
PARTICIPANTS' PAPERS

STUDY ON THE ALGERIAN ANTI-CORRUPTION LAW

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I. INTRODUCTION

Algeria has sought like the rest of the world to address the phenomenon of corruption, convinced of the importance of this to try to achieve economic and social development and the consolidation of the rule of law, and also the principles of social justice in the context of transparency and clarity. This has been embodied through the law No. 06/01 of February 20, 2006 on the prevention and combating of corruption, and through the ratification of the United Nations Convention against Corruption of October 31, 2003, ratified by Presidential Decree No. 04/128 of April 19, 2004, with reservations. This law aims mainly as stated in the first article to:

1. Support measures for preventing and fighting corruption
2. Promoting integrity, responsibility and transparency in the public and private sectors
3. Facilitate and support international cooperation and technical assistance to prevent and fight corruption, including asset recovery.

II. DEFINITIONS AND TERMS

It includes several anti-corruption laws and definitions of various terms, including: corruption, public officials, foreign public officials, confiscation and controlled delivery.

A. Corruption

Corruption includes all the crimes set forth in Section IV of this Act, which are: bribery of public officials, unjustified concessions in the field of public procurement, bribery in public transactions, bribery of foreign public officials and officials of public international organizations, misappropriation of property by a public official and use of it illegally, treachery, exemption, illegal reduction of taxes and fees, influence peddling, abuse of function, conflicts of interest, taking illegal benefits, failure to declare or false statement of property, illicit enrichment, receiving gifts, hidden funding of political parties, taking illegal benefits, bribery in the private sector, misappropriation of property in the private sector, the laundering of proceeds of crime, concealment, obstructing the smooth functioning of justice, the protection of witnesses, experts, victims and whistleblowers, abuse of reporting and non-reporting of offences.

B. Public Officer

A public officer is any person who holds an administrative legislative, executive, judicial mandate, or at a popular locally elected assembly, whether elected or nominated, as permanent or temporary, whether paid or not, and regardless of their hierarchical level or seniority. The term also includes any other person holding a function or mandate, even temporary, paid or unpaid, who contributes as such, in the service of the public organism or public enterprise, or any other company in which the State owns all or part of its capital, or any other company that provides a public service, or any other person defined as a public officer or who is assimilated in accordance with current legislation or regulations.

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III. MEASURES TO PREVENT CORRUPTION IN THE PUBLIC SECTOR

A number of measures must be taken into account in the public sector to combat corruption; these are most important when dealing with property and in the field of public procurements.¹

A. Employment

Several criteria and principles must be taken into account when recruiting in the public sector:

- the principle of efficiency, transparency and objective criteria such as merit, equity and ability.
- appropriate procedures to select and train persons called to occupy public positions considered especially exposed to corruption.
- adequate treatment and adequate compensation.
- programme development of education and adequate training to enable public officers to fulfil their duties in a fair, honourable and proper manner and make them expect to benefit from specialized training to sensitize them to risks of corruption.

B. Property Statement

The anti-corruption law devoted an important chapter to the property statement to ensure transparency in order to give the state an opportunity to discover signs of corruption. This is an obligation on public officers, and this law defines entities that are committed in front of each category of public servants to make such declarations. This liability, which requires public officers property statement submission during the month following the date of his inauguration in the job or the beginning of his electoral term, and he or she must renew this statement periodically. The financial disclosure of public officers includes real estate and chattels in Algeria and abroad, and the law identified the body that each employee must report to, according to his or her rank, starting from the President of the Republic. The law also urged the elected bodies and public institutions to promote economic integrity and honesty of the officers by adopting codes and rules of conduct.

C. Public Procurement Order

The conclusion of public procurement is subject to specific rules due to the importance of these transactions to the public and private sectors and the national economy in general. The process is subject to several criteria:

- dissemination of information concerning the procedures for public procurement orders
- the prior establishment of the conditions of participation, selection objectives and precise decision-making criteria concerning public procurement orders
- the exercise of any means of redress

IV. MEASURES TO PREVENT CORRUPTION IN THE PRIVATE SECTOR

A. Principles for Fighting Corruption

There are several measures taken to prevent the involvement of the private sector in corruption, and they are:

- strengthening cooperation between the services of detection and repression and relevant private entities.
- promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct to ensure that companies and all relevant professions operate in a fair, honourable and proper way to prevent conflicts of interest and

¹Penal Code of Algeria.

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to encourage the application of good commercial practices between companies and in the contractual relations with the state.

- promoting transparency between private entities
- prevention of improper use of procedure regulating private entities.
- implementation of internal audits of private companies

B. Accounting Standards

These standards are based primarily on the prevention of several incubator acts of corruption, and they are:

- the establishment of off-book accounts, records and transactions
- identification of the off-book or insufficiently identified operations
- identifying liabilities which have not been correctly recorded

V. CIVIL SOCIETY PARTICIPATION AND COOPERATION OF PUBLIC AND PRIVATE INSTITUTIONS

The participation of civil society in the prevention of corruption plays an active role in reducing the growth of this negative phenomenon, by adopting transparency in decision-making and enhancing the participation of citizens in public affairs, and the preparation of mentoring programmes and awareness through the public and private media, and through popular channels organized in the form of education and awareness of non-governmental organizations for youth and adults, and also by holding training courses.

In fact, despite the tireless efforts made by the Algerian state in order to reduce and combat the phenomenon of corruption, and the recruitment of security, judicial and financial institutions, to amputate the roots of this phenomenon, Algerian society has not yet achieved giant strides in consolidating the idea of social participation, whether by individuals, non-organized groups or organized groups such as civil society associations or non-governmental organizations to address this phenomenon.

And by working in the field of justice, this role is often limited to the form of letters or faxes signed anonymously, and this is because either the informants fear reprisals from corrupt actors or these messages are submitted for revenge.

For the financial institutions of public or private banks or postal centres where money is transferred, their main role is to detect money laundering through monitoring of regular and electronic bank accounts or monitoring suspicious movements of funds; as a result it is not available question because, on the one hand, it is complex and requires approval from the relevant judicial authorities such as the public prosecutor or the investigating judge; on the other hand, it interferes with privacy and individual freedoms protected by the law, Constitution and international conventions in this area.

VI. THE NATIONAL BODY FOR THE PREVENTION AND FIGHTING AGAINST CORRUPTION

This body is an independent administrative authority that has legal personality and financial independence, made by the President of the Republic, and it is responsible for the prevention and fighting against corruption. It is working on the implementation of the national strategy in this area and has its own legal system and specific tasks.

A. The Legal System of the Body

The body is an independent administrative authority with a legal personality and financial auton-

omy. The autonomy of the body is guaranteed in particular by taking the following measures:

- the swearing in of members and officers of the body empowered to access the personal data and, in general, any confidential information before installation to their duties. The form of oath is set by regulation.
- staffing of the body in necessary human and material resources to accomplish these tasks.
- adequate and high level training of personal within the body.
- safety and protection of members and officers of the body against any form of pressure or intimidation, threat, insult or attack of any nature whatsoever which they may be the subject during or in connection of the performance of their duties.

B. Missions of the Body

The members are required to:

- propose a comprehensive policy for the prevention of corruption embodied in the principles of rule of law and reflecting the integrity, the transparency and responsibility in management of public affairs and public property;
- provide advice for the prevention of corruption to any person or public or private organization and recommend measures, including legislative and regulatory developments and steps for the prevention of corruption and to cooperate with the public and private sectors in the development of the rules of conduct;
- develop programmes for education and citizen awareness about the harmful effects of corruption;
- to collect, centralize and use any information that can be used to detect and prevent corruption, including research on legislation, regulations, procedures, and administrative practices, the factors of corruption in order to provide recommendations designed for their elimination;
- periodically evaluate relevant legal instruments and administrative measures on the subject to determine their effectiveness in the field of prevention and the fight against corruption;
- to collect periodically, respecting Article 6, the declaration of assets of public officers, to examine and use the information they contain, and to ensure their preservation;
- to use the public prosecutor to gather evidence and to carry out investigations on corruption;
- to ensure the coordination and monitoring of activities and actions in the field based on periodic and regular reports with statistics and analysis relating to the field of prevention and the fight against corruption which are addressed by the sectors and the participants concerned;
- to ensure the strengthening of inter-sectoral coordination and the development of cooperation with entities in fighting against corruption, both at the national and international levels;
- generate any evaluation research of the actions undertaken in the field of prevention and the fight against corruption.

C. The Relationship between the Body and the Judicial Authority

When the body reached to events that may constitute a breach of the criminal law, the matter is referred to the Minister of Justice and Keeper of the Seals, which makes use of an experienced attorney general to commence public action in movement, if appropriate.

Corruption cases are initiated at the level of the judicial authorities, as the regular criminal cases

are initiated, through the same procedures and degrees of litigation applicable in the Algerian judicial system. Thus, there are no special or exceptional rules on corruption issues.

Legal persons have penal responsibility for the crimes stipulated in Article 53 of the Anti-Corruption Act. Some of the special investigative techniques adopted in the anti-corruption law are controlled delivery, electronic surveillance and intrusion with permission from the judicial authorities. Any contract or transaction, privilege or license obtained by corruption should be declared null and void by the judicial authorities. In the end, all members and staff of the body are committed to protecting professional secrets, and they must report annually to the President on an assessment of its activities and deficiencies and suggestions they see useful to fight against corruption.

VI. INTERNATIONAL COOPERATION IN COMBATING CORRUPTION

International cooperation in fighting corruption is mainly associated with the presence of international agreements between Algeria and other states, and is governed by international principles such as the principle of reciprocity, and this cooperation is available with the convention's parties, in the field of investigations and prosecutions and judicial proceedings

A. Prevention, Detection and Transfer of Proceeds of Crime

In order to detect financial transactions related to corruption, and without prejudice to the legal provisions relating to money laundering and terrorist financing, banks and non-banking financial institutions shall, in accordance with the regulations:

- comply with data concerning persons or entities on the accounts of what financial institutions should exercise greater oversight, types of accounts and transactions to which to pay attention, as well as measures for the establishment and maintenance of such accounts and the recording of transactions.
- take into account the information provided to them as part of their relationship with foreign authorities in particular regarding the identity of persons or entities that they will strictly monitor the accounts;
- transaction that is recorded, keep adequate records of accounts and transactions involving the persons mentioned in the first and second paragraphs of Article 58 of the anti-corruption law.

B. Relations with Banks and Financial Institutions

In order to prevent and detect transfers of proceeds of corruption, banks which have no physical presence and are not affiliated with a regulated financial group will not be allowed to settle in Algeria. Banks and financial institutions operating in Algeria are not allowed to have relationships with foreign financial institutions that accept their accounts to be used by banks that do not have physical presence and that are not affiliated to a financial group regulated.

C. Measures for Direct Recovery of Property

Algerian courts are competent to know the committed civil action by the States parties to the Convention with a view to know the existence of a right of ownership of property acquired subsequent to the corruption. The court seized of a proceeding accordance with article 62 of the anti-corruption law, may order persons convicted of corruption to pay civil damages to the applicant state for the damage that has been caused. In all cases where a confiscation order may be imposed, the court shall take necessary measures to protect the legitimate owner claimed by another State party to the Convention.

D. Recovery of Property through International Cooperation for Purposes of Confiscation

Foreign judicial decisions ordering the confiscation of property acquired through an offence under the anti-corruption law, or means for its commission, shall be enforceable in national territory in accordance with established rules and procedures. By speaking, under the legislation, an offence of money laundering or such other offence falling within its competence, the seized court may order the confiscation of foreign goods acquired through one of the offences under the anti-corruption law, or

used for their commission. Confiscation of property referred to in the anti-corruption law is declared even in the absence of a criminal conviction due to the extinction of public policy or for some other reason.

1. Requests for International Cooperation for the Purpose of Confiscation

As well as the documentation provided with the information contained in the requests for judicial cooperation, according to bilateral and multilateral agreements, there must also be:

- a statement of the facts relied upon by the requesting State and a description of the actions required and a copy of the order;
- a description of property to be confiscated, its location and value
- a statement of information and facts that defines the scope of the implementation and that authorization of confiscation measures has been taken to notice the States Parties.

2. Measures of International Cooperation for Confiscation

The request of a State Party to the Convention must be directed to the Minister of Justice for the confiscation of proceeds of crime located within the national territory, then turned to the competent public prosecutor, and the public prosecutor sends it to the competent court; the judgement of the Court shall be subject to appeal, and the appeal, and the provisions are implemented with the knowledge of the Public Prosecution.

Information on proceeds of offences established in accordance with law against corruption may, without prior request, be given to a State Party to the Convention, where such information might assist the receiving State to initiate or conduct an investigation, prosecution or judicial proceedings or might lead to the presentation by the State of a request for confiscation. When a confiscation order is made, the disposal of confiscated property is under the relevant treaties and legislation.

VII. THE EFFECTS OF CORRUPTION

Corruption has strong effects on all fields in the country, and corruption has led to weak political institutions of the country and encouraged the birth of the soft state, which is characterized by a lack of social discipline that leads to wilful neglect of rules and directives by public officers and civil servants. The main qualities of a soft state are the high dependence on outside sources, disobedience of the public authority weakened system of rights and obligations over centralized government, rigid bureaucracies unable to adjust to change, which explains clearly the strong relationship between developed countries and the colonial history on the one hand and on the other hand their relationship with their colonial past which left a deep connection with developed countries. This makes them associates with corruption. Lack of social discipline, combined with the monopoly position of government and a confusing network of regulations has enabled powerful individuals and business groups.²

VIII. FIGHT AGAINST CORRUPTION

Considering that corruption is a global phenomenon and widespread around the world, it requires great efforts in order to fight corruption and to keep it from spreading to different regions. There are many measures we can take in order to decrease corruption.³

- Parliaments control function (legislation authority)
- Private institutions

²David J. Gould and Jose A. Amero-Reyes, *The Effects of Corruption on Administrative Performance*, 20, available at <http://www-wds.worldbank.org/servlet/WDSContentServer/IW3P/IB/1983/10/01/000009265_3980716172221/Rendered/PDF/multi_page.pdf>.

³Memorandum of Cooperation with the National Agency for Integrity Issues of Romanc Podgorica, 21 April 2008.

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- Individual effort and organization
- The application of laws by courts
- Media should work together with government hand in hand
- Exchanging experiences between governments and organizations
- Improve the living conditions of citizens as well as public officers
- Create strong central mechanisms at the level of administration, different institutions and companies

IX. CONCLUSION

To conclude we can say that corruption in general is a national and international problem demanding efforts of countries, institutions and individuals; in addition, it requires consultation between countries and organizations. Thus, we find a radical solution and impose a roadmap to overcome challenges.

Since the accession of Algeria to the United Nations Convention against Corruption, adopted by the General Assembly of the United Nations in New York on October 31, 2003 ratified by Algeria on April 19, 2004 and the issuance of Law No. 06/01 dated February 20, 2006 on the prevention of corruption, Algeria witnessed a remarkable development at the level of legal mechanisms and material means adopted to address all types of corruption. Nevertheless, Algeria must exert more efforts, in particular, to mobilize popular energies to confront this phenomenon.