

## Constitutional Mechanisms for the Prevention and Combating of Corruption Crimes in Algeria

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### Abstract:

This study aims to underscore the principal developments introduced by the 2020 constitutional amendment concerning the prevention and combating of corruption crimes, within the context of an effective national strategy. This strategy is grounded in innovative approaches, particularly the imposition of transparency obligations on institutions regarding the management of public affairs, the mandatory declaration of assets by public officials to ensure the transparency of their financial integrity, and a commitment to integrity in the conduct of public business and interactions with citizens. Additionally, the amendment established new institutional mechanisms, most notably the creation of the High Authority for Transparency, Prevention, and the Fight against Corruption, as well as the enhancement of the roles of the Court of Accounts and various civil society entities in this domain.

The findings indicate that, despite the Algerian legislator's efforts to implement what can be described as a "constitutional strategy for the prevention of corruption crimes," the strategy remains incomplete in several procedural respects. This deficiency undermines its overall effectiveness in preventing corruption crimes, which continue to pose significant challenges to detection and control.

**Keywords:** Constitution, mechanisms, corruption crimes, prevention.

### Introduction:

The Algerian legislator has adopted a new strategy, formalized through the recent constitutional amendment, aimed at preventing corruption crimes in general and combating administrative corruption in particular. Corruption crimes represent one of the oldest and most pervasive phenomena across political systems and human societies. Notwithstanding the mechanisms adopted by Algeria, similar to those employed in other countries, to confront corruption, the necessity to modernize and update the Algerian legislative and regulatory framework has become increasingly evident. This imperative was reinforced by Algeria's ratification of the United Nations Convention against Corruption, which led to the promulgation of Law No. 06-01 on the prevention of corruption and its control.

In recent years, however, Algeria has experienced a paradigm shift in its approach to corruption and the mechanisms for its prevention and combat, transitioning from reliance on ordinary legal texts to enshrining these concerns within the highest legal authority: the Constitution. This shift materialized through the launch of a new national strategy designed to regulate

political authority and the institutions embodying governance, in parallel with the introduction of new mechanisms for the prevention and fight against corruption. These mechanisms were given considerable prominence within the 2020 constitutional amendment, which incorporated numerous provisions, both explicit and implicit, addressing the strategy for preventing corruption crimes.

This evolution prompts the following inquiry: **what are the new mechanisms introduced by the 2020 constitutional amendment to address corruption in Algeria?**

Consequently, the recent constitutional amendment demonstrates a distinct and substantial transformation in the understanding of political authority, in all its facets, as well as in the collective consciousness of the people, concerning the issue of corruption and associated crimes. This transformation signifies a tacit consensus on the necessity to transcend the traditional perspective, which long regarded corruption merely as a crime to be prosecuted, without accounting for its unique nature and specific characteristics, and to elevate it to a constitutional issue that must be integrated within the core functions of the state.

This integration compels the state, particularly through its sovereign authorities and institutions, to assume responsibility for confronting corruption. The primary objective is to elucidate the mechanisms established by the Constitution as the cornerstone of its preventive strategy against corruption, thereby endowing them with constitutional authority and empowering them to fulfill preventive functions rather than serving exclusively punitive purposes.

To address this subject, the study employed both descriptive and analytical methodologies. The content was organized into two principal axes: the first explores the

novel developments introduced by the 2020 constitutional amendment for the prevention of corruption crimes; the second focuses on the most significant institutions entrusted with the prevention and combat of corruption.

### **First Section: Developments in Preventive Measures against Corruption in the 2020 Constitutional Amendment**

The Algerian Constitution has established a set of commitments adopted as preventive measures against corruption, with the aim of embodying two crucial principles essential to any preventive strategy: the principle of transparency and the principle of integrity. These principles are universally regarded as fundamental pillars in the prevention of corruption crimes, provided that they are genuinely implemented in practice and that the relevant measures are coordinated and integrated as required.

#### **First: The Constitutional Amendment's Emphasis on the Principle of Transparency**

Transparency is defined as “the principle that allows those affected by an administrative, commercial, or charitable decision to know not only the basic facts but also its mechanisms and operations. It means that public administration operates in a glass house where everything is visible to employees and the public. The systems within which the administration functions must ensure that everyone has the means to know the reality of its activities and operations through disclosure, publicity, and clarity, thereby allowing for accountability and scrutiny” (Al-Sebei, *The Role of Transparency and Accountability in Reducing Administrative Corruption in Government Sectors*, 2010).

Accordingly, transparency is considered one of the most significant principles introduced by the 2020 constitutional amendment for the prevention, and subsequently the combat, of corruption, as its proper establishment across

all state activities eliminates secrecy, which has long been recognized as a critical component and a main driver of corruption, both fueling and facilitating its spread. For this reason, the Algerian Constitution has approved a variety of procedures and commitments designed to institutionalize this principle throughout all facets of the state and its operations, whether those governed by specific legal procedures or those falling within the discretionary powers of public employees, as part of a comprehensive national strategy, including:

### **1- Requiring Institutions to Maintain Transparency in the Management of Public Affairs**

Article 09 of the Algerian Constitution stipulates that the institutions chosen by the people must be oriented toward guaranteeing transparency in the management of public affairs. This provision obligates institutions to adopt all necessary measures to embody transparency in all matters related to public administration, ensuring the publicity of their actions and decisions. This, in turn, subjects them to constant scrutiny from their surroundings and prevents both the institutions and their employees from managing and directing public affairs in a manner that serves private interests over the public good (Presidential Decree 20-442, 2020).

Despite the importance of this constitutionally and explicitly imposed requirement, the Constitution is subject to criticism for confining this obligation to institutions chosen by the people, namely, those whose formation involves popular participation, essentially the Presidency or the President of the Republic, Parliament, and local assemblies, including both the Provincial People's Assembly and the Municipal Assembly. The rationale behind restricting this obligation to the aforementioned institutions fundamentally

relates to the nature of their function within the state apparatus, as they serve either as decision-making entities or as oversight bodies for the actions of the executive branch. Thus, they are entrusted with the responsibility of imposing or monitoring transparency.

Nonetheless, it would have been preferable if the Constitution required all state institutions, irrespective of their mode of formation or the authority constituting them, to strive for the institutionalization of the principle of transparency in the management of public affairs. As the management of public affairs is a shared responsibility among all state entities, whether central or decentralized, national or local, it is inappropriate to confine this function to specific institutions while exempting others.

### **2- Declaration of Assets to Ensure Financial Transparency of the Employee**

Given that the public employee is legally empowered to implement state laws, fulfill various official functions, and manage public interests, and considering the significant authority conferred upon him to make and assess decisions to facilitate his assigned duties, there arises the risk of such powers being misused for personal gain through corrupt practices.

To counter this, Article 24 of the Algerian Constitution mandates public employees to declare their assets at both the commencement and conclusion of their service or term. This requirement is designed to ensure transparency in the financial liability of the employee, thereby preventing exploitation of authority for private benefit, since all financial increases are subject to scrutiny by competent authorities. Consequently, the employee cannot plausibly claim that assets acquired through corrupt acts are unconnected to his position.

It is important to note that Article 24 limits the asset declaration obligation to public employees, particularly those occupying high-ranking positions in the state, as well as elected or appointed members of parliament, national bodies, or local councils. However, it would be more appropriate if the law delegated the authority to specify additional categories of public employees who must declare their assets. The risk of committing corruption crimes is not determined solely by the type of position held, but rather by the powers and authorities associated with the role, which can facilitate corrupt behavior. In some cases, individuals in high positions may face greater difficulty engaging in corruption, while those in ordinary roles may find it easier to commit various forms of corruption with considerable facility.

### **3- Ensuring Transparency by Providing Reasons for Administrative Decisions**

The relationship between the administration and those dealing with it is characterized by considerable complexity, stemming from the administration's legal recognition of public authority and privileges, in contrast to the relative vulnerability of individuals interacting with it. This imbalance frequently leads the administration to exercise its powers over clients in an authoritarian manner and for unlawful purposes, often encompassing corrupt practices and creating opportunities for corruption crimes by its empowered employees. Although discretionary authority was originally intended to serve the public interest and meet the essential needs of users, in practice, the administration has often become the prime suspect in perpetuating corruption and, indeed, its principal cause.

For this reason, Article 26 of the Constitution intervened by requiring the administration to uphold the principle of transparency in handling various applications from beneficiaries of its services. The administration must provide reasons in its

responses to requests whenever necessary. This allows applicants to monitor administrative conduct and its compliance with the law concerning the specific subject of the request, thus binding administrative decisions to legal standards and preventing employees from issuing unjustified decisions. Such decisions may be designed to coerce applicants into making payments to obtain lawful rights or to create opportunities for privileges granted in exchange for payments, regardless of legal entitlement.

Nevertheless, the constitutional requirement that the administration issue reasoned decisions for requests requiring justification simultaneously grants the administration discretionary authority to determine which requests necessitate justified administrative decisions. This undermines the effectiveness of the obligation and limits its role in achieving the transparency necessary to prevent corruption in administrative activities.

Furthermore, Article 77 of the Constitution addresses the most complex aspect of the relationship between the administration and citizens, the domain most susceptible to the secretive unilateral exercise of administrative power. This provision grants citizens the right to submit petitions to the administration regarding public or private interests and obliges the administration to respond to these petitions within a reasonable period.

### **4- Freedom of Information Flow**

The citizen's right to access information, coupled with the corresponding obligation on the state and all its organs and institutions to actively facilitate the free flow of information, constitutes one of the most vital measures in preventing corruption crimes. The practical implementation of this obligation effectively eliminates secrecy from the activities of state organs, firmly establishing the principle of transparency in

all state actions. Such transparency necessitates continuous vigilance from state organs to ensure that all activities and behaviors conform to the law, particularly given the perpetual oversight exercised by citizens.

In this context, Article 3 of the African Union Convention on Preventing and Combating Corruption, adopted in 2003, mandates that each state enact legislation and procedures guaranteeing the right to access information required to aid in combating corruption and related offenses. This requirement is further affirmed by the African Charter on the Values and Principles of Public Service and Administration, adopted in Addis Ababa on January 31, 2003, and by Article 55 of the Algerian Constitution.

## **Second: Commitments Realizing the Principle of Integrity**

Recognizing the crucial importance of integrity within both state institutions and their employees in the process of preventing and deterring corruption, the 2020 constitutional amendment addressed this principle through various articles. These articles contain numerous obligations fundamentally designed to embody the principle of integrity, thus achieving the essential equation for corruption prevention: an honest administration and honest public officials (Suleiman, 2017).

### **1- Commitment to Integrity in the Management of Public Affairs**

The Algerian Constitution has sought to enshrine the principle of integrity in the management of public affairs by explicitly obligating the administration, through Article 24, to adhere to integrity in all activities that impact public finances. It categorically prohibits the creation of any public position (employment) or the initiation of any public procurement (public contracts) that does not serve the public interest.

The link between this obligation imposed upon the administration and the realization of integrity is evident: if the creation of a position or the initiation of a procurement process does not serve the public interest, then it is, by definition, intended to benefit a private or personal interest, either for the person initiating the process or for the intended beneficiary. Such actions are rooted in corrupt practices, and corruption permeates all related procedures from inception to completion. Even the outcomes of such actions are tainted by corruption, providing no advantage whatsoever to the public interest.

### **2- Commitment to Integrity in Dealing with the Public**

Given that the administration provides essential services for which alternatives are often unavailable, and considering the extensive authority it wields in determining whether to provide or withhold such services to individuals or groups, the Constitution requires the administration to adopt integrity as a foundational principle in its interactions with the public. This principle operates as a binding restriction. Article 11 of the Algerian Constitution explicitly prohibits regionalism and favoritism in any form when dealing with the public, as such behaviors are inherently corrupt practices that inevitably give rise to various corruption crimes.

Furthermore, to reinforce the principle of integrity in administrative dealings, Article 26 of the Constitution imposes an additional obligation on the state in its interactions with the public: impartiality. This principle prohibits any form of preference or distinction between individuals, thereby preventing employees from engaging in corruption and protecting the administration from being perceived as a structure open to exploitation or manipulation by those with access to decision-makers.

### **3- Obligation of Notification in Case of Conflict of Interest**

It is generally acknowledged that the public employee is, first and foremost, a citizen and a member of society, and that the exercise of public office constitutes a secondary role. Consequently, it is not unlikely that a public employee may encounter situations involving a conflict of interest, wherein personal interests, or the interests of individuals closely connected to him, intersect with the public interest. Such circumstances may incline the public employee to prioritize personal considerations, thereby diminishing his capacity to make objective judgments or decisions in accordance with the law and the requirements of the public good (Bouhafs, 2007).

Although conflicts of interest are, to a certain extent, a natural phenomenon arising from inherent human tendencies toward self-interest and egoism, allowing a public employee to decide on matters in which he has a personal stake may compromise his integrity and, by extension, the integrity of the institution or administration to which he belongs. Moreover, this situation creates a fertile ground for the commission of corruption crimes in pursuit of personal benefit.

The most appropriate approach to addressing this issue is for the public employee to recuse himself from any matter in which he has a particular interest, even when he is legally authorized to decide on it. This conduct embodies the principle of integrity and serves to avert suspicions that could tarnish his reputation or that of the institution he represents, even where the decision itself may be legally and procedurally sound. This approach is consistent with Article 24 of the Constitution, which emphasizes the obligation of the public employee to avoid any situation of conflict of interest while performing his duties, as an essential element

in realizing the principle of integrity and supporting the strategy for preventing corruption crimes.

### **4- Prohibition of Enrichment from Public Office**

Although the public employee is vested with powers and prerogatives intended to facilitate the performance of public service duties, it remains undeniable that there exists a risk of exploiting such powers and the associated authority for personal gain, particularly through seeking enrichment derived from public office, often by committing one or more corruption crimes. These practices contribute to the spread of various forms of corruption, undermine the credibility of the administration and its employees, and ultimately pose a serious threat to the stability and integrity of the state system as a whole.

Accordingly, the only effective means of mitigating these risks lies in strict adherence to the principle of integrity and in striving to entrench it as a safeguard that prevents the public employee from abusing the powers entrusted to him (Fatima, 2017). The Algerian Constitution seeks to give practical effect to this principle through Article 24, which explicitly stipulates that public office or mandates within state institutions shall not constitute a source of enrichment or a means of serving personal interests. Consequently, the public employee is constitutionally bound to respect this prohibition and to refrain from engaging in corrupt practices or committing corruption crimes aimed at deriving personal benefit from his position.

## **Second Section: Mechanisms for the Prevention of Corruption in the Algerian Constitutional Amendment of 2020**

The Algerian Constitution did not confine itself to measures intended solely to implement the principles of integrity and transparency as tools for preventing corruption. Rather, it went further by establishing mechanisms specifically dedicated to preventive action, while simultaneously activating the roles of other institutions involved in the prevention process. This was achieved, in particular, by providing these institutions with guarantees enabling them to confront executive authority, through institutional frameworks represented by the following bodies:

### **First: Specialized Institutions for Corruption Prevention**

The Algerian Constitution adopted an institutional approach to the prevention of corruption, moving beyond exclusive reliance on preventive measures to strengthen the approved preventive strategy and diversify the mechanisms of prevention.

#### **1- Court of Auditors**

Despite the long-standing existence of the Court of Auditors as a constitutional body under the Algerian Constitution, its functions prior to the 2016 amendment were largely limited to ex post oversight of public expenditure (Law No. 16-01, 2016). However, with the constitutional amendment of 2016, the Constitution entrusted this institution with a preventive role in combating corruption, as part of its broader mandate to oversee public funds. Article 192 provides that, in addition to its core function as the supreme authority for ex post control of public finances, the Court of Auditors contributes to the promotion of good governance and transparency in the management of public funds.

The 2020 constitutional amendment further reinforced this role by reaffirming the Court's contribution to transparency and by explicitly designating it, under Article 199, as an

independent supreme institution of oversight. Moreover, the amendment addressed one of the most significant concerns affecting the Court's effectiveness in preventing corruption, namely the system governing appointments within the institution. In this regard, Article 199 determined the term of office of the President of the Court's Council as five years, renewable once, thereby enhancing institutional stability and reinforcing guarantees of independence.

### **2 - The High Authority for Transparency, Prevention, and Combating Corruption**

Pursuant to Article 204 of the Constitution, Algeria established a constitutional oversight body known as the High Authority for Transparency, Prevention, and Combating Corruption. This authority has been constitutionally entrusted with several key responsibilities within the institutional framework for the prevention of corruption crimes. The Constitution assigned this institution a prominent role in the anti-corruption landscape, particularly in formulating a national strategy for transparency, prevention, and combating corruption, and in overseeing the implementation of this strategy. In addition, the Constitution delineated further duties for the High Authority, as detailed in Articles 204 and 205, which include:

- Gathering, processing, and disseminating information relevant to its area of expertise and providing such information to the competent authorities.
- Reporting any detected violations to the Court of Auditors and the competent judicial authorities, and issuing instructions to relevant institutions and bodies as necessary.
- Supporting and strengthening the capacities of civil society and other stakeholders in the fight against corruption.

- Monitoring, implementing, and fostering a culture of transparency, prevention, and anti-corruption.
- Providing expert opinions on legal texts pertinent to its field of competence.
- Participating in the training of personnel responsible for transparency, prevention, and combating corruption.
- Contributing to the moralization of public life and reinforcing the principles of transparency, good governance, prevention, and anti-corruption.

It is noteworthy that this authority replaced the National Body for the Prevention and Fight Against Corruption. However, the Constitution conferred upon it responsibilities significantly broader than those previously assigned to the National Body, aiming to activate and reinforce the institutional approach adopted as a specialized mechanism in the field of preventing corruption crimes.

## **Second: Activating Civil Society Institutions**

Recognizing political parties and associations, as well as the media, as essential pillars of a democratic state has led the Constitution to explicitly regulate their operation and grant them necessary safeguards. After Algeria ratified the United Nations Convention Against Corruption in 2004, which classified these entities as civil society institutions with a preventive role (Presidential Decree No. 04-128, 2004), the Algerian constitutional legislator enshrined, in Article 10, the right of civil society institutions to participate in the management of public affairs, while also providing the requisite guarantees to enable them to effectively fulfill their preventive function against corruption, especially in the face of executive power. These guarantees are tailored to the particularities and vulnerabilities of each institution, which may

otherwise be susceptible to interference or obstruction by executive authorities.

Political parties, given their structure, organization, and influence over both the general public and their members, constitute distinctive mechanisms for the prevention of corruption. Their participation in governance, whether as part of the ruling coalition or as opposition, establishes them as significant actors in the anti-corruption domain. Nevertheless, this role can lead to confrontations with authorities, which are often the primary source of corruption or demonstrate negligence in its prevention, potentially exposing political parties to administrative restrictions or even dissolution.

Consequently, the Algerian Constitution provides a range of guarantees to ensure that political parties can fulfill their political functions, and more specifically their anti-corruption roles, with complete freedom. For example, Article 57 obliges the administration to abstain from infringing upon the rights of political parties, particularly their rights to expression, assembly, and protest. It also ensures their access to public media and public funding as needed. Most crucially, political parties cannot be dissolved except by judicial authority and based on a court decision, affording them full protection from executive actions that could hinder or suspend their anti-corruption initiatives.

Associations, as key components of civil society, are distinguished by their non-profit orientation and their sustained, direct interaction with citizens. This direct engagement enables associations to play a significant role in preventive efforts against corruption, particularly by educating the public about the dangers of corruption, promoting a culture of civic responsibility, instilling anti-corruption values, and fostering



a societal conviction regarding the necessity of prevention.

Nonetheless, due to their involvement in a subject that frequently incites official resistance, associations may face direct confrontation with political authorities or individuals wielding state power, exposing them to the risk of dissolution through mere administrative action. The 2020 constitutional amendment addressed this concern by stipulating in Article 53 that associations may only be dissolved through judicial proceedings. This safeguard is intended to encourage associations to address the issue of corruption and to play an active role in combating it.

Media today is not just a manifestation of democracy within the state, but the greatest influence on the workings of power and the orientation of citizens. The media has rapidly evolved from merely transmitting news to becoming a direct participant in public affairs, widely recognized as the “fourth estate.” Its historical role in toppling governments and shaping new regimes underscores its immense power to both build and dismantle systems of governance. In this regard, the media occupies a unique position as a vital instrument for organized and effective preventive action against corruption, targeting both governmental authorities and the public. It is the institution capable of confronting authorities openly regarding corruption and potential future abuses, while simultaneously educating and mobilizing citizens against all manifestations of corrupt practices. Most significantly, the media reassures the public by standing as a major institution by their side, even when facing state power.

Nonetheless, the media requires robust safeguards to shield it from constant conflict with authority and potential misuse by the state. The Algerian Constitution, through the 2020 amendment, responded by providing the

media with a suite of rights that serve as essential guarantees for the free exercise of its preventive function against corruption. Article 54 affirms the right to establish newspapers, publications, and television channels; the journalist’s right to freedom of expression and independence; and the right to access information sources. More critically, the Constitution guarantees all media institutions protection from administrative suspension, vesting this authority exclusively in the judiciary as the defender of freedoms and the true embodiment of the rule of law.

### **Conclusion:**

The 2020 constitutional amendment, through its provisions on corruption prevention, marked a significant qualitative leap in Algeria’s approach to combating this enduring issue and illustrated the state’s growing resolve to tackle a challenge that has undermined the economy and drained resources for over six decades. The amendment instituted measures to realize the principles of transparency and integrity in all aspects of public affairs management, both within the administration and among public officials. It further reinforced the preventive role of the Court of Auditors and consolidated this with the establishment of the High Authority for Transparency, Prevention, and Combating Corruption. Additionally, the Constitution introduced various provisions that guarantee civil society institutions the independence and freedom necessary to perform their preventive functions effectively.

This study has yielded the following principal findings:

- The 2020 constitutional amendment signaled a pivotal shift in the approach of governing authorities and their institutions toward the problem of corruption.

- The amendment relied on the principles of transparency and integrity for the prevention of corruption within public administration, while assigning a central role to the Court of Auditors and the High Authority for Transparency, Prevention, and Combating Corruption.
- The constitutional amendment of 2020 enhanced the participation of political parties, associations, and civil society in the anti-corruption process.
- Special emphasis was placed on clear and effective legal provisions for preventive measures stipulated in the Constitution, notably those prohibiting the administration from all forms of corrupt practices in order to uphold the constitutional significance of these provisions.
- The High Authority for Transparency is endowed with the power to issue orders to relevant institutions and agencies, and holds the authority to notify the Court of Auditors and competent judicial bodies regarding detected violations.

Based on the findings of this study, several recommendations are proposed to further strengthen the prevention and combat of corruption, including:

- Bolstering institutional preventive action against corruption by granting official institutions greater safeguards and autonomy to confront executive authority, as outlined by the Constitution, and by providing non-official institutions with legal solutions to address funding challenges, incentives to encourage their participation, and mechanisms for their effective involvement, particularly by affirming their right to

participate as a civil party in corruption cases.

- Establishing regional branches of the High Authority for Transparency, Prevention, and Combating Corruption throughout the country to fully activate its role and enhance its capacity to investigate corruption crimes.
- Exempting the High Authority for Transparency from the constraints of professional secrecy, thereby allowing it access to all documents and records deemed essential for the detection and investigation of corruption offenses.

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