

Mohamed Bouafra University Mosta
Faculty of Law and Political Sciences
Master 2 all fields



English Legal Hermeneutic
Program Law Metandus
Teacher Pr. Debi Hatem

Doc. 4

THE FIGHT AGAINST CORRUPTION IN ALGERIA

Corruption research has mushroomed into a world of its own in the last decade, during which there has been no agreed upon conceptualisation. However one thing is clear, corruption is a multidimensional as well as universal concept, reflected by the abundance of conceptualisations from the various academic disciplines. During this process various concepts have been tucked in the corruption realm through an implicit understanding within the research community; whereby independent concepts now share space with corruption.

The fight against corruption constitutes a priority strategic action in the global process of reforms started in 1999. The compliance of national legislation with the *United Nations Convention Against Corruption* UNCAC by way, particularly, of the promulgation of Law 06-01 from 26 February 2006 On Preventing and Combating Corruption, falls within this approach to conduct an effective fight against a complex phenomenon.

We are going to shed the light on the scourge of corruption and the fight against it in Algeria within legal issues; critic and analytic framework

I- THE CONCEPT OF CORRUPTION

There is no single, comprehensive or universally accepted definition for corruption. Attempts to develop such a definition invariably encounter legal, criminological and, in many countries, political problems.

Corruption is a reprehensible behavior whereby a person (the bribed person) solicits, agrees or accepts a gift, offer or promise, presents or benefits of any kind for the purpose of accomplishing, delaying or failing to perform an act coming directly or indirectly within the scope of his duties.

The offense is twofold since it covers the existence of a bribe and a briber. The Penal Code distinguishes between active bribery, which is the briber's, and passive bribery, which is the responsibility of the corrupt. The functions of the corrupt may be public as well as private, but their public character will result in a heavier sentence than that foreseen for private corruption.

Corruption can be defined through specific angles: it can be seen through the lens of philosophy, through a moral-ethical prism or as part of an economic school of thought. All of these angles have shaped the international legal consensus on corruption that is now laid out in the major international legal instruments, as well as in national legislation of many countries.

We focus here on the legal standards governing corruption, but it is important to set the ground for this discussion by looking at the wider debate. At least a couple of definitions are used more frequently than others in the general debate about corruption. One frequently quoted definition is that of the World Bank (WB): "*Corruption is the abuse of public power for private benefit*". Another definition, cited more often than any other, is that of Transparency International (TI), a global non-governmental organisation (NGO) that specialises in the fight against corruption. Transparency International defines corruption as "*the abuse of entrusted power for private gain*".

The World Bank definition emphasises the relationship between the public sector and private interests. The focus here is on State actors - civil servants, functionaries, bureaucrats

and politicians - that is, anyone with the discretion to decide how public resources are being spent.

Transparency International (TI), however, takes this definition further. It covers any abuse of entrusted power, and hence it also covers private-sector corruption, for example when a chief executive officer (CEO) abuses the trust placed in him/her by share-holders. This type of corruption, also referred to as private-to-private corruption, has increasingly become the subject of international debate, whereas in the early 1990s there was much greater emphasis on private-to-public corruption. The Transparency International definition of corruption would cover a case like a private-sector company engaged in corporate fraud and corruption on a massive scale, and abused the trust of its shareholders.

II- CORRUPTION AND BRIBERY

Corruption and bribery have been defined in many different ways. According to probably the most common definition, corruption/bribery refers to the abuse of public power or a position of power for personal gain. However, there is no comprehensive definition that would cover all the elements of corruption/bribery. In general, however, it can be thought that bribery refers to an actual criminal offence, while corruption is a more general and broader term. The term corruption usually covers the entire array of problems, including social and other societal dimensions. Corruption covers both bribery and other influence through inappropriate means. Bribery is the most well-known form of corruption, although it is only one type. While the concrete wording of the definition differs slightly, it is generally defined as "*the offering, promising or giving, or the request or receipt, by any person, directly or indirectly, of any undue advantage to or by any public official, for themselves or for anyone else, to act or refrain from acting in the exercise of their functions*". Most international instruments use the term 'corruption' in their titles, though the focus lies (sometimes exclusively) on bribery.

III- ASPECTS OF CORRUPTION

A non-exhaustive list of aspects of corruption may give an idea of the breadth of the phenomenon:

- Bribery and graft (extortion and kickbacks);
- kleptocracy (stealing and privatising public funds, appropriation of public resources);
- Misappropriation (forgery, embezzlement, misuse of public funds);
- Non-performance of duties (cronyism);
- Influence peddling (favour brokering and conflict of interest);
- Acceptance of improper gifts ('speed' money);
- Protecting maladministration (cover-ups and perjury);
- Abuse of power (intimidation and torture);
- Manipulation of regulations (bias and favouritism);
- Electoral malpractice (vote-buying and election-rigging);
- Rent-seeking (public officials illegally charging for services after creating artificial shortage);
- Clientelism: privileges for certain clients or sells of dependents in exchange for their loyalty;
- Patronage: politicians giving material favours in exchange for citizen support);
- Illegal campaign contributions: giving unregulated gifts to influence policies and regulations.
- Legal discrimination;

IV- CATEGORIES OF CORRUPTION: there are four categories of corruption

A- BUREAUCRATIC, ADMINISTRATIVE OR PETTY CORRUPTION

Is everyday corruption. It takes place at the implementation end of politics, where the public meets public officials. Petty corruption is described as "*survival corruption*", a form of corruption which is pursued by underpaid agents who depend on extra-payments to feed and house their families. Although petty corruption involves small sums of money, the amounts are not "petty" for the individual adversely affected. Petty corruption challenges the low income members of society, who may experience bribes regularly in their encounters with public administration and services such as police, hospitals etc.

B- GRAND AND HIGH LEVEL CORRUPTION

Takes place at the policy formulation end of politics. It refers not so much to the amount of money involved as to the level at which it occurs - where policies and rules may be unjustly influenced. The kinds of transactions that attract grand corruption are usually large in scale. Political corruption is in some instances used synonymously with grand and high level corruption, referring to the misuse of entrusted power by political leaders. In others it refers specifically to corruption within the political and electoral processes.

C- STATE CAPTURE

Is recognised as a most destructive and intractable corruption problem. It is a phenomenon in which outside interests (private sector, mafia network etc.) are able to bend State laws, policies and regulation to their benefit through corrupt transactions with public officers and politicians.

D-POLITICAL CORRUPTION:

Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.

V- LEGAL TEXTS ANTI-CORRUPTION IN ALGERIA

A- INTERNATIONAL ANTI-CORRUPTION CONVENTIONS

- The United Nations Convention against Corruption, adopted on 31 October 2003, ratified by Algeria pursuant to Presidential Decree No. 04-128 dated 19 April 2004.
- The African Union Convention on the Prevention and Fight against Corruption, adopted in Maputo on 11 July 2003, ratified by Algeria pursuant to Presidential Decree No. 06-137 dated 10 April 2006.

B- DOMESTIC BRIBERY AND CORRUPTION LAWS

- Law No. 06-01 of 20 February 2006 on the Prevention and Fight against Corruption, modified and amended by Ordinance No. 10-05 of 26 August 2010 and Act No. 11-15 of 2 August 2011.
- Ordinance No. 07-01 of 14 March 2007 concerning incompatibilities and specific obligations related to certain jobs and functions.

The General Secretary of the National Anti-corruption Association reportedly stated that the legislation "*suffers from glaring deficiencies, which prevent combating corruption effectively,*" and explained that "*the law doesn't specifically define offences of massive corruption and petty corruption or the scope and consequences of the offences*".

VI- SANCTIONS AND PENALTIES

There are sanctions and penalties against individuals and against companies.

A-INDIVIDUALS

Sanctions imposed on individuals violating foreign bribery laws and regulations are a maximum term of 10 years' imprisonment and a minimum of two years' imprisonment, and a penalty from 200,000 to 1 million Algerian Dinars.

Additional penalties are legal prohibition, loss of civil rights, confiscation of the sums or objects unlawfully proffered or the sum representing the benefit of the corruption and banishment from Algerian territory.

B-COMPANIES

- . Dissolution of the corporation;
- . prohibition from undertaking permanently or for a period not exceeding five years, either directly or indirectly, the professional or social activity in which or on the occasion of which the offence was committed;
- . placement under judicial supervision for a period not exceeding five years;
- . closing of the establishment or any of its subsidiaries used to commit the offence for a period not exceeding five years;
- . disqualification from public contracts for a period not exceeding five years; the sums or objects unlawfully proffered or given or the sum representing the benefit of the corruption may be confiscated.

VII- ANTI-CORRUPTION GOVERNMENTAL ORGANS

There are two governmental organs anti-corruption in Algeria

A- THE NATIONAL PREVENTION AND ANTI-CORRUPTION ORGAN (NPACO):

It became operational in January 2013, the creation of the NPACO (*Office National de Prevention et de Lutte contre la Corruption ONPLC*) was provided for by the 2006 anti-corruption law. According to an executive summary prepared to examine the application of the *United Nations Convention against Corruption* in Algeria, the NPACO is an independent administrative authority having legal personality and financial autonomy. It reports to the President and is the main executing body of the national anti-corruption strategy. It is also in charge of collecting and analysing corruption statistics and trends, and leads efforts in education and the promotion of good governance practices. Where appropriate, it also refers cases to the *Ministry of Justice* for prosecution.

However, in a document outlining its roles and responsibilities, the NPACO states that it "does not conduct investigations or fact-finding missions on corruption" but rather has a "*primarily preventive mission*".

B- THE CENTRAL OFFICE FOR THE REPRESSION OF CORRUPTION (CORC):

It was created in 2011; it became operational in spring 2013. According to the executive summary regarding the application of the *United Nations Convention against Corruption* in Algeria, the CORC (*Office Centrale de Repression de Corruption OCRC*) is a central specialized investigative service in charge of fighting corruption. It brings together several police criminal investigation services and financial experts. It is responsible for assembling evidence, investigating acts of corruption and arranging for charges to be brought before the courts.

The CORC can initiate an investigation using the information reported by the press or by other sources, such as the *Internal Audit Group IAG (Inspection Générale des Finances, IGF)*, the *Financial Information Processing Unit FIPU (Cellule de Traitement du Renseignement Financier, CTRF)*, national securities commissions, police forces or even private citizens.

VIII- ANALYSIS AND CRITIC OF THE SITUATION: CORRUPTION AND LACK OF TRANSPARENCY IN GOVERNMENT

The law provides for criminal penalties of two to 10 years in prison for official corruption, but the government didn't implement the law effectively. Corruption remained a problem, and officials sometimes engaged in corrupt practices with impunity.

The criminal code stipulates that only the board of directors of the institution concerned may initiate charges related to theft, embezzlement, or loss of public and private funds against senior, public sector "*economic managers*." Critics of the law asserted that by permitting only senior officials of State businesses to initiate investigations, the law protects high-level government corruption and promotes impunity.

In the last few months and after the popular movement (*Hirak*) against the fifth term for the former President of the Republic and all his associates so called "*the Gang*", a real revolution against the most powerful political and business men, such as two former prime ministers, many former ministers, heads of political parties, two intelligence former chiefs, the personal councillor of the former president, many business men and others, the majority of them are facing heavy charges concerning corruption and conspiracy against the State.

The prosecution were held by the Ministry of Justice with the accompaniment of the Military Institution which is constitutionally charged to protect the country, these procedures satisfying the whole of citizens which they have suffered from corruption consequences the whole last 20 years, in addition; a several public officials at the national level which are suspects to be corrupted are susceptible to be charged and prosecuted.

⊕ QUESTIONS:

- TRANSLATE THE UNDERLINED TERMS INTO ARABIC.
- GIVE AN ABSTRACT (IN ARABIC) TO THE TOPIC.