phase 2 Recommendations, *supra* note 10 at 7.

of the UNCAC's states parties.[90] So why should it be more necessary to abstain from criticism in favor of a collaborative, non-adversarial, "inherently positive" approach with states parties to the UNCAC than with states parties to the OECD Convention? The most obvious answer is that the UNCAC strives to be as comprehensive as possible both in terms of its substantive scope and in terms of the countries that adhere to it. On the other hand, the states parties to the OECD Convention are exclusively developed countries and the Convention itself focuses only on the "supply side" of bribery by requiring the criminalization of bribes to *foreign* public officials.[91] The implication of pointing to this difference in scope is that comprehensiveness of scope and membership must come at the cost of compliance. As long as those who carry out UNCAC country reviews feel that they cannot engage in a more probing inquiry of the effectiveness of the anti-corruption laws that states parties have enacted, the above statement will be a self-fulfilling prophecy.

While the efforts of Egypt and others ensured that country visits and published reports of the type states parties to the OECD Convention have become accustomed to will not be a feature of the UNCAC review mechanism any time soon, those who do carry out desk reviews of UNCAC self-assessments performed by states parties should do everything in their power to demand clear indications from states parties that their anti-corruption laws are being effectively enforced. To the extent that the state party has not reached a level of effective enforcement, the team performing the review should embrace the "inherently positive" aspect of the UNCAC review process to work with the state party to come up with a comprehensive strategy to ensure that those laws are one day enforced. If, instead, review teams follow in the footsteps of the

[90] Bribery Act 2010 only received a Royal Assent on April 8, 2010. Bribery Act 2010, Ministry of Justice of the United Kingdom, http://www.justice.gov.uk/publications/bribery-bill.htm, *accessed* 10 May 2010 ("The Act will…create a discrete offence of bribery of a foreign public official.").

[91] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, OECD Directorate for Financial and Enterprise Affairs, http://www.oecd.org/document/20/0,3343,en_2649_34859_2017813_1_1_1_1,00.html, *accessed* 10 May 2010.

Pilot Review Program, country reports will continue to resemble laundry lists of laws and states parties such as Egypt will not be pushed to engage in the politically difficult effort to eliminate structural barriers to effective enforcement.