An economic reading of the legal and institutional mechanisms to curb the phenomenon of corruption in Algeria

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Summary: this study aimed to provide a theoretical reading according to an economic point of view, of the mechanisms adopted in Algeria to curb the phenomenon of corruption at the legal and institutional level, by reviewing the relevant legal and regulatory texts as wel as the international and regional agreements ratified by Algeria in this field.

Analysis of the data presented by the competent bodies such as the world bank, the world economic forum and transparency international, on the reality of this phenomenon in our country, shows that Algeria occupies a lagging position in the list of countries that including data, which indicates the limited effectiveness of legal and institutional mechanisms taken to curb corruption in algeria; and which also leads us to the conclusion that the anti-corruption bodies in algeria are fictitious bodies, which were created in response to the international and regional agreements, and not for combating corruption internally; furthermore, the establishment of these bodies and subjecting them to the authority of the executive body, which is the main brreding ground for corruption, makes them lack independence in carrying their tasks with the required objectivity.

Keywords:corruption, bribery, public investment programs, algeria.
Jel Classification Codes D73 ; D73 ; H59 ; H80

I- Introduction :

There is no doubt that the spread of corruption in a country is inversely proportional to the efficiency and effectiveness of economic policies and development programs that are implemented on the ground.

The algerian economy, like other economies of developing countries, has suffered and is still suffering from this phenomenon, which has hampered the development process and costs the public treasury billions of dollars in losses, And it created a repulsive environment for domestic and foreign investments; as confirmed by many reports of specialized institutions and bodies such as the International Monetary Fund, the World Bank and Transparency International.

Through this research paper, we try to identify the reality of this phenomenon in Algeria, and to review the legal and institutional mechanisms adopted in Algeria to curb this phenomenon, to provide a reading, in the end, of the effectiveness of these mechanisms to reduce the spread of this phenomenon.

For this purpose, this study is organized into three axes, as follows:

- The reality of the phenomenon of corruption in Algeria;
- Legal and institutional mechanisms to combat the phenomenon of corruption in Algeria;
- A reading of anti-corruption mechanisms in Algeria

II- The reality of corruption in Algeria:

The phenomenon of corruption is one of the most important factors that impede the implementation of public investment programs, weaken their efficiency and effectiveness, increase the costs and deadlines for their implementation, and degrade the quality of their outputs, as it

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constitutes a main channel for the leakage of public funds, and diverts them away from the expenditures allocated to them.

Algeria, like many other developing countries, has suffered and is still suffering from this dangerous phenomenon that drains the capabilities and resources of society, and disrupts its development process, and negatively affects the business climate, as it creates an environment that expels both local and foreign investments.

The phenomenon of corruption in Algeria takes many forms, ranging from bribery (bribery of public administration officials, bribery related to public transactions, bribery of foreign public officials and employees of international organizations), and granting, or benefiting, or attempting to take advantage of benefits in kind or in-kind that are not due illegally, and between Abuse of public office and illegal use of public property for private gain.

Table (01) presents a sample of corruption crimes - broken down by type of crime - registered in Algeria between 2010 and the first semester of 2012.

It is noticeable that the large number of these cases in which cases related to the illegal use of public property by public agents constitute a greater proportion (50%), while crimes of bribery of various kinds related to the public sector (bribery of public officials, bribery related to concluding public deals) constitute 16%, while crimes related to the misuse of public office and making it a vehicle to achieve private benefits constituted about 15% of the total corruption cases. during this period.

The phenomenon of corruption has increased significantly in Algeria during the period 2001-2019, coinciding with the launch of public investment programs that cost the public treasury huge sums of money, estimated by some sources at more than 800 billion US dollars; The available data, which we present through Table (02) show that during the period between 2010 and the end of the first quarter of 2017, the number of corruption cases brought to the courts was 2,273 cases, 2035 cases were handled, and the number of people who followed up on those corruption cases, during the same Period 3240.

These statistics do not reflect the reality of the effort made by Algeria to combat this phenomenon and limit its spread, especially in terms of reforming the legal arsenal (ratification - with reservation- of the United Nations Convention against Corruption in 2004, promulgation of Law 06-01 related to the prevention and control of corruption in Algeria ...), and institutional (the National Authority for the Prevention and Combating of Corruption, the Accountability Council...); This raises serious questions about the effectiveness of these mechanisms, and the extent of their implementation on the ground in order to curb the aggravation of the phenomenon of corruption.

The national statistics related to corruption, previously referred to above, find strong support in the reports of international organizations and bodies such as Transparency International and the World Bank.

Through extrapolation of the periodic reports issued by these organizations, the extent of corruption in Algeria becomes clear.

Table (03) below presents the evolution of two of the most important indicators of corruption measurement in Algeria during the period 2003-2020; The first is the Corruption Perceptions Index issued by Transparency International. This index assesses corruption on the basis of the degree of corruption in the public sector based on the results of thirteen surveys prepared by specialized international organizations (the World Bank, the World Economic Forum, Freedom House, the Economic Intelligence Unit...) includes local businessmen and resident or non-resident experts; The second indicator is the corruption control index issued by the World Bank. This indicator measures the level of corruption in a country, by evaluating the extent to which power is exploited by ruling elites and other parties to achieve personal benefits.

The most prominent observation on the data of Table (3) below, is the instability of the evolution of the two indicators in the case of Algeria during the period 2003-2020, as for the corruption perceptions index, which showed a slight improvement during the period 2003-2007, as it moved from 26% (2.6 out of 10) to 30 %, declined during the period 2009-2011 to settle during the last year (2011) at 29%, this value made Algeria rank 112 out of 182 countries on the scale of corruption, after that the value of the indicator improved between 2013 and 2015 to settle at 36%, making Algeria ranked 98th in the world in 2015.

During the 2017-2020 time period, the value of the Corruption Perceptions Index in Algeria decreased by about three percentage points, and with it, Algeria's ranking declined among the list of countries controlling this phenomenon, to rank 112 and 104 in 2017 and 2020, respectively.

On the other hand, the corruption control index issued by the World Bank moved from 28.79% in 2003 to 40.0% in 2005, which is the highest value reached by the index during the period 2003-2019, then during the period 2007-2011 the value of the indicator declined - although this period witnessed many Reforms after the ratification of the United Nations Convention against Corruption - to settle at 35.07% in 2011. In 2013, the corruption control index recorded the second highest value during the period 2003-2015, reaching 39.34%, but this improvement did not last long, as evidenced by the decline in the value of the indicator to 29.3% in 2019.

The public investment volume that was implemented in Algeria during the time period 2001-2019 created a favorable climate for the spread of the phenomenon of corruption.

During this period, During this period, many corruption cases cost the public treasury huge sums of money estimated, according to some sources, at 30 billion dollars between In the years 2000 and 2010, we mention here the case of the khalipha Bank, which cost the public treasury about 1.7 billion dollars and caused bankruptcy and withdrawal of credit from seven banks and two financial institutions; corruption and bribery cases related to the completion of the East-West Highway, especially in its western part, as well as corruption cases that affected Sonatrach, what has become known as the "Sonatrach 01 and Sonatrach 02 scandal, where some sources indicate that the number of suspicious deals concluded by the company with foreign companies (mostly Italian), is about 1,600 deals.

In a related context, and according to the competitiveness reports issued by the World Economic Forum, Algeria is among the countries that waste the most public spending. During 2012, for example (table (04)), Algeria ranked 116 out of 144 countries surveyed in terms of Wasting public spending, and the value of the public spending waste index issued by the forum, which measures the efficiency of the public sector in providing goods and services on a scale ranging from 1 to 7, during this year reached 2.4, lagging behind Arab countries such as Egypt, Morocco, Jordan, Qatar and African countries such as Senegal, Nigeria, Guinea and Benin (we note that the closer the value of the index is to one, this indicates a large waste of public spending); During the year 2018, the value of the index improved by about 0.7 points out of ten, reaching a value of 3.1, which enabled Algeria to rise to the 75th place out of 138 countries covered by the survey).

II.1 Mechanisms to reduce corruption in Algeria:

It was found above that the volume of public investment that was implemented in Algeria during the period 2001-2019, formed a fertile climate for the spread of the phenomenon of corruption, as through a review of the most important indicators of classification applicable at the global level for this phenomenon (corruption control index, corruption perception index and waste spending index year) it became clear that Algeria ranks among the most corrupt countries in the world, ahead of even some African and Arab countries; This reality does not reflect the the efforts made in Algeria to curb this phenomenon, which raises serious questions about the credibility of these efforts and the reality of their implementation on the ground.

In the following points, we will try to provide a reading of the mechanisms of combating corruption in Algeria, which range from legal to institutional.

II.1.1 Legal mechanisms to combat corruption in Algeria:

Algeria's ratification of the United Nations Convention against Corruption adopted by the United Nations General Assembly in New York on October 31, 2003 (official gazette n°04-128, 2004), as well as the African Union Convention to Prevent and Combat Corruption adopted in Maputo on July 11, 2003 (official gazette n°06-137, 2006), imposed on the public authorities in Algeria the imperative to reconsider the legal arsenal related to prevention, and combating corruption.

Law No. 06-06 of February 2006 was approved, which is a code that collects previous legal texts related to fighting corruption, and through it the National Authority for the Prevention and Combating of Corruption was established; This was followed by the issuance of Ordinance 07-01, which relates to cases of incompatibility and obligations relating to certain positions and jobs, through which the National Office for the Suppression of Corruption was established.

II.1.1.1 The Anti-Corruption Law (Law 06-01):

Law 06-01, amended and supplemented, dated February 20, 2006 (official gazette n° 14-2006, 2006), related to the prevention and control of corruption, is considered as the most important legal texts related to the fight against corruption in Algeria and is known as the "Anti-Corruption Law". This law came as a culmination of Algeria's ratification of the United Nations

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Convention adopted on October 31, 2003, and the African Union Convention of July 11, 2003; According to the first article of the text of this law, it aims to:
-Supporting measures to prevent and combat corruption;
-Promote integrity, responsibility and transparency in the management of the public and private sectors;
- Facilitate and support international cooperation and technical assistance to prevent and combat corruption, including asset recovery.

In order to achieve the aforementioned goals, the law includes - in addition to the establishment of the National Authority for the Prevention and Combating of Corruption - a number of measures, including those related to the public sector and the fields of public office, declaring property for elected public sector employees, public procurement, management of public funds and transparency In dealing with the public.

- Public office: Article 03 of Law 06-01 stipulates that the principles of efficiency, transparency, merit and efficiency are taken into consideration in the recruitment of public sector employees, and that they receive wages commensurate with the nature of the tasks they perform, and public sector employees should be subject to periodic training and qualification programs and specialized training.
- Property declaration: Articles 04, 05 and 06 of Law 06-01 obligate public sector employees and elected officials to subscribe to a property declaration that includes an inventory of immovable and movable property owned by the subscriber or his minor children, even in common, inside or outside Algeria.
- Codes of Conduct for Public Officials: According to Article 07 of Law 06-01, in order to support the fight against corruption, the state, elected councils, local authorities, public institutions and bodies, as well as public economic institutions, should work to encourage integrity, honesty and a sense of responsibility among their employees. and its elected officials, through the formulation of codes of conduct that define the proper and impartial framework for the performance of public functions and electoral commitments.
- Public procurement: Article 09 of the law relating to the prevention and control of corruption included the basic principles governing the preparation, conclusion and implementation of public procurement, equal treatment of candidates and transparency of procedures.
- Transparency in dealing with the public: Article 11 of Law 06-01 proposes a set of measures that would give more transparency to the managing of public affairs, such as enabling the public to obtain information related to the organization and functioning of public institutions and administrations, and responding to complaints and petitions citizens.

Law 06-01 also included measures related to reducing corruption in the private sector; Among these measures, we mention what Article 13 of this law stipulates:
- Strengthening cooperation between the competent agencies in the fight against corruption and the relevant private sector entities;
- Enhancing transparency among private sector institutions;
- Auditing of private sector accounts.

Law No. 06-01 related to the prevention and control of corruption was amended and supplemented twice, the first by Order No. 10-05 dated August 26, 2010, where the Central Office for the Suppression of Corruption was created, and the second by Law No. 11-15 dated August 2, 2011, which affected Amendment Articles 26 and 29 of Law 06-01, which relate to penalties for public sector employees who violate the provisions of regulating public procurement, and who commit crimes of waste, destruction and embezzlement of public money, respectively.

II.1.1.2 Conflict of interest prevention law (Order 07-01):

Ordinance No. 07-01, dated March 1, 2007 (official gazette n°16-2007, 2007), concerns cases of incompatibility and obligations relating to some of the senior tenures of the state, and constitutes, according to the text of its first article, a legal tool aimed at preventing conflicts of interests that mean public agents who may be employed during and after their exercise of responsibilities in Public administrations, public economic institutions, including mixed companies, and control or arbitration authorities.

For this reason, the text of Article No. 02 of this order prevents these employees from having, during their activity, by themselves or through other persons inside or outside the country, interests with the institutions and bodies they monitor or supervise or with which they concluded a deal or issued an opinion in order to make a deal with it; This ban, according to the text of Article 03,

extends for a period of two years after the end of their duties. Upon the expiry of this period, the above-mentioned persons - according to Article 4 of Ordinance 07-01- who wish to practice a professional activity, provide advice or obtain interests with the public administrations and institutions referred to above, must submit a written declaration for a period of three consecutive years with the Authority. The National Authority for the Prevention and Combating of Corruption shall be held by the last employed body or the authority in charge of the public function, and this is within a period of one month starting from the date of the commencement of the activity.

II.1.2 Institutional Mechanisms to Combat Corruption in Algeria:

In addition to the aforementioned set of legal texts, the prevention and control of corruption in Algeria is carried out by the following bodies:

II.1.2.1 The National Commission for Prevention and Combating Corruption:

The National Commission for the Prevention and Combating of Corruption In accordance with the provisions of Article 17 of Law 06-01 relating to the prevention and control of corruption, the Commission enjoys legal personality and financial independence and is affiliated with the Presidency of the Republic.

It undertakes, according to Article 20 of the aforementioned law, the following tasks:

- Proposing a comprehensive policy to prevent corruption, reflecting integrity, responsibility and transparency in the management of public funds; To provide directives on the prevention of corruption to all relevant bodies, institutions and persons;
- Preparing programs that allow awareness and sensitization of citizens;
- Gathering and exploiting all the information that can help detect and prevent the phenomenon of corruption;
- periodic evaluation of legal and administrative measures and procedures related to the prevention and reduction of the phenomenon of corruption;
- receiving declarations of property; Seeking the assistance of the Public Prosecution Office in order to collect evidence and investigate corruption incidents;
- Ensuring the strengthening of coordination between sectors and between national and international anti-corruption bodies;
- Supporting and evaluating activities related to research and completed works that deal with the prevention and reduction of corruption.

In practice, the launch of the National Commission to Prevent and Combat Corruption in the exercise of the tasks entrusted to it was delayed until 2012, after the issuance of Presidential Decree No. 12-64 dated February 7, 2012, amending and supplementing Presidential Decree No. 06-413 dated November 24, 2006, It defines the composition of the National Commission for the Prevention and Combating of Corruption, its organization, and the modalities of its functioning.

II.1.2.2. The Central diwan for the Suppression of Corruption:

The Central diwan for the Suppression of Corruption was established in accordance with the provisions of Article 24 bis of Ordinance No. 10-05 of August 26, 2010 supplementing Law No. 06-01 related to the prevention and control of corruption; The Diwan is a central operational interest of the judicial police, charged with searching for and examining corruption crimes, reporting to the Minister in charge of Finance, and enjoying independence in its work and progress.

The Central diwan for the Suppression of Corruption is composed of judicial police agents of the Ministries of National Defense and the Interior and local authorities, as well as competent public agents in the field of combating corruption. The office undertakes the following tasks (official gazette n°68-2011, 2011):

- collecting, centralizing and making use of all the information that would allow the detection and fight against corruption; Collecting evidence, conducting investigations into corruption incidents, and referring the perpetrators to the competent judicial authorities;
- Developing cooperation with anti-corruption bodies and exchanging information;
- Suggesting every measure that would contribute to ensuring the proper conduct of the investigations carried out by the competent authorities.

Judicial police officers exercise their duties in accordance with the Code of Criminal Procedure, and their local jurisdiction in corruption and related offenses extends to the entire national territory.

What is worth noting, is that the work of the bodies in charge of the prevention and prevention of corruption (the National Authority for the Prevention and Control of Corruption and the Central diwan for the Suppression of Corruption), is supported by other oversight bodies such

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as the Audit Council, the General Inspectorate of Finance, the external interests of the Directorate General of the Budget, the external interests of the Directorate General Accounting.

III- Results and discussion :

We had previously indicated that what international reports and even the Court of Auditors report on the reality of the phenomenon of corruption in Algeria does not reflect the extent of the efforts made and the measures taken to prevent and limit this phenomenon, which raises serious questions about the causes of the gap between the reality of this phenomenon in Algeria and the measures announced by the public authorities aimed at prevention and control.

By reviewing the legal texts establishing and regulating the work of anti-corruption bodies in Algeria (the National Authority for the Prevention and Control of Corruption and the Central diwan for the Suppression of Corruption) previously mentioned, it becomes clear to us that these two bodies are organically, functionally and even financially affiliated with the executive authority, and considering that most corruption operations that may affect public money related to the latter's activity (the executive authority), the main question that arises here relates to the extent of the independence of these bodies in performing the tasks entrusted to them by law, and taking the necessary measures to combat corruption at the level of the agency under its authority.

With regard to the National Authority for Prevention and Combating Corruption, we find that Article 03 of Law 06-01 relating to the fight against corruption states that this authority reports to the President of the Republic (the same article states that the authority enjoys legal personality and independent financial disclosure), the latter who appoints its members and terminates Their tasks or the renewal of their membership, which of the executive authority, which would greatly affect the credibility of its activities and the credibility of the annual reports it prepares and submits to the President of the Republic. The authority of the executive body over the National Authority to Prevent and Combat Corruption extends to determining the internal system of the authority, as Article 05 of Presidential Decree 12-64 stipulates that the internal organization of the authority is determined by a joint decision between the authority in charge of public service, the minister in charge of finance and the head of the authority.

In the same context, Article 22 of Law 06-01 states that "when the authority finds facts of a criminal description, the file is transferred to the Minister of Justice, the Keeper of the Seals, who notifies the competent public prosecutor to initiate a public case when necessary." This means that the role of the national authority To prevent and combat corruption, it is limited to conducting investigations in corruption cases. As for the final decisions on these cases, it is up to the executive body represented by the Minister of Justice, the Keeper of the Seals.

As for the Central diwan for the Suppression of Corruption, it has been affiliated with the Minister in charge of Finance since its establishment, before its subordination was transferred to the Minister of Justice, Keeper of the Seals, according to the provisions of Article 02 of Presidential Decree No. 14-209, The subordination of the bureau to the executive body is also reflected in the fact that the composition of this body is determined by a joint decision between the concerned minister and the minister of justice, the keeper of the seals, the latter having the power to appoint the director general of the bureau and to terminate his duties; We also point out here that the members who make up the Central Bureau for the Suppression of Corruption (judicial police officers and other employees) remain functionally subordinate to their original sectors and are subject to the basic legislative, organizational and legal provisions applicable to them.

Financially, in addition to the fact that the budget of the Central diwan for the Suppression of Corruption is subject to the prior approval of the Minister of Finance, as Article 23 of Presidential Decree 11-426 which defines the Bureau's composition, organization and modalities for its functioning states that "the Director-General prepares the Bureau's budget and presents it to the approval of the Minister of Finance," the diwan enjoys financial independence, which adds another limitation to his functional independence and exacerbates his dependency on the executive authority.

IV- Conclusion:

In an effort to curb the phenomenon of corruption, and in compliance with the international and regional conventions and treaties it has ratified in this field, Algeria has taken many legal and

institutional measures to combat this phenomenon; On the legal level, Algeria passed Law No. 06-06 in February 2006, which is a code of previous legal texts related to the fight against corruption, and through it the National Authority for the Prevention and Combating of Corruption was established; This was followed by the issuance of Ordinance 07-01, which relates to cases of incompatibility and obligations relating to certain positions and functions. On the institutional level, the National Authority for the Prevention and Combating of Corruption was established, as well as the Central Office for the Suppression of Corruption, which was established in accordance with the provisions of Article 24 bis of Ordinance No. 10-05 dated 26 August 2010.

What was found is that the extent of the efforts made, and the measures taken to prevent limit the phenomenon of corruption in Algeria, did not have a very positive impact in reducing this phenomenon in it, as evidenced by what international reports and even the reports of the Algerian Accountability Council present on the reality of this phenomenon in our country.

Among what we have reached through this research paper is that the anti-corruption bodies in Algeria are fictitious bodies, which were created in response to the international agreements to which Algeria is bound. For example, we find that the two most important anti-corruption bodies in Algeria, the National Authority for the Prevention and Combating of Corruption, and the Central Office for the Suppression of Corruption, are subject to the authority of the executive branch (the government), the actual hotbed for most of the reported corruption operations, which raises serious questions about the ability of this The bodies shall perform the tasks entrusted to them independently and objectively.

Therefore, in order to activate its role and give credibility to its activities, it must:

- Granting absolute independence to these bodies, organically, functionally and financially, from the executive body (especially with regard to the Central diwan for the Suppression of Corruption);
- Expand the powers of anti-corruption bodies beyond conducting investigations and collecting information related to corruption cases;
- Supporting coordination and integration between the National Authority for the Prevention of Corruption and the Central Office for the Suppression of Corruption;
- Providing the necessary protection to members of anti-corruption bodies, thus keeping them away from any harassment, pressure or threats; - Limiting the authority to issue legal texts related to the organization, functioning and formation of these bodies to Parliament (that is, in the form of laws), since what was noted through the previous presentation is that most of the legal texts and regulations previously referred to are issued by the President of the Republic (presidential order and decrees).
- Supporting the legal arsenal related to the fight against corruption, and tightening the penalties prescribed for perpetrators of violations and crimes related to public money.

-Appendices:

Table 01: Corruption crimes broken down by type of crime between 2010 and the first semester of 2012.

Type of crime	year 2010	year 2011	The first semester of 2017
Bribery of public administration officials	95	83	50
Illegal advantages related to public deals	73	81	39
Public bribery	5	11	6
Bribery of foreign public officials and employees of international organizations.	0	0	4
Unlawful use of public property by public agents	456	329	221
Tax exemptions and other illegal privileges	5	7	21
Abuse of public office	104	101	54
Bribery in the private sector	10	11	2

Source : Office des nations unies contre la drogue et le crime, **rapport d'examen de l'Algérie**, cycle d'examen 2010-2012, p 248.

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Table 2: Statistical data on corruption cases at the level of courts between 2010 and the first semester of 2017.

year	2010	2011	The first semester of 2017
number of Judicial follow-up	918	850	1314
Number of issues handled	832	735	1213
The number of people followed	529	450	713

The Source : Office des nations unies contre la drogue et le crime, **rapport d'examen de l'Algérie**, cycle d'examen 2010-2017, p 248

Table (3): Evolution of the indicators of corruption perceptions and corruption control in Algeria between 2003 and 2020.

year	2003	2005	2007	2009	2011	2013	2015	2017	2019	2020
Corruption Perceptions Index	26	28	30	28	29	36	36	33	35	36
global Ranking according to the Corruption Perceptions Index	88	97	99	111	112	105	89	112	106	104
Corruption Control Index	28.8	40.0	34.5	33.5	35	39.3	29.0	30.3	29.3	-

The Source: - Worldwide governance indicators, http://info.worldbank.org/governance/wgi.

- www.transparency.org.

Table (4): The evolution of the public expenditure waste index in Algeria during the period 2008-2014.

period	2008-2009	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	-2015 2016	-2017 2018
Index value	3.7	3.3	3.0	2.4	2.8	3.1	3.1	3.1
world rank	48/134	64/139	79/142	116/144	101/18	74/144	140/76	138/75

The Source : world economic forum, **the global competitiveness report**, from 2008 to 2015

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