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AFTER THE REVOLUTION: EGYPT'S CHANGING FORMS OF CORRUPTION

M. PATRICK YINGLING AND MOHAMED A. 'ARAFA

ABSTRACT:

Egypt's revolution of January 25, 2011 was impelled by a desire to eliminate "conventional corruption," a particular kind of corruption that occurs when government officials illegally abuse public office for private gain. Illegal quid pro quo transactions, including acts of bribery, are prominent examples of conventional corruption. This form of corruption is to be contrasted with "unconventional corruption," a form of corruption that has (thus far) been absent in Egypt. Unconventional corruption occurs when elected officials put personal campaign finances ahead of the public interest without engaging in a quid pro quo transaction. These different forms, conventional and unconventional corruption, are not necessarily exhaustive of the universe of corruption. However, classification of corruption in these terms serves a purpose: when conventional corruption decreases, there is often a correlating increase in unconventional corruption. This relationship is relevant for purposes of analyzing corruption in Egypt because Egypt's new constitution, although imperfect, provides for greater restraints on executive power, and thus, in turn provides a foundation for a reduction in conventional corruption. However, as a result, problems of unconventional corruption are likely to emerge. Fortunately, unconventional corruption is not an inevitable side effect of progress—it can be contained. With a certain bit of insight and courage, the people of Egypt can reform their campaign finance system and bring forth a true democracy—one where elected officials make decisions not for the benefit of potential political funders, but rather, for the benefit of the people.

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When a republic has been corrupted, none of the ills that arise can be remedied except by removing the corruption and recalling the principles; every other correction is either useless or a new ill.

- Charles de Montesquieu, *The Spirit of the Laws*

I. INTRODUCTION

Egypt's revolution of January 25, 2011 was the result of many factors. One factor was government corruption. More specifically, it was "conventional corruption," which occurs when government officials illegally abuse public office for private gain. Illegal quid pro quo transactions, including acts of bribery, are prominent examples of conventional corruption. This form of corruption is to be contrasted with "unconventional corruption," a form of corruption that has (thus far) been absent in Egypt. Unconventional corruption occurs when elected officials put personal campaign finances ahead of the public interest. Although unconventional corruption does not involve an illegal quid pro quo transaction, it does involve corrupt decision-making that is undertaken with the purpose of serving political funders instead of the people.

Unconventional corruption, in contrast to its conventional counterpart, is not always recognized as a form of corruption. Thus, unconventional corruption requires a more detailed explanation. The unconventional corrupt act is not the spending of money by private parties. Rather, it is the elected official's decision to act with the purpose of inducing such spending by private parties. Unconventional corruption is not a problem of gratitude; it is a problem of incentive—the wrong incentive. Instead of making decisions with the incentive of serving the public interest, elected officials make decisions with the incentive of benefiting from future campaign contributions and expenditures.

These different forms, conventional and unconventional corruption, are not necessarily exhaustive of the universe of corruption. Nonetheless, classification of corruption in these terms serves a purpose due to their shared relationship—when conventional corruption decreases, there is a correlating increase in unconventional corruption. One aspect of this relationship involves the increased supply of campaign contributions and expenditures from private parties: when conventional corruption decreases and bribe offering becomes less effective, campaign contributions and expenditures become alternative tools of influence. Another aspect of this relationship involves the

increased demand for campaign contributions and expenditures from elected officials: when measures to combat conventional corruption are implemented and elected officials can no longer illegally steal elections or divert public monies to fund their campaigns, such officials become eager to benefit from contributions and expenditures. Thus, once a country takes concrete steps to reduce conventional corruption, it must then focus on combating unconventional corruption.

This article analyzes conventional and unconventional corruption in the context of Egypt's remarkable past, its tumultuous present, and its hopeful future. Part I elaborates on the concepts of conventional and unconventional corruption. Part II catalogs Egypt's history of conventional corruption. Part III describes Egypt's revolution of January 25, 2011 as well as the uprising of June 30, 2013, which has been described as a revolution, counter-revolution, and/or military coup d'état. Part IV analyzes Egypt's new constitution and its potential impact on conventional corruption. Part V explains why Egypt could experience a rise in unconventional corruption. Part VI details what can be done to combat a rise in unconventional corruption.

II. CONVENTIONAL AND UNCONVENTIONAL CORRUPTION

Government corruption is commonly defined as the abuse of public office for private gain.¹ Within this broad definition, corruption

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¹ Peter J. Henning, *Public Corruption: A Comparative Analysis of International Corruption Conventions and United States Law*, 18 ARIZ. J. INT'L & COMP. L. 793, 802-03 (2001) ("Professor [Bruce] Gronbeck, a linguist gave a straightforward definition, that 'the term political corruption' encompasses those acts whereby private gain is made at public expense.' Professor [Abraham] Eisenstadt, a historian, offered a

exists in different forms. One specific form is “conventional corruption,” which occurs when government officials *illegally* abuse public office for private gain.² Illegal quid pro quo transactions, including acts of bribery, are examples of conventional corruption.³ Perhaps the most notorious form of conventional corruption is the illegal theft of an election.⁴

Conventional corruption can be further broken down into two basic kinds: grand corruption and petty corruption.⁵ Grand corruption involves theft or misuse of vast amounts of public resources by government officials.⁶ This kind of corruption most often originates with high-level officials who recognize and exploit opportunities that are presented through government work.⁷ Petty corruption, on the other hand, involves isolated transactions by lower-level administrative bureaucrats who abuse their office by demanding bribes, diverting public funds, or awarding favors in return for personal considerations.⁸ Although the individual corrupt transactions within a government’s bureaucratic cholesterol usually involve very little money, such

similar description, that “[p]olitical corruption means that a public official has perverted the office entrusted to his care, that he has broken a public trust for private gain.”); *FAQs on Corruption*, TRANSPARENCY INT’L, http://www.transparency.org/whoweare/organisation/faqs_on_corruption#defineCorruption (last visited Sept. 13, 2013).

² M. Patrick Yingling, *Conventional and Unconventional Corruption*, 51 DUQ. L. REV. 263, 266 (2013).

³ *Id.*

⁴ *See id.* at 273-74.

⁵ *Id.* at 266.

⁶ Anwar Shah, *Tailoring the Fight Against Corruption to Country Circumstances*, in PERFORMANCE ACCOUNTABILITY AND COMBATING CORRUPTION 233, 235 (Anwar Shah ed., 2007).

⁷ James Thuo Gathii, *Corruption and Donor Reforms: Expanding the Promises and Possibilities of the Rule of Law as an Anti-Corruption Strategy in Kenya*, 14 CONN. J. INT’L L. 407, 412 (1999); Kimberly Ann Elliott, *Corruption as an International Policy Problem: Overview and Recommendations*, in CORRUPTION AND THE GLOBAL ECONOMY 175, 178 (1997),

http://www.piie.com/publications/chapters_preview/12/10ie2334.pdf.

⁸ Gathii, *supra* note 7, at 412; Elliott, *supra* note 7, at 178.

transactions can, in the aggregate, involve a substantial amount of public resources.⁹

In contrast to conventional corruption, “unconventional corruption” occurs when elected officials put personal campaign finances ahead of the public interest.¹⁰ Because it involves *elected* officials, unconventional corruption is unique to democratic forms of government¹¹—at least in so far as corrupt governments can be classified as true democracies.¹² Although frequently overlooked, this form of government corruption involves a decision-making process that can corrupt a democracy to its core.¹³

Unconventional corruption is not necessarily illegal; many statutory prohibitions on “corruption” do not reach unconventionally corrupt acts.¹⁴ And, although academics sometimes define

⁹ Shah, *supra* note 6, at 231.

¹⁰ Yingling, *supra* note 2, at 264, 267.

¹¹ *Id.* at 267.

¹² See Juliet Sorensen, *Ideals Without Illusions: Corruption and the Future of a Democratic North Africa*, 10 NW. J. INT’L HUM. RTS. 202, 203 (2012) (“The absence of corruption alone does not engender democracy, but true democracy cannot exist where corruption thrives.”).

¹³ Yingling, *supra* note 2, at 270.

¹⁴ See, e.g., 18 U.S.C. § 201(b)(2) (2006) (“Whoever . . . being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, *in return for*: (A) being influenced in the performance of any official act; (B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or (C) being induced to do or omit to do any act in violation of the official duty of such official or person . . . shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.”) (emphasis added); see also *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 404-05 (1999) (“[F]or bribery, there must be a *quid pro quo* – a specific intent to give or receive something of value *in exchange* for an official act.”).

“corruption” to involve illegal activity,¹⁵ and courts sometimes assume that government power can only be corrupted through quid pro quo transactions,¹⁶ government corruption, as described here, does not require illegal activity or a quid pro quo transaction.¹⁷ Indeed, perhaps the most elusive and counterproductive form of corruption in some transition and developed countries is the unconventional form, which is often legal and does not require a coordinated agreement.¹⁸

The underlying problem of unconventional corruption does not concern secret deals entered into pre-election. Rather, the problem concerns incentives that are offered post-election.¹⁹ Similarly, the problematic effect of unconventional corruption is not necessarily exposed in that elected officials take a position on a particular issue because of past contributions and expenditures. Instead, the problematic effect is ex-ante in that incumbent elected officials take a position on a particular issue with the hopes of benefiting from future contributions and expenditures.²⁰ Elected officials know of past

¹⁵ See, e.g., ROBIN THEOBALD, CORRUPTION, DEVELOPMENT AND UNDERDEVELOPMENT 15 (1990) (recognizing the difficulties in defining corruption but ultimately concluding that corruption is best defined as “the *illegal* use of public office for private gain”); Jakob Svensson, *Eight Questions about Corruption*, J. ECON. PERSP. 19, 20 (Summer 2005) (“A common definition of public corruption is the misuse of public office for private gain. Misuse, of course, typically involves applying a legal standard.”); cf. RALPH KETCHUM, FRAMED FOR POSTERITY 58 (1993) (stating that the universally understood meaning of “corruption” is “the opposite of the public good”).

¹⁶ See, e.g., *Citizens United v. FEC*, 558 U.S. 310, 357 (2010) (interpreting the U.S. Constitution and finding a government interest in combating only “*quid pro quo* corruption”).

¹⁷ Henning, *supra* note 1, at 794 (“At a fundamental level, the term ‘corruption’ does not denote any particular transgression, and need not even be conduct that would constitute a crime.”).

¹⁸ Yingling, *supra* note 2, at 268.

¹⁹ *Id.* (citing Samuel Issacharoff, *On Political Corruption*, in MONEY, POLITICS, AND THE CONSTITUTION, BEYOND *CITIZENS UNITED* 119, 124 (Monica Youn ed., 2011)).

²⁰ Yingling, *supra* note 2, at 268.

contributions *and the possibility of future ones* from the interested parties.²¹

There is a coherent and sensible argument to be made that money in the form of campaign contributions and expenditures merely buys speech that helps persuade voters to side with one candidate over another, and that private campaign contributions and expenditures are essential for a properly functioning democracy. The problem of unconventional corruption, however, is not about what the money does. Rather, it is about what has to be done in order to secure the money. The money does not necessarily contradict democratic principles. What must be done to secure the money, however, can corrupt a democracy to its core.²²

Although unconventional corruption has, thus far, not been a factor that has hampered Egyptians' pursuit of democracy, this form of corruption is not merely theoretical; it exists in various countries, and one in particular: the United States.²³ There are a number of policy issues that perpetually go unsolved in the United States due to unconventional corruption. These unsolved issues include a financial system composed of irrational incentives,²⁴ nutrition standards that promote obesity,²⁵ and firearms laws (or lack thereof) that fail to reflect the public will.²⁶ These unsolved issues are not necessarily the result

²¹ LAWRENCE LESSIG, *REPUBLIC, LOST* 121 (2011) (citing Daniel Hays Lowenstein, *On Campaign Finance Reform: The Root of All Evil is Deeply Rooted*, 18 HOFSTRA L. REV. 301, 325 (1989)).

²² Yingling, *supra* note 2, at 270 (citing LESSIG, *supra* note 21, at 161-62).

²³ Yingling, *supra* note 2, at 286-90.

²⁴ *Id.* at 286-88 (citing LESSIG, *supra* note 21, at 188-89).

²⁵ Yingling, *supra* note 2, at 288-89.

²⁶ Frank Newport, *Americans Wanted Gun Background Checks to Pass Senate*, GALLUP (Apr. 29, 2013), <http://www.gallup.com/poll/162083/americans-wanted-gun-background-checks-pass-senate.aspx> ("Sixty-five percent of Americans say the U.S. Senate should have passed the measure that would have expanded background checks for gun purchases, while 29% agree with the Senate's failure to pass the measure."); *Votes on Manchin-Toomey Amendment*, OPENSECRETS.ORG, Apr. 18, 2013, http://www.opensecrets.org/news/issues/guns/vote_2013.php (last visited Sept. 14, 2013) ("On April 17th, 2013, members of the US

of backward morals or conventional corruption, such as bribery; rather, they are the result of unconventional corruption—elected officials making decisions with the purpose of being rewarded (in a non-*quid pro quo* fashion) with future campaign financing, regardless of whether the elected officials believe those decisions to be in the public interest. Thus, in the United States, unconventional corruption is, perhaps ironically, not so unconventional.²⁷

These different forms, conventional and unconventional corruption, are not exhaustive of the universe of corruption. For example, academics often consider nepotism (or *wasta*, as loosely translated in Arabic) to be a form of corruption.²⁸ However, unless acts of nepotism are accomplished through a public official's illegal act, they are neither acts of conventional nor unconventional

Senate voted on the Manchin-Toomey amendment, which would have required background checks on all commercial sales of guns. The vote failed, with 54 members in support and 46 in opposition. Nearly all of the members who voted against the amendment have received substantial amounts of money from the political action committees of gun rights groups, including the National Rifle Association.”)

²⁷ Yingling, *supra* note 2, at 267-68 (“The label ‘unconventional’ does not imply that this form of corruption occurs less frequently than conventional corruption; instead, the label ‘unconventional’ reflects the fact that because acts of unconventional corruption are not necessarily illegal, courts and academics often assume that government power can only be corrupted through traditionally illegal activities, such as *quid pro quo* transactions.”).

²⁸ See, e.g., Phillip M. Nichols, George J. Siedel, Matthew Kandin, *Corruption as a Pan-Cultural Phenomenon: An Empirical Study in Countries at Opposite Ends of the Former Soviet Empire*, 39 TEX. INT’L L. J. 215, 244 (2004) (citing SUSAN ROSE-ACKERMAN, CORRUPTION: A STUDY IN POLITICAL ECONOMY 4 (1978)) (referring to nepotism as a form of corruption); JOHN R. BRADLEY, INSIDE EGYPT: THE ROAD TO REVOLUTION IN THE LAND OF THE PHARAOHS 154-55 (2012) (discussing *wasta* under a chapter on “corruption”); see also Lawrence Rosen, *Understanding Corruption*, THE AMERICAN INTEREST, at 82 (Spring 2010), <http://www.the-american-interest.com/pdf/v5/n4/Rosen.pdf> (quoting ROBERT B. CUNNINGHAM & YASIN K. SARAYAH, WASTA: THE HIDDEN FORCE IN THE MIDDLE EASTERN SOCIETY 1, 4, 6 (1993) (opining that “*wasta* includes, but is broader than, corruption” and that some *wasta* acts are legal while others are illegal)).

corruption. Despite their combined non-exhaustive nature, classification of corruption in these terms serves a purpose due to their shared relationship—when conventional corruption decreases, there is a correlating increase in unconventional corruption.²⁹ One aspect of this relationship involves the increased supply of campaign contributions and expenditures from private parties: when conventional corruption decreases and bribe offering becomes less effective, contributions and expenditures become alternative tools of influence.³⁰ Another aspect of this relationship involves the increased demand for campaign contributions and expenditures from elected officials: when measures to combat conventional corruption are implemented and elected officials can no longer illegally steal elections or divert public monies to fund their campaigns, such officials become eager to obtain campaign contributions and expenditures.³¹ Therefore, as is argued below in our country-specific analysis of Egypt,³² once a country takes concrete steps to reduce conventional corruption, it must then focus on combating unconventional corruption.³³

III. THE HISTORY OF CONVENTIONAL CORRUPTION IN EGYPT

After years of perceived corruption and injustice under British occupation,³⁴ Egypt, in 1919, started a move to independence with Muslims and Christian Copts joining forces to instigate a popular revolution.³⁵ This uprising resulted in nominal independence for Egypt

²⁹ Yingling, *supra* note 2, at 270-71.

³⁰ See Nauro F. Campos and Francesco Giovannoni, *Lobbying, Corruption, and Political Influence*, 131 PUB. CHOICE 1, 2-3 (2007) (finding that lobbying activities, which include campaign contributions and expenditures, are an important alternative tool of influence when bribe offering becomes less effective).

³¹ Yingling, *supra* note 2, at 270-71.

³² See *infra* Parts V & VI.

³³ Yingling, *supra* note 2, at 271.

³⁴ See TAREK OSMAN, *EGYPT ON THE BRINK, FROM NASSER TO MUBARAK* 24-25 (2010); BRUCE K. RUTHERFORD, *EGYPT AFTER MUBARAK: LIBERALISM, ISLAM, AND DEMOCRACY IN THE ARAB WORLD* 35 (new introduction ed. 2012) (discussing corruption in Egypt under British occupation).

³⁵ Mohamed A. ‘Arafa, *Towards a Culture for Accountability: A New Dawn for Egypt*, 5 PHOENIX L. REV. 1, 8 (2011); M. Cherif Bassiouni,

in 1922, which was followed by the first post-independence constitution in 1923.³⁶ With the implementation of the constitution, Egypt became a constitutional monarchy in which certain executive powers were held by the government, which was answerable to a nationally elected parliament.³⁷

Under the constitutional monarchy, Egypt experienced economic development through advances in industry and infrastructure, as well as through exposure to international markets.³⁸ However, the benefits of such development were generally confined to the wealthiest members of Egyptian society; the country's middle class grew at a very slow pace.³⁹ As Egyptians became more aware of this situation, King Farouk, the head of the Egyptian state, became ensnared in multiple incidents of conventional corruption.⁴⁰ Specifically, in 1951, he accepted a bribe in return for dissolving the government.⁴¹ In addition, the king's name was mentioned in investigations pertaining to the illegal procurement of weapons for the Egyptian army during the 1948 war with Israel.⁴² The state of the economy and the monarchy's corrupt misuses of power led to the revolution of July 23, 1952,⁴³ also known as the Free Officers' Revolution, and the eventual abolishment of the constitutional monarchy.⁴⁴ Although the Free Officers'

The Fight for Democracy in Egypt's Liberation Square, CHI. COUNCIL ON GLOBAL AFF. 1 (Feb. 10, 2011), http://www.thechicagocouncil.org/UserFiles/File/Events/FY%2011%20Events/02_February_11/EgyptBackgroundPaper110207.pdf; *see generally* KATHRIN NINA WIEDL, *THE ROLE OF THE COPTS IN THE NATIONAL MOVEMENT IN EGYPT UNTIL THE 1919 REVOLUTION* (2007).

³⁶ 'Arafa, *supra* note 35, at 8; Bassiouni, *supra* note 35, at 2.

³⁷ OSMAN, *supra* note 34, at 25; Bassiouni, *supra* note 35, at 2.

³⁸ OSMAN, *supra* note 34, at 37.

³⁹ *Id.* at 37, 55; BRADLEY, *supra* note 28, at 54.

⁴⁰ *See* OSMAN, *supra* note 34, at 38; *see also* BRADLEY, *supra* note 28, at 31.

⁴¹ OSMAN, *supra* note 34, at 38.

⁴² *Id.*

⁴³ Bassiouni, *supra* note 35, at 2.

⁴⁴ National Integrity System Study Egypt 2009 ("NIS Study Egypt"), TRANSPARENCY INT'L 18 (2009), http://archive.transparency.org/publications/publications/nis_egypt_2009.

Revolution was a military coup d'état, it was strongly embraced and reinforced by the people.⁴⁵

Lieutenant Colonel Gamal Abdel Nasser was among the officers of the revolution.⁴⁶ In the span of a few years, Nasser was able to sideline Egypt's first president, Major General Mohammad Naguib, dissolve all political parties except for the Arab Socialist Union Party,⁴⁷ and create a new constitutional order defined by a powerful presidency.⁴⁸ As a result, there were few checks on Nasser's political power.⁴⁹ Presidential power was already significant before the 1958 enactment of the Emergency Law, which gave the president the power to circumscribe non-governmental political activity.⁵⁰ The Emergency Law would remain in effect for all but eighteen months between 1967 and 2012.⁵¹ With executive power unrestrained and political activity greatly restricted, conventional corruption began to fester under Nasser as administrators and bureaucrats abused their power to prey on citizens and siphon off resources from the state.⁵²

Anwar Sadat ascended to the presidency after Nasser's death in 1970.⁵³ Sadat immediately backed a new constitution—the 1971 Constitution—in what he promoted as an effort to restore greater

⁴⁵ 'Arafa, *supra* note 35, at 8; *but see* BRADLEY, *supra* note 28, at 27 (describing the Free Officers as “hijack[ing] the popular unrest to seize power”).

⁴⁶ BRADLEY, *supra* note 28, at 12.

⁴⁷ *Id.* at 14; NIS Study Egypt, *supra* note 44, at 19.

⁴⁸ SELMA BOTMAN, EGYPT FROM INDEPENDENCE TO REVOLUTION, 1919-1952 30-40 (1991); OSMAN, *supra* note 34, at 45.

⁴⁹ TAMIR MOUSTAFA, THE STRUGGLE FOR CONSTITUTIONAL POWER: LAW, POLITICS, AND ECONOMIC DEVELOPMENT IN EGYPT 59-60 (2007).

⁵⁰ Lisa Reynolds Wolfe, *Cold War Legacy: Egypt's Emergency Law 162 of 1958* (Feb. 1, 2011),

<http://www.coldwarstudies.com/2011/02/01/cold-war-legacy-egypts-emergency-law-162-of-1958/>.

⁵¹ Sarah El Deeb, *Egypt Emergency Law Lapses*, HUFFINGTON POST (May 31, 2012), http://www.huffingtonpost.com/2012/05/31/egypt-emergency-law-lapse_n_1559110.html.

⁵² *See* MOUSTAFA, *supra* note 49, at 82-83.

⁵³ OSMAN, *supra* note 34, at 117.

democracy to Egypt.⁵⁴ Sadat also dismantled the Arab Socialist Union Party and allowed previously banned political parties to re-enter political life.⁵⁵ The new parties, however, entered political life under a tightly controlled process that was dominated by the executive branch.⁵⁶ In the later years of Sadat's presidency, despite the fact that Egyptian law prohibited acts of bribery and the like,⁵⁷ there was a glaring increase in conventional corruption.⁵⁸ Notably, vote rigging flourished and referenda typically resulted in 99% "yes" votes.⁵⁹ During this time, Egypt also experienced an emergence of parasitic links between sections of the public sector and private industry.⁶⁰

After Sadat's assassination in 1981, Hosni Mubarak rose to the presidency,⁶¹ and the National Democratic Party (NDP), which was the only party represented in presidential elections until 2005,⁶² began its dominance of the political realm.⁶³ Conventional corruption soared

⁵⁴ James Feuille, *Reforming Egypt's Constitution: Hope for Egyptian Democracy?*, 47 TEX. INT'L L. J. 237, 241-42 (2011).

⁵⁵ NIS Study Egypt, *supra* note 44, at 19-20.

⁵⁶ Sahar F. Aziz, *Revolution Without Reform? A Critique of Egypt's Election Laws*, 45 GEO. WASH. INT'L L. REV. 1, 40 (2013); MOUSTAFA, *supra* note 49, at 90 ("But Sadat's shift to a multiparty system was never intended to be a complete and comprehensive democratic transition. Rather, it was to be a tightly controlled process of political liberalization that would give the appearance of free party competition with few concrete concessions from the regime.").

⁵⁷ See, e.g., Egypt, Law No. 62 of 1975 (Illegal Profit-Making) *Al-Jarida Al-Rasmiyya* [THE OFFICIAL GAZETTE], July 7, 1975; NIS Study Egypt, *supra* note 44, at 146 ("The Penal Code criminalises both active and passive bribery, as well as using public resources for private gain.").

⁵⁸ See OSMAN, *supra* note 34, at 123.

⁵⁹ Feuille, *supra* note 54, at 242; MOUSTAFA, *supra* note 49, at 70.

⁶⁰ OSMAN, *supra* note 34, at 123; BRADLEY, *supra* note 28, at 45.

⁶¹ Feuille, *supra* note 54, at 243.

⁶² NIS Study Egypt, *supra* note 44, at 20.

⁶³ 'Arafa, *supra* note 35, at 13; *Inside Story: How Did Egypt Become So Corrupt?*, AL JAZEERA (Feb. 7, 2011), <http://www.aljazeera.com/programmes/insidestory/2011/02/201128111236245847.html>; Abdul-Monem Al-Mashat, *Political Finance Systems in Egypt, Regulation and Disclosure: The Way Out* (Nov. 2008), at 3,

to extraordinary levels during Mubarak's reign.⁶⁴ Over this time, Transparency International reported a marked increase in the wasting of public resources, as well as embezzlement, bribery, and forgery.⁶⁵ In addition, the parasitic links between the public and private sectors that emerged under Sadat only intensified under Mubarak.⁶⁶ A small group of businessmen with close ties to the president's son, Gamal Mubarak, gained enormous influence over the economy and began running it pursuant to their personal interests.⁶⁷ Although these businessmen may have obtained their influence through technically legal means, their interests lied in maintaining a status quo that was defined by conventional corruption.⁶⁸

One very problematic aspect of the increase in conventional corruption was the executive's willingness and ability to steal elections.⁶⁹ As just one example, during the 1995 elections, electoral irregularities were widespread.⁷⁰ The Independent Commission for Election Review reported that police stood by while representatives of opposition candidates were expelled or turned away from polling stations, ballot boxes arrived stuffed with voting papers, and polling stations were ransacked by paid thugs.⁷¹

http://www.ifes.org/~media/Files/Publications/Money%20and%20Politics/Research%20and%20Publications/Reports%20and%20Papers/English/PoliticalFinanceSystems_in_Egypt.pdf ("The [NDP] is built and based on the legacy of the ASU [Arab Socialist Union] including most of its old guard.").

⁶⁴ See 'Arafa, *supra* note 35, at 8; Bassiouni, *supra* note 35.

⁶⁵ NIS Study Egypt, *supra* note 44, at 23-31.

⁶⁶ BRADLEY, *supra* note 28, at 46.

⁶⁷ ALAA AL ASWANY, ON THE STATE OF EGYPT, WHAT MADE THE REVOLUTION INEVITABLE vii (2011); see OSMAN, *supra* note 34, at 218-19.

⁶⁸ See Abdel-Fattah Mady, *Popular Discontent, Revolution, and Democratization in Egypt in a Globalizing World*, 20 IND. J. GLOBAL. LEGAL STUDIES 313, 320 (2013).

⁶⁹ Feuille, *supra* note 54, at 243; Ahmed Eldakak, *Approaching Rule of Law in Post-Revolution Egypt: Where We Were, Where We Are, and Where We Should Be*, 18 U.C. DAVIS J. INT'L L. & POL'Y 261, 278-79 (2012); BRADLEY, *supra* note 28, at 35.

⁷⁰ Charles Robert Davidson, *Reform and Repression in Mubarak's Egypt*, 24 FLETCHER F. WORLD AFF. 75, 83 (2000).

⁷¹ *Id.*

Under Mubarak, many facets of society openly and comprehensively discussed conventional corruption.⁷² The general public was fully aware of the costs of conventional corruption for the country's political stability and the threat it posed to economic and social development.⁷³ Despite such awareness, conventional corruption represented the ruling social law and a behavior that governed various aspects of Egyptian life.⁷⁴

IV. THE ARAB SPRING IN EGYPT: A FIGHT AGAINST CONVENTIONAL CORRUPTION

In an extraordinary set of events, popular protests in Tahrir Square (together with workers' strikes on factory floors)⁷⁵ provided the tipping point for a revolution.⁷⁶ The date for initial protests, January

⁷² See NIS Study Egypt, *supra* note 44, at 24; see also MENA-OECD Business Climate Investment Strategy, Phase 1 Policy Assessment, Egypt, Anti-Corruption, 13 (Dec. 2009), <http://www.oecd.org/daf/psd/46341460.pdf> (“Corruption allegations are frequent in the media and people often speak of the practice as affecting all parts of society.”).

⁷³ See ‘Arafā, *supra* note 35, at 9.

⁷⁴ See *id.*; see also BRADLEY, *supra* note 28, at 164 (“[C]orruption is a disease that has long spread to all of Egypt’s organs. There is literally no end to it; it reaches precisely from the officer who takes five pounds to overlook a speeding offense all the way to the top.”).

⁷⁵ Ian Hartshorn, *Labor Unions Under Attack in Morsi’s Egypt*, MUFTAH (Nov. 30, 2012), <http://muftah.org/labor-unions-under-attack-in-morsis-egypt/> (“While western media focused its attention on the Tweeting and Facebooking [of] upper middle class youth in Tahrir Square, much of the 2011 revolution took place in the fields and factory floors among Egypt’s working poor. The Land Center for Human Rights, a leading human rights NGO focused on workers and farmers, described the general strike of Egypt’s industrial and port workers on February 9, 2011, combined with the farmers’ protests, as a ‘knockout punch’ to the Mubarak regime.”).

⁷⁶ Using the term “revolution” to describe the events of January 25, 2011 is arguably only aspirational at this point in time. See John Liolos, Note, *Erecting New Constitutional Cultures: The Problems and Promise of Constitutionalism Post-Arab Spring*, 36 B.C. INTL & COMP. L. R. 219, 229-32 (2013) (comparing a “revolution” to a “coup d’état”).

25, 2011, was deliberately chosen to coincide with Egypt's National Police Day⁷⁷—a day that once commemorated Egyptian freedom, but evolved to represent the deterioration of Egypt's corrupt police forces.⁷⁸ Conventional corruption played a significant role in motivating the January 25th revolution as well as other revolutions in the Middle East throughout Arab Spring.⁷⁹ During the revolution, the popular chant outside of the NDP's headquarters in el-Minya, 245 kilometers south of Cairo, was “[c]orruption caused this country's destruction!”⁸⁰

Egypt's popular uprisings focused on the removal of the corrupt Mubarak regime.⁸¹ Mohamed ElBaradei, former head of the International Atomic Energy Agency and a well-known opposition leader in Egypt, expressly called for a military coup on his Twitter page.⁸² Meanwhile, Mubarak called on the military to intervene on his

⁷⁷ Ozan O. Varol, *The Democratic Coup D'Etat*, 53 HARV. INT'L L. J. 291, 342 (2012).

⁷⁸ Ahmed Zaki Osman, *Egypt's Police: From Liberators to Oppressors*, EGYPT INDEP. (Jan. 24, 2011), <http://www.egyptindependent.com/news/egypts-police-liberators-oppressors>; *Egypt's Police Widely Despised, Viewed as 'Corrupt and Abusive'*, HUFFINGTON POST (Feb. 3, 2011), http://www.huffingtonpost.com/2011/02/03/egypt-police-corrupt_n_818088.html.

⁷⁹ Anne Applebaum, *Why the Anti-Corruption Movement is the New Human Rights Movement*, SLATE (Dec. 13, 2012), http://www.slate.com/articles/news_and_politics/foreigners/2012/12/anti_corruption_movement_protests_riots_and_marches_across_the_globe_are.html; RUTHERFORD, *supra* note 34, at xxxiv (“The scope of this corruption and inequality became one of the triggers of the January 25 uprising.”); Aziz, *supra* note 56, at 3 (“Egyptians sought to upend an entrenched system of cronyism, nepotism, and pervasive corruption that squandered the future of an entire generation.”).

⁸⁰ Mona El-Ghobashy, *The Praxis of the Egyptian Revolution*, in THE JOURNEY TO TAHRIR, REVOLUTION, PROTEST, AND SOCIAL CHANGE IN EGYPT 21, 36 (Jeannie Sowers & Chris Toensing eds., 2012).

⁸¹ ‘Arafa, *supra* note 35, at 13-15; Ursula Lindsey, *Revolution and Counterrevolution in the Egyptian Media*, in THE JOURNEY TO TAHRIR, REVOLUTION, PROTEST, AND SOCIAL CHANGE IN EGYPT 53, 53-54 (Jeannie Sowers & Chris Toensing eds., 2012).

⁸² Varol, *supra* note 77, at 302, 343.

behalf.⁸³ Instead, on February 11, 2011, in what has been termed a “democratic coup d’etat,”⁸⁴ the military issued a communiqué declaring that it was intervening to protect the country and “to sponsor the legitimate demands of the people.”⁸⁵ Hours after the release of the communiqué, Mubarak’s Vice President, Omar Suleiman, announced that Mubarak had resigned his post and the Supreme Council of the Armed Forces (SCAF) had assumed power.⁸⁶

Mubarak was later convicted for complicity in the killing of protestors during the uprising and was sentenced to life in prison.⁸⁷ The conviction, however, has since been rejected and Mubarak will now face a retrial which could result in a different penalty or even acquittal.⁸⁸ Mubarak and his sons, Gamal and Alaa, will also be tried on corruption charges for allegedly redirecting presidential palace renovation funds to be used on their own private residences.⁸⁹ Many members of Mubarak’s regime have been sentenced to several years in

⁸³ *Id.* at 343.

⁸⁴ *Id.* at 345.

⁸⁵ *Id.* at 344.

⁸⁶ *Id.* For further discussion of the January 25th revolution, see JEREMY M. SHARP, CONG. RES. SERV., EGYPT: THE JANUARY 25 REVOLUTION AND IMPLICATIONS FOR U.S. FOREIGN POLICY (Feb. 11, 2011), <http://fpc.state.gov/documents/organization/157112.pdf>.

⁸⁷ Jamie Davis, *Mubarak Sentenced to Life in Prison*, JURIST (June 2, 2012), <http://jurist.org/paperchase/2012/06/ex-egypt-president-mubarak-sentenced-to-life-in-prison.php>.

⁸⁸ David D. Kirkpatrick, *Egyptian Court Rejects Verdict Against Mubarak*, N.Y. TIMES, at A.1 (Jan. 14, 2013), http://www.nytimes.com/2013/01/14/world/middleeast/egyptian-court-grants-hosni-mubarak-a-new-trial.html?_r=0; Associated Press, *As Turmoil Persists, Mubarak Returns to Courtroom in Egypt*, N.Y. TIMES (Sept. 14, 2013), <http://www.nytimes.com/2013/09/15/world/middleeast/as-turmoil-persists-mubarak-returns-to-courtroom-in-egypt.html>.

⁸⁹ El-Sayed Gamal El-Din, *Egypt’s Toppled Mubarak and Sons to Face Corruption Trial in August*, AHARAM ONLINE (July 17, 2013), <http://english.ahram.org.eg/NewsContent/3/12/76720/Business/Economy/Egyptys-toppled-Mubarak-and-sons-to-face-corruption.aspx>.

prison on charges of corruption, embezzlement of public funds, unjust enrichment, and peddling in influence.⁹⁰

Egypt's transition to democracy took a big step forward when elections for the People's Assembly, the lower house of parliament, began in November 2011 and continued in staggered rounds until January 2012.⁹¹ Nearly all political parties, except for Mubarak's NDP, which was dissolved by Egypt's High Administrative Court for monopolizing and manipulating elections, were allowed to freely establish themselves and participate in the post-revolution parliamentary elections.⁹² The Muslim Brotherhood's Freedom and Justice Party emerged as the clear victor of the elections, obtaining 47% of the seats in the People's Assembly.⁹³ Although the Supreme Constitutional Court dissolved the People's Assembly only a few months later because election officials had impermissibly allowed political parties to compete for seats designated for independents,⁹⁴ the elections were widely viewed as free and fair by independent monitoring organizations.⁹⁵

⁹⁰ Hillary Stemple, *Egypt Court Sentences Former Mubarak Associates on Corruption Charges*, JURIST (Sept. 16, 2011), <http://jurist.org/paperchase/2011/09/egypt-court-sentences-former-mubarak-associates-on-corruption-charges.php>.

⁹¹ Varol, *supra* note 77, at 350.

⁹² *Id.* at 305.

⁹³ *Id.* at 352; Max Fisher, *Egypt's Constitutional Crisis, Explained as a Simple Timeline*, WASH POST, <http://www.washingtonpost.com/blogs/worldviews/wp/2012/12/06/egypts-constitutional-crisis-explained-as-a-simple-timeline/> (last updated Dec. 6, 2012).

⁹⁴ Haider Hamoudi, *Democracy and the Supreme Constitutional Court of Egypt*, JURIST (June 28, 2012), <http://jurist.org/forum/2012/06/haider-hamoudi-scc-parliament.php>; David D. Kirkpatrick, *Blow to Transition as Court Dissolves Egypt's Parliament*, N.Y. TIMES (June 14, 2012), http://www.nytimes.com/2012/06/15/world/middleeast/new-political-showdown-in-egypt-as-court-invalidates-parliament.html?pagewanted=all&_r=0; Aziz, *supra* note 56, at 39-40.

⁹⁵ See, e.g., The Carter Center, *Final Report of the Carter Center Mission to Witness the 2011-2012 Parliamentary Elections in Egypt*, 2, 64, (Sept. 21, 2012), http://www.cartercenter.org/resources/pdfs/news/peace_publications/el

Before the People's Assembly was dissolved, however, it appointed 100 representatives to the Constituent Assembly to draft the post-revolution constitution.⁹⁶ Like the People's Assembly, the Constituent Assembly was dominated by Islamists.⁹⁷ Soon thereafter, in June 2012, the Muslim Brotherhood continued its domination of electoral politics when, following an electoral run-off, Mohamed Morsi was declared Egypt's first democratically elected president.⁹⁸

Morsi strongly asserted that he would curtail corruption in Egypt, and although little progress was made in the first few months of his presidency,⁹⁹ polls showed that the majority of the Egyptian public had confidence in the national government.¹⁰⁰ However, serious problems began to emerge for Morsi when he shifted his focus toward ensuring an abbreviated process for drafting a new constitution. On November 22, 2012, in the midst of speculation as to whether the Constituent Assembly would be disbanded by the Supreme Constitutional Court, Morsi issued a declaration stating that the Constituent Assembly would not be subject to judicial oversight and

ection_reports/egypt-2011-2012-final-rpt.pdf; Varol, *supra* note 77, at 350.

⁹⁶ Fisher, *supra* note 93.

⁹⁷ *Id.*; see also Jill I. Goldenziel, *Veiled Political Questions: Islamic Dress, Constitutionalism, and the Ascendance of the Courts*, 61 AM. J. COMP. L. 1, 14 (2013) (stating that the "Islamist" label has generally been applied broadly to any group that fuses Islam and politics, whether supportive of constitutional democracy or violent extremism).

⁹⁸ *Celebration in Egypt as Morsi Declared Winner*, AL JAZEERA (June 24, 2012), <http://www.aljazeera.com/news/middleeast/2012/06/201262412445190400.html>.

⁹⁹ Sahar Aziz & Derek Clinger, *Egypt's Corruption Woes*, GLOBAL PUB. SQUARE BLOGS (Feb. 8, 2013), <http://globalpublicsquare.blogs.cnn.com/2013/02/08/egypts-corruption-woes/>; Erik Kirschbaum, *Egypt Slips in Corruption Index Despite Arab Spring*, REUTERS (Dec. 5, 2012), <http://www.reuters.com/article/2012/12/05/us-corruption-transparency-egypt-idUSBRE8B406Q20121205>.

¹⁰⁰ Mohamed Younis, *Egyptians' Views of Government Crashed Before Overthrow*, GALLUP (Aug. 2, 2013), <http://www.gallup.com/poll/163796/egyptian-views-government-crashed-overthrow.aspx>.

that he would have the “power to take all necessary measures and procedures” against any potential threat to the revolution.¹⁰¹ Shortly thereafter, the Constituent Assembly approved the draft of the new constitution,¹⁰² which was put to a two-round referendum vote on December 15th and 22nd of 2012 and approved by 63.8% of voters, amidst very low turnout.¹⁰³ The 2012 Constitution increased separation of powers and restraints on the executive, but was criticized heavily for its lack of human rights protections and its deference to Islam in state affairs.¹⁰⁴

Egyptians’ early support of Morsi and the national government began to steadily decline in the wake of Morsi’s November declaration.¹⁰⁵ Frequent power cuts, gas shortages, and security breaches added to the decline in Morsi’s popularity.¹⁰⁶ In June 2013, Morsi blamed the country’s problems on Mubarak-era corruption that was, in his words, “greater than we had imagined.”¹⁰⁷ This excuse, however, did not appease the Egyptian people. On June 30, 2013,

¹⁰¹ David D. Kirkpatrick & Mayy El Sheikh, *Citing Deadlock, Egypt’s Leader Seizes New Power and Plans Mubarak Retrial*, N.Y. TIMES (Nov. 22, 2012),

http://www.nytimes.com/2012/11/23/world/middleeast/egypts-president-morsi-gives-himself-new-powers.html?_r=0.

¹⁰² David D. Kirkpatrick, *Egyptian Islamists Approve Draft Constitution Despite Objections*, N.Y. TIMES (Nov. 29, 2012),

http://www.nytimes.com/2012/11/30/world/middleeast/panel-drafting-egypts-constitution-prepares-quick-vote.html?_r=0.

¹⁰³ *Egypt Approves Disputed Draft Constitution*, AL JAZEERA (Dec. 25, 2012),

<http://www.aljazeera.com/news/middleeast/2012/12/201212251825337958.html>.

¹⁰⁴ Mirette F. Mabrouk, *The View From a Distance: Egypt’s Contentious New Constitution*, BROOKINGS INSTITUTE 5-6 (Jan. 31, 2013),

http://www.brookings.edu/~media/Research/Files/Papers/2013/1/31%20egypt%20mabrouk/0131_Egypt_Mabrouk.pdf.

¹⁰⁵ Younis, *supra* note 100.

¹⁰⁶ *Mubarak-era Corruption ‘Greater Than we Imagined,’ Egypt’s Morsi Tells Al-Ahram*, AHARAM ONLINE (June 7, 2013),

<http://english.ahram.org.eg/NewsContent/1/64/73389/Egypt/Politics-/Mubarakera-corruption-greater-than-we-imagined,-Eg.aspx>.

¹⁰⁷ *Id.*

millions of Egyptians began to demonstrate in Tahrir Square and elsewhere, calling for Morsi to step down.¹⁰⁸ On July 1, 2013, Egypt's military gave Morsi forty-eight hours to resolve the government's disputes with the demonstrators or face a military solution.¹⁰⁹ Finally, on July 3, 2013, General Abdul-Fattah el-Sisi led the military in removing Morsi from power, suspending the 2012 Constitution, and installing Adly Mansour, the Chief Justice of the Supreme Constitutional Court, as acting president.¹¹⁰ The military's actions, although highly controversial, were celebrated by many Egyptians.¹¹¹

The military, along with Morsi's political opposition, subsequently appointed ten legal experts to a committee tasked with making recommendations to a larger fifty-member committee for amending the 2012 Constitution.¹¹² In August 2013, the committee of

¹⁰⁸ David D. Kirkpatrick, Kareem Fahim & Ben Hubbard, *By the Millions, Egyptians Seek Morsi's Ouster*, N.Y. TIMES (June 30, 2013), <http://www.nytimes.com/2013/07/01/world/middleeast/egypt.html?pagewanted=all>.

¹⁰⁹ David D. Kirkpatrick & Kareem Fahim, *Morsi Faces Ultimatum as Allies Speak of Military 'Coup'*, N.Y. TIMES (July 1, 2013), <http://www.nytimes.com/2013/07/02/world/middleeast/egypt-protests.html?pagewanted=all>.

¹¹⁰ David D. Kirkpatrick, *Army Ousts Egypt's President; Morsi is Taken into Military Custody*, N.Y. TIMES (July 3, 2013), <http://www.nytimes.com/2013/07/04/world/middleeast/egypt.html?pagewanted=all>.

¹¹¹ Sarah Lynch, *Egyptians Celebrate in the Streets, but Instability Remains*, USA TODAY (July 3, 2013), <http://www.usatoday.com/story/news/world/2013/07/03/egypt-morsi-deposed-military/2488057/>. For an interesting discussion of how anti-corruption efforts in countries with politically active militaries can lead to "good governance" coups that do not, in fact, lead to restored democracies, see Nick Robinson & Nawreen Sattar, *When Corruption is an Emergency: "Good Governance" Coups and Bangladesh*, 35 FORDHAM. INT'L L. J. 737 (2012).

¹¹² Osman El Sharnoubi, *80 Constitutional Articles Revised: Amendments Committee*, AHAM ONLINE (July 31, 2013), <http://english.ahram.org.eg/NewsContent/1/64/77890/Egypt/Politics/-/constitutional-articles-revised-Amendments-commit.aspx>; Mokhtar Awad, *Egypt's New Road Map*, CARNEGIE ENDOWMENT FOR

ten proposed a draft that was generally viewed as an edit to the 2012 Constitution.¹¹³ Aside from its proposed creation of a unicameral legislature, the draft largely retains the same separation of powers between the branches of government.¹¹⁴ The most significant changes pertain to the reduced role of Islam in state affairs.¹¹⁵

V. COMBATING CONVENTIONAL CORRUPTION IN POST-REVOLUTION EGYPT

In seeking solutions for conventional corruption, it is common for politicians and the general public to push for moral reform above all else. However, appealing for moral reform in isolation from political and administrative reform prevents a clear understanding of the situation and distracts from the real causes of conventional corruption.¹¹⁶ Furthermore, even certain kinds of political and

INTERNATIONAL PEACE (July 12, 2013),
<http://egyptelections.carnegieendowment.org/>.

¹¹³ Sarah El Masry, *Constitutional Amendments: Repeating Past Mistakes?*, DAILY NEWS EGYPT (Sept. 4, 2013),
<http://www.dailynewsegypt.com/2013/09/04/constitutional-amendments-repeating-past-mistakes/>.

¹¹⁴ PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 20 Aug. 2013,
http://www.constitutionnet.org/files/2013.08.20_-_proposed_changes_to_2012_constitution_expert_committee_idea_english.pdf; El Masry, *supra* note 113.

¹¹⁵ PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 20 Aug. 2013,
http://www.constitutionnet.org/files/2013.08.20_-_proposed_changes_to_2012_constitution_expert_committee_idea_english.pdf; El Masry, *supra* note 113.

¹¹⁶ See ASWANY, *supra* note 67, at 184; *see also* ROBERT KLITGAARD, CONTROLLING CORRUPTION xii (1988) (“Too often it is assumed that organizations or entire governments are corrupt simply because people are immoral; and, it is concluded, nothing can be done to curb corruption short of generations of moral education. But let us avoid the fallacy of composition. Let us ask instead how organizations and countries might change their ‘systems of information, rules for decisions, and incentives’ in order to reduce corruption.”) (citing Thomas C. Schelling, *Command and Control*, in SOCIAL RESPONSIBILITY AND THE BUSINESS PREDICAMENT (James W. McKie

administrative reform can be unhelpful if the foundations for reducing conventional corruption are not in place. In this regard, even the best anti-corruption legislation will fail if implemented in a political environment that is not conducive to real scrutiny.¹¹⁷

In order to curb conventional corruption, the people must, at a minimum, impose upon their government a separation of powers, complete with a system of checks and balances.¹¹⁸ As was stated by Charles de Montesquieu, whose bedrock ideas have been implemented throughout the world, “[s]o that one cannot abuse power, power must check power by the arrangement of things.”¹¹⁹ When powers are separated and limited, the government can effectively enact laws prohibiting government officials from abusing their office, enforce such laws, and impartially determine when the laws have been violated.¹²⁰ Friction in the form of checks must exist between the branches of government in order for the political environment to be open to real scrutiny. This is especially true with regard to restraints on the executive.¹²¹

ed., Washington: The Brookings Institution) (1974)); THEOBALD, *supra* note 15, at 152.

¹¹⁷ CHATHAM HOUSE, *DEFINING AND TACKLING CORRUPTION* 8 (Feb. 2012), http://www.chathamhouse.org/sites/default/files/public/Research/Middle%20East/0212egyptsummary_corruption.pdf; FREEDOM HOUSE, *COUNTRIES AT THE CROSSROADS 2012: EGYPT*, <http://www.freedomhouse.org/sites/default/files/Egypt%20-%20FINAL.pdf> (noting that the Egyptian government of Prime Minister Ahmed Nazif, in power from 2004 until January 2011, initiated numerous laws to limit money laundering, improve auditing standards, and regulate banking transactions, yet Transparency International still ranked Egypt 98 out of 178 countries in 2010).

¹¹⁸ Yingling, *supra* note 2, at 271.

¹¹⁹ MONTESQUIEU, *THE SPIRIT OF THE LAWS* 155 (Anne M. Cohler, Basia C. Miller & Harold S. Stone eds. and trans., Cambridge Univ. Press 1989) (1748); THEOBALD, *supra* note 15, at 152.

¹²⁰ Yingling, *supra* note 2, at 271; CHATHAM HOUSE, *supra* note 117, at 8.

¹²¹ Yingling, *supra* note 2, at 272; FREEDOM HOUSE, *supra* note 117 (“As with other aspects of democratic governance, meaningful improvements on corruption and transparency will require a decisive break from the model of an all-powerful, unaccountable executive.”).

Real checks and balances were not totally absent from Mubarak's Egypt. For example, the 1971 Constitution gave the Supreme Constitutional Court the exclusive authority to determine the constitutionality of laws enacted by the other two branches.¹²² The 1971 Constitution also guaranteed the independence of the judiciary,¹²³ along with tenure of office,¹²⁴ so that judges would be protected from the whims of the executive. And even though the 1971 Constitution allowed the president to appoint judges without the final consent of the legislature,¹²⁵ the judiciary was perceived as one of the least corrupt public authorities in Egypt.¹²⁶ In practice, the heads of the Court of Cassation, the High Administrative Court, and the Supreme Constitutional Court often declared electoral laws and other legislative procedures unconstitutional, thus indicating that the judiciary enjoyed a significant degree of independence.¹²⁷

¹²² ABROGATED CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, *as amended*, May 22, 1980, May 25, 2005, Mar. 26, 2007, art. 175; *see also* MOUSTAFA, *supra* note 49, at 74-77 (explaining that although the 1971 Constitution confirmed the establishment of a Supreme Constitutional Court, the Court was not actually established until 1979).

¹²³ ABROGATED CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, *as amended*, May 22, 1980, May 25, 2005, Mar. 26, 2007, arts. 65, 165, 166, & 174.

¹²⁴ *Id.* at arts. 168, 177.

¹²⁵ *See* NIS Study Egypt, *supra* note 44, at 81; Aziz, *supra* note 56, at 71 (“The most powerful tool over the judiciary in the president’s arsenal is the authority to appoint senior judges to the highest courts. Unchecked political appointment of senior judges who in turn appoint their deputies in a hierarchical judicial system compromises judicial independence.”).

¹²⁶ BRADLEY, *supra* note 28, at 21 (“[T]he judiciary has often proved to be a thorn in the regime’s side.”); NIS Study Egypt, *supra* note 45, at 11.

¹²⁷ NIS Study Egypt, *supra* note 44, at 81-82; *but see* Lama Abu Odeh, *Of Law and the Revolution*, 34 U. PA. J. INT’L L. 341, 348 (2013) (writing that even though Egypt’s judiciary occasionally overturned repressive or unfair laws, “such acts of defiance, against a background of dictatorial rule interspersed with contrary acts of compliance by the same judiciary, signal less a thick judicial sphere acting legally than a political sphere in which the judiciary carefully calculates its

The 1971 Constitution also contained several mechanisms that sought to hold the executive accountable to the legislature. For example, the former lower house of parliament, the People's Assembly, could withdraw its confidence from any of the ministers or prime minister's deputies through a motion by one-tenth of its members, followed by a majority vote of the entire assembly.¹²⁸ The People's Assembly was also entitled to form committees for the purpose of fact-finding and conducting investigations into the activities of administrative bodies.¹²⁹

Unfortunately, unlike the judiciary's mechanisms, the legislature's mechanisms were rarely exercised in full.¹³⁰ There was a wide gap between de jure and de facto accountability in Egypt,¹³¹ especially with regard to the legislature's checks on the executive. Opposition parties in the People's Assembly struggled to play an effective role in combating conventional corruption.¹³² This was primarily due to the restrictions on their activities imposed by the Emergency Law,¹³³ which permitted, among other things, arbitrary arrests and searches, indefinite detention without trial, heightened censorship, and restraints on the gathering of more than five people at any one time,¹³⁴ thus giving Egyptian authorities and the NDP the

position"); *Aziz*, *supra* note 56, at 15 (noting that, unfortunately, "the executive branch sought to use the judiciary's reputation and prestige to validate sham elections").

¹²⁸ ABROGATED CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, *as amended*, May 22, 1980, May 25, 2005, March 26, 2007, art. 126.

¹²⁹ *Id.* at art. 131.

¹³⁰ NIS Study Egypt, *supra* note 44, at 11.

¹³¹ *Id.* at 13.

¹³² *Id.* at 27. For further details on the struggles of opposition parties to combat corruption in Egypt, see MOHAMED A. 'ARAFAT, TOWARDS A NEW ANTI-CORRUPTION LAW IN EGYPT AFTER MUBARAK: A COMPARATIVE STUDY BETWEEN THE UNITED STATES FOREIGN CORRUPT PRACTICES ACT, EGYPTIAN ANTI-BRIBERY LAW, AND ISLAMIC LAW (2013).

¹³³ NIS Study Egypt, *supra* note 44, at 11-12.

¹³⁴ Varol, *supra* note 77, at 341-42; Mona El-Ghobashy, *Unsettling the Authorities: Constitutional Reform in Egypt*, in *THE JOURNEY TO TAHRIR, REVOLUTION, PROTEST, AND SOCIAL CHANGE IN EGYPT* 122, 127 (Jeannie Sowers & Chris Toensing eds., 2012).

ability to circumvent many legal and political checks on executive power.¹³⁵ The regime made full use of its Emergency Law privileges, particularly during election season.¹³⁶ As a result, the NDP constituted an overwhelming majority in parliament, which allowed the party to continually drown out opposition voices.¹³⁷

With the January 25th revolution, Egypt gained a rare opportunity to repair the fundamentals of its governance system and combat conventional corruption. Many Egyptians had high hopes for a new constitution. For some, these high hopes turned to disappointment when the Constituent Assembly released the final draft of the 2012 Constitution.¹³⁸ However, even though the 2012 Constitution includes a questionable deference to religion in state affairs¹³⁹ and less reform on individual rights than many had hoped for, the reality is that, when measured against the Egyptian constitutional tradition, the new text brings forth a number of improvements to the governance system and is not the catastrophe that many have identified.¹⁴⁰

First, the 2012 Constitution includes many of the positive aspects of the 1971 Constitution. Judicial independence and security of

¹³⁵ BRADLEY, *supra* note 28, at 56.

¹³⁶ MOUSTAFA, *supra* note 49, at 95.

¹³⁷ El-Ghobashy, *supra* note 134, at 147.

¹³⁸ David D. Kirkpatrick, *Egyptian Islamists Approve Draft Constitution Despite Objections*, N.Y. TIMES (Nov. 29, 2012), <http://www.nytimes.com/2012/11/30/world/middleeast/panel-drafting-egypts-constitution-prepares-quick-vote.html>.

¹³⁹ See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Dec. 26, 2012, arts. 2, 4, & 219; Marc Lynch, *The Battle for Egypt's Constitution*, PROJECT ON MIDDLE EAST POLITICAL SCIENCE 4 (Jan. 11, 2013), http://pomeps.org/wp-content/uploads/2013/01/POMEPS_BriefBooklet17_Egypt_web.pdf.

¹⁴⁰ Zaid Al-Ali, *The New Egyptian Constitution: An Initial Assessment of its Merits and Flaws*, OPEN DEMOCRACY (Dec. 26, 2012), <http://www.opendemocracy.net/zaid-al-ali/new-egyptian-constitution-initial-assessment-of-its-merits-and-flaws>; Shadi Hamid, *Is There an Egyptian Nation?*, in THE BATTLE FOR EGYPT'S CONSTITUTION, PROJECT ON MIDDLE EAST POLITICAL SCIENCE 25 (Jan. 11, 2013), http://pomeps.org/wp-content/uploads/2013/01/POMEPS_BriefBooklet17_Egypt_web.pdf.

tenure for judges is protected.¹⁴¹ Also, the Supreme Constitutional Court is still exclusively competent to review the constitutionality of laws, giving it the ability to check the other branches.¹⁴² And, with respect to the legislature, individual legislators have the right to request information, demand a statement from the government, or even interrogate the prime minister in relation to urgent matters of public importance.¹⁴³

The 2012 Constitution also imposes new limits on the executive. For example, while the president previously served a six-year term without term limits,¹⁴⁴ the president shall now be elected every four years and may only be re-elected once.¹⁴⁵ Also, the constitution provides stronger restrictions on the president's power to call a state of emergency and on the president's powers during that period.¹⁴⁶ In addition, whereas the president previously faced few obstacles in dissolving the parliament,¹⁴⁷ he may now only do so pursuant to a public referendum.¹⁴⁸ The current version of the constitution even stipulates that if the referendum fails, then the president must resign;¹⁴⁹ however, proposed amendments contemplate the removal of this stipulation.¹⁵⁰

¹⁴¹ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Dec. 26, 2012, arts. 168, 170.

¹⁴² *Id.* at art. 175.

¹⁴³ *Id.* at arts. 123-25.

¹⁴⁴ ABROGATED CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, *as amended*, May 22, 1980, May 25, 2005, March 26, 2007, art. 77.

¹⁴⁵ Constitution of the Arab Republic of Egypt, 26 Dec. 2012, art. 133.

¹⁴⁶ *Id.* at art. 148; *see also* Mabrouk, *supra* note 104, at 5 (“[T]he president’s authority to declare a state of emergency has been hobbled; it has to be approved by a majority of both houses.”).

¹⁴⁷ El-Ghobashy, *supra* note 134, at 143.

¹⁴⁸ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 26 Dec. 2012, art. 127.

¹⁴⁹ *Id.*; *see also* Holger Albrecht, *Unbalancing Power in Egypt’s Constitution*, FOREIGN POLICY (Jan. 31, 2013), http://mideast.foreignpolicy.com/posts/2013/01/31/unbalancing_power_in_egypt_s_constitution (“Article 127 is an interesting attempt to balance power relations between the president and parliament. It allows the president to move to dissolve parliament through a popular

The 2012 Constitution also imposes new legislative checks on the executive branch. Parliament is now empowered to dismiss the government, the prime minister, or any individual minister by a simple majority of its members.¹⁵¹ In contrast, under the 1971 Constitution, the parliament could only dismiss the government after obtaining the president's approval or a two-thirds majority vote.¹⁵² In addition, the 2012 Constitution puts forth a method for the House of Representatives, the new lower house of parliament, to impeach the president by a two-thirds majority, after which the president shall be tried before a special court composed of heads of the judiciary.¹⁵³

Although the 2012 Constitution embodies an improvement with respect to the division of power in Egypt, it is by no means perfect. To note just a couple of deficiencies, the constitution provides no legislative check on the president's power to appoint judges at the highest levels and also fails to set forth any procedures for determining judicial salaries.¹⁵⁴ Another caveat is the Egyptian military, which in its efforts to maintain order until a new government is elected has shown a willingness to disregard power structures and the rights of

vote, a provision that might come as a necessary step to solve a deadlock between the two institutions. Yet, an important clause has been introduced in order to impede the article's abuse: losing the popular referendum triggers the automatic resignation of the president.”).

¹⁵⁰ PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 20 Aug. 2013, art. 112, http://www.constitutionnet.org/files/2013.08.20_-_proposed_changes_to_2012_constitution_expert_committee_idea_english.pdf; Bassem Sabry, 22 *Key Points in Egypt's New Draft Constitution*, Al-Monitor (Aug. 23, 2013), <http://www.al-monitor.com/pulse/originals/2013/08/egypt-draft-constitution-guide.html>.

¹⁵¹ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 26 Dec. 2012, art. 126.

¹⁵² ABROGATED CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, *as amended*, May 22, 1980, May 25, 2005, March 26, 2007, art. 127.

¹⁵³ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 26 Dec. 2012, art. 152.

¹⁵⁴ Al-Ali, *supra* note 140.

those who oppose its actions.¹⁵⁵ However, even though the constitution is imperfect, and the transition has been chaotic, there is hope for a future Egypt with less conventional corruption. If Egypt is able to hold free and fair elections in 2014 and emerge with a party in power facing unprecedented scrutiny due to a newly relevant political opposition and a constitution that limits the powers of the presidency,¹⁵⁶ then Egypt will at least have a chance of succeeding in its fight against conventional corruption.

VI. THE LIKELY RISE OF UNCONVENTIONAL CORRUPTION IN EGYPT

Unfortunately, measures aimed at combating conventional corruption do not also solve problems of unconventional corruption.¹⁵⁷ In fact, when conventional corruption declines, a rise in unconventional corruption is usually on the horizon.¹⁵⁸ Unconventional corruption, in this regard, is an unfortunate side effect of necessary reforms to combat conventional corruption. Although the occurrence of unconventional corruption can thus be an indicator of progress, unconventional corruption is not a necessary evil for a democracy that has recently implemented measures to combat conventional corruption. As described below, there are solutions that can and should be implemented to combat unconventional corruption.

There are two specific reasons why Egypt could be susceptible to a rise in unconventional corruption in the coming years. The first is a likely increase in the supply of campaign contributions and expenditures. If reforms focused on reducing conventional corruption are successful, private parties who are accustomed to getting their way through acts of bribery and the like will be forced to seek alternative means of achieving their objectives, and these alternative means are

¹⁵⁵ See Mayy El Sheikh and Kareem Fahim, *Dozens Are Killed in Street Violence Across Egypt*, N.Y Times (Oct. 6, 2013), http://www.nytimes.com/2013/10/07/world/middleeast/clashes-in-egypt-leave-at-least-15-dead.html?_r=0.

¹⁵⁶ Lynch, *supra* note 139, at 45.

¹⁵⁷ Yingling, *supra* note 2, at 275.

¹⁵⁸ *Id.* at 270-71.

likely to include campaign contributions and expenditures.¹⁵⁹ In addition, many individuals who once flaunted near complete control of the economy may find it necessary to utilize campaign contributions and expenditures in order to wield the kind of influence that they brandished under Mubarak.¹⁶⁰

The second reason why Egypt is susceptible to an increase in unconventional corruption is a likely increase in the demand for campaign contributions and expenditures. While a ruling party incumbent of the past may have been able to rely on the ultimate act of conventional corruption—stealing an election—to stay in power, incumbents will now be required to communicate with their constituencies to keep their support, and this requires financing.¹⁶¹ Furthermore, due to the events of the last few years, ruling party incumbents can no longer safely forgo actual campaigns with the expectation that the state-run media will dominate the landscape and communicate the incumbent’s re-election message to the public.

To elaborate on this last point, the Mubarak regime was able to use the state-run media in a way that made it unnecessary for NDP incumbents to seek contributions and expenditures from outside parties in order to run comprehensive campaigns.¹⁶² The NDP mobilized the

¹⁵⁹ See Campos & Giovannoni, *supra* note 30, at 2 (concluding that lobbying activities are an important alternative tool of influence when bribe offering becomes less effective).

¹⁶⁰ See ASWANY, *supra* note 67, at vii.

¹⁶¹ See Ahmed Feteha, *The Best Democracy Money Can Buy: Funding Egypt’s Presidential Campaigns*, AHAM ONLINE (Mar. 31, 2012), <http://english.ahram.org.eg/NewsContent/3/12/38063/Business/Economy/The-best-democracy-money-can-buy-Funding-Egypt-pr.aspx> (“According to [Professor] Abdel Aziz, campaign activities fall into two categories: promotion in the mass media, and round-level activities including popular conferences and drives to provinces. Though the latter is relatively inexpensive, both require large amounts of funding.”).

¹⁶² Sharif Abdel Kouddous, *After Mubarak: Fighting For Press Freedom in Egypt*, THE NATION (June 20, 2011), <http://www.thenation.com/article/161555/after-mubarak-fighting-press-freedom-egypt> (“Under Mubarak, state-owned media was a propaganda arm of the government, parroting party dogma while dismissing public criticism and political opposition.”); Al-Mashat, *supra* note 63, at 11

state-run media to serve its own interests by promoting party policies and exaggerating achievements, all while excluding coverage of other parties.¹⁶³ As recently as the 2010 parliamentary elections, the state-run media showed a marked interest in giving positive coverage to state figures.¹⁶⁴ The Cairo Institute for Human Rights Studies found that, without exception, all of the state-owned newspapers exhibited a clear pro-NDP bias in their election coverage.¹⁶⁵ The state television channels were also biased. For example, on Channel 2, in the lead up to the election, the NDP received 56.6% of the coverage (71% positive and 1% negative). In contrast, the Muslim Brotherhood received only 10% of the coverage (2% positive and 92% negative).¹⁶⁶

However, this situation has changed, and will continue to change, because contemporary digital technology has destroyed much of the government's capacity to monopolize the means of broadcast communication.¹⁶⁷ Technology, besides facilitating the rise of web-based blogs and social media, has been an impetus for private and independent news journalism.¹⁶⁸ Even under Mubarak and the NDP, state media organs were already losing ground to private upstarts such as *Al-Masry Al-Youm* and *Al-Shorouk*.¹⁶⁹ The private media gained a firm foothold on the Egyptian media landscape, and although it has not been completely immune from government influence or eliminated the

(“The Egyptian government, which inherited a vast state apparatus, has been in total control of state resources, mass media outlets and legal channels for political participation. This diminishes any possibility for real and substantial competition.”).

¹⁶³ CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES (“CIHRS”), *Media and Parliamentary Elections in Egypt: Evaluation of Media Performance in Parliamentary Elections* (Oct. 28/Dec. 15, 2010), at 76; Eldakak, *supra* note 69, at 289-92; MOUSTAFA, *supra* note 49, at 96.

¹⁶⁴ CIHRS, *supra* note 163, at 9.

¹⁶⁵ *Id.* at 39.

¹⁶⁶ *Id.* at 70.

¹⁶⁷ See generally KAYLAN GEIGER & FRAUS MASRI, *THE RED LINE: PRESS FREEDOM IN POST-MUBARAK EGYPT* (2012).

¹⁶⁸ JEFFREY C. ALEXANDER, *PERFORMATIVE REVOLUTION IN EGYPT: AN ESSAY IN CULTURAL POWER* 69 (2011); see also Eldakak, *supra* note 69, at 289 (explaining that the rise of privately owned independent media was also caused by the state-run media's lack of credibility).

¹⁶⁹ ASHRAF KHALIL, *LIBERATION SQUARE: INSIDE THE EGYPTIAN REVOLUTION AND THE REBIRTH OF A NATION* 290 (2012).

state-run media's bias, partiality, and prejudice,¹⁷⁰ it has reduced it in significant ways.¹⁷¹ With the growth of private media, including well-known satellite channels, elected ruling-party officials can no longer rely on the dominance and bias of the state-run media to communicate their messages in lieu of conducting actual campaigns that require vast sums of money.

Even if the government attempts to censor private media, as the military-controlled post-Morsi government has done,¹⁷² such efforts are unlikely to return the state-run media to the position of influence that it once held. Cracks are emerging in the once rigid walls of the state-run media not only because of private media, but also because of pure economic inertia.¹⁷³ The state media machine, like most public sector enterprises in Egypt, is significantly overstaffed with thousands of phantom employees who draw a paycheck for barely working.¹⁷⁴ The combination of declining readership and viewers, along with the immense economic drain associated with supporting the propaganda machine, will eventually cause the state-run media to change its ways.¹⁷⁵ Thus, ruling-party incumbents will not be able to safely forgo actual campaigns with the expectation that the state-run media will dominate the political landscape in a biased manner and communicate the incumbent's re-election message to the public.

One factor that could potentially mitigate an increase in demand for campaign financing is Egypt's new electoral system. Prior to the January 25th revolution, members of parliament were elected under a plurality (winner-take-all) system, in which Egyptians voted for individual candidates.¹⁷⁶ In contrast, Egypt has recently experimented with electing legislators under a "mixed system," in which only one-third of the parliament is elected on a plurality basis, while the other

¹⁷⁰ Eldakak, *supra* note 69, at 289-90.

¹⁷¹ KHALIL, *supra* note 169, at 290; CIHRS, *supra* note 163, at 9; NIS Study Egypt, *supra* note 44, at 21-22.

¹⁷² Kevin Liffey, *Egypt Expels Al Jazeera Journalists in Crackdown on Qatari Channel*, Reuters (Sept. 1, 2013), <http://www.reuters.com/article/2013/09/01/us-egypt-protests-jazeera-idUSBRE97S0ZL20130901>.

¹⁷³ KHALIL, *supra* note 169, at 295.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Aziz, *supra* note 56, at 29.

two-thirds are elected on a closed party list basis, whereby voters select parties instead of individual candidates.¹⁷⁷ Candidates elected on a plurality basis have a heightened incentive to personally differentiate themselves from their competitors,¹⁷⁸ which is accomplished more easily with the help of campaign contributions and expenditures. In contrast, candidates elected on a closed party-list basis do not have the same incentive to personally differentiate themselves from their competitors,¹⁷⁹ and thus, candidates elected on such a basis are presumably less incentivized to seek campaign financing. As a result, the existence of a mixed system, whereby two-thirds of the legislators are elected on a closed party list basis, may mitigate the previously mentioned causes of an increased demand for campaign financing.¹⁸⁰ However, the ten-member committee tasked with making recommendations for amendments to the 2012 Constitution has proposed returning to the plurality system for Egypt's next parliamentary elections.¹⁸¹ Even if this proposal is not accepted by the larger committee and the mixed system remains in place, the mixed system's potential mitigating effect does not apply to the one-third of

¹⁷⁷ Gamal Essam El-Din, *Egypt's Shura Council Approves New House of Representatives Law*, AHRAM ONLINE (Apr. 11, 2013), <http://english.ahram.org.eg/NewsContent/1/64/69038/Egypt/Politics-/Egypts-Shura-Council-approves-new-House-of-Repres.aspx>.

¹⁷⁸ See Daniel W. Gingerich, *Ballot Structure, Political Corruption and the Performance of Proportional Representation*, 21(4) J. OF THEORETICAL POL. 509, 512 (2009) (describing how candidates in closed party list systems have fewer incentives to differentiate themselves from their opponents); see also The Carter Center, *supra* note 95, at 25 ("Different electoral systems promote different types of representation and political behaviors that influence the performance and focus of an elected assembly.").

¹⁷⁹ See Gingerich, *supra* note 178, at 512.

¹⁸⁰ Although a closed party list system might mitigate demand for campaign financing, scholars have reached different conclusions as to whether closed party lists systems are preferable to plurality systems (or open party list systems) with respect to the prevention of illegal forms of corruption. See *id.* at 511-14.

¹⁸¹ PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 20 Aug. 2013, art. 191, http://www.constitutionnet.org/files/2013.08.20_-_proposed_changes_to_2012_constitution_expert_committee_idea_english.pdf; Sabry, *supra* note 150.

legislators who will be running independent of the party system. For these legislators, the causes of increased demand for campaign financing are unmitigated.

Unfortunately, Egypt lacks a comprehensive framework for regulating campaign financing with respect to independent candidates in parliamentary elections.¹⁸² Thus, the country does not currently have the tools to preempt a rise in unconventional corruption. The most problematic aspect of this situation is that Egypt's laws pertaining to campaign finance do not include any disclosure requirements for parties or candidates.¹⁸³ Egypt's current campaign finance rules for lower house elections can be found in Law 38 of 1972.¹⁸⁴ Besides lacking disclosure requirements, Law 38 also lacks any meaningful restrictions on domestic campaign contributions or independent expenditures by private parties.¹⁸⁵ Instead, Article 11 of Law 38 restricts the expenditures of the candidates themselves; candidates must comply with a specific ceiling for expenditures that is set for each

¹⁸² Rabab Fayad, *Egypt Going to Elections*, COMMON GROUND NEWS SOURCE (Mar. 8, 2011), <http://www.commongroundnews.org/article.php?id=29395&lan=en&sp=0>.

¹⁸³ The Carter Center, *supra* note 95, at 38, 71. It is still unclear whether Article 47 of the 2012 Constitution will be used to require candidates to make campaign finance disclosures. Article 47 states that “[a]ccess to information, data, documents and statistics, and the disclosure and circulation thereof, is a right guaranteed by the state, in a manner that does not violate the sanctity of private life or the rights of others, and that does not conflict with national security. The law regulates the rules for filing and archiving public documents, the means of access to information, the means of complaint when access is refused, and the consequent accountability.” CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 26 Dec. 2012, art. 47.

¹⁸⁴ Law No. 38 of 1972 (Concerning the People's Assembly), *Al-Jarida Al-Rasmiyya*, 28 Sept. 1972, art. 11 (Egypt) (unofficial English translation prepared by Democratic Reporting International). For an in depth discussion of Law 38 of 1972, see Aziz, *supra* note 56, at 25-40.

¹⁸⁵ Law No. 38 of 1972, art. 11; Hoda Youssef, *Is Egypt's Presidential Election for Sale?*, ATLANTIC COUNCIL (May 18, 2012), http://www.atlanticcouncil.org/blogs/egyptsource/is-egypts-presidential-election-for-sale_

election.¹⁸⁶ In essence, under the current framework, domestic private parties are permitted to contribute and spend unlimited amounts of money to benefit election campaigns, which, in turn, provides elected officials with incentives for engaging in unconventional corruption, without any way for the public to gauge the elected official's susceptibility to such corruption.

VII. COMBATING A RISE IN UNCONVENTIONAL CORRUPTION IN POST-REVOLUTION EGYPT

Unconventional corruption is not a necessary evil for a transitioning democracy that has recently implemented measures to combat conventional corruption. The solution, however, is not to prohibit unconventional corruption with positive laws. Because unconventional corruption does not involve a coordinated quid pro quo transaction, it is rather difficult to prove in any particular instance. Furthermore, laws prohibiting acts of unconventional corruption could give executive branch prosecutors the means to bring trumped up charges against political adversaries based on a subjective view of what is, and what is not, in the public interest.¹⁸⁷ Instead, a more appropriate method of combating unconventional corruption is to provide transparency and limit the incentives for unconventional corruption, *i.e.*, restrict the amounts of contributions and expenditures that private parties can make to benefit an election campaign.

The first step towards combating unconventional corruption is to establish rules that require elected officials to periodically disclose information pertaining to campaign contributions.¹⁸⁸ The public is entitled to information pertaining to who gives money, to whom is it allocated, and for what purpose.¹⁸⁹ Reports on contributions should

¹⁸⁶ Law No. 38 of 1972, art. 11.

¹⁸⁷ See KLITGAARD, *supra* note 116, at 203 (acknowledging that anticorruption campaigns can sometimes be used to “clean up political opponents rather than to clean up corruption”).

¹⁸⁸ Yingling, *supra* note 2, at 275 (citing Paul Collier, *The Bottom Billion: Why the Poorest Countries are Failing and What Can Be Done About It* 149 (2007)).

¹⁸⁹ Youssef, *supra* note 185; Yingling, *supra* note 2, at 275; USAID, Office of Democracy and Governance, *Money in Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies* 15 (2003),

not be limited to the eyes of a government oversight body; instead, the public should be able to access such reports without having to make specific requests.¹⁹⁰ Vulnerable sections of society are often fearful of making information requests, but if the reports are published online or otherwise, then everyone can access them anonymously.¹⁹¹

With proper disclosure rules, the voting public gains necessary access to information that may be indicative of an elected official's tendencies to act against the public interest.¹⁹² Transparency has a curative effect on the process of campaign funding that diminishes the incentive for unconventional corruption.¹⁹³ In this regard, Article 7(3) of the United Nations Convention Against Corruption, which Egypt ratified in 2005, states that each party to the convention shall "consider taking appropriate legislative and administrative measures . . . to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties."¹⁹⁴

http://transition.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacr223.pdf.

¹⁹⁰ See Yingling, *supra* note 2, at 318 (describing the problematic aspects of a proposed Kenyan campaign finance law that did not make reports available to the public).

¹⁹¹ ANDREW PUDEPHATT, GLOBAL PARTNERS & ASSOCIATES, CORRUPTION IN EGYPT 20 (2012), <http://www.global-partners.co.uk/wp-content/uploads/Corruption-in-Egypt-Report-new-cover.pdf>.

¹⁹² Yingling, *supra* note 2, at 275; Varol, *supra* note 77, at 311; Vincent R. Johnson, *Regulating Lobbyists: Law, Ethics, and Public Policy*, 16 CORNELL J. OF LAW & PUB. POL'Y 1, 16 (2006); Anthony Johnstone, *A Madisonian Case for Disclosure*, 19 GEO. MASON L. REV. 413, 437 (2012).

¹⁹³ See Henning, *supra* note 1, at 843.

¹⁹⁴ G.A. Res. 58/4, at 11, U.N. Doc. A/RES/58/4 (Oct. 31, 2003), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf; *but see* Timothy K. Kuhner, *The Democracy to Which We Are Entitled: Human Rights and the Problem of Money in Politics*, 26 HARV. HUM. RTS. J. 39, 53-54 (2013) (recognizing the shortcomings of Article 7(3) of the United Nations Convention Against Corruption).

Disclosure rules, although necessary, are not sufficient for eliminating unconventional corruption.¹⁹⁵ The influence of campaign contributions may be independent of any amounts spent because the influence could also depend on the credible threat of contributions or expenditures to benefit the elected official's opponent.¹⁹⁶ For example, imagine that a wealthy business owner announced that he or she intended to spend vast sums of money to defeat any elected official who supported workers' rights legislation. If an elected official learned of the business owner's threat and decided to change his or her position on workers' rights, there would be little doubt that such change was the result of the business owner's threat. Disclosure rules, however, would not be able to quantify the business owner's influence or the elected official's act of unconventional corruption.¹⁹⁷ Notably, it is in this regard that the United States has experienced a great deal of unconventional corruption despite its well-established disclosure requirements for campaign contributions.¹⁹⁸

In order to effectively combat unconventional corruption, laws must limit campaign contributions and independent campaign expenditures in their amounts.¹⁹⁹ When contributions and expenditures are limited, elected officials have less incentive to engage in unconventional corruption, and the effects of unconventional corruption are likely to be less problematic because elected officials will need to appeal to a greater number of individuals in order to receive significant financing. Unconventional corruption is most detrimental to a democracy when there only a *few* parties making *large* contributions or expenditures, as opposed to when there are *many*

¹⁹⁵ Yingling, *supra* note 2, at 275; *see also* B. Guy Peters, *Performance-Based Accountability*, in PERFORMANCE ACCOUNTABILITY AND COMBATING CORRUPTION 15 (2007) ("Transparency and openness are necessary, but perhaps not sufficient, to produce accountability in the public sector.").

¹⁹⁶ LESSIG, *supra* note 21, at 258 (citing Marcos Chamon and Ethan Kaplan, *The Iceberg Theory of Campaign Contributions* 2-5 (Apr. 2007), http://people.su.se/~ekapl/jmp_final.pdf).

¹⁹⁷ Yingling, *supra* note 2, at 275-76.

¹⁹⁸ *Id.* at 282-302.

¹⁹⁹ *Id.* at 276; *see also* Kuhner, *supra* note 194, at 88 (recommending a limit on campaign contributions and expenditures based on a human rights approach to money in politics).

parties making *small* contributions or expenditures.²⁰⁰ To advocate for limits on contributions and expenditures, however, is not to advocate that they be prohibited. In fact, it is critical that they not be prohibited, otherwise candidates for public office who are not independently wealthy might lack the ability to communicate their messages to their constituencies.²⁰¹

In a similar regard, while limits on independent *third-party* campaign expenditures are necessary to combat unconventional corruption, limits on *candidate* expenditures (which currently exist in Egypt) can be detrimental to the system. Poorly calculated limits on candidate expenditures can have negative consequences.²⁰² Specifically, if the limits are too low, a candidate may be rendered unable to effectively communicate with a constituency.²⁰³ In general, campaign finance laws should allow candidates to effectively communicate with their constituencies, and at the same time, ensure fairness and accountability to the people.²⁰⁴

VIII. CONCLUSION

Egypt's revolution of January 25, 2011 was fueled by a desire to limit conventional corruption—illegal activity that has long existed in Egypt. The country's transition, although chaotic and tragic in some respects, has not been void of positive developments. The 2012 Constitution, while imperfect, provides for greater restraints on power, especially in the executive branch. As a result, with time and further action, Egypt has an opportunity to realize a goal of the revolution and experience a drop in conventional corruption. However, when conventional corruption is on the decline, unconventional corruption is likely on the rise. Fortunately, unconventional corruption is not an inevitable side effect of progress—it can be contained. With a certain bit of insight and courage, the people of Egypt can reform their campaign finance system and bring forth a true democracy—one where elected officials make decisions not for the benefit of potential political funders, but rather, for the benefit of the people.

²⁰⁰ Yingling, *supra* note 2, at 276 (citing Issacharoff, *supra* note 19, at 133).

²⁰¹ Yingling, *supra* note 2, at 276.

²⁰² *Id.* at 318-19.

²⁰³ *Id.*

²⁰⁴ *Id.* at 275-77; Youssef, *supra* note 185.