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Legal Tools to Combat Corruption in Public Procurement in Algeria

Dr. Lakhdari Imane¹

¹- Lecturer "A, University of Ghardaia, Laboratory: Law and Society in the Digital Space, Faculty of Law and Political Science, University of Ghardaia (Algeria). E-mail: lakhdari.imane@univ-ghardaia.edu.dz

Abstract:

Corruption is a long-standing phenomenon. As it intensifies in modern societies due to the complexity of the political, economic and social spheres, governments and communities have sought to mitigate it through various means. This includes identifying areas susceptible to corruption and implementing legal mechanisms to address it, both preventive and dissuasive.

This paper aims to examine corruption and its causes in Algeria, focusing particularly on corruption within the highly vulnerable field of public procurement. We will identify the key legal mechanisms established by the Algerian legislature to combat corruption, whether preventive or dissuasive.

Our findings suggest that the Algerian legislature has effectively implemented preventive measures to ensure the integrity of public procurement procedures, though there are shortcomings in their implementation. On the dissuasive front, it is challenging to delineate behaviours that lead to corruption, primarily due to their evolving nature.

Keywords: Corruption, public procurement, preventive measures, dissuasive measures, integrity of procurement procedures.

Introduction:

Corruption has long been a significant obstacle to societal progress. Over time, it has attracted the attention of academics and practitioners who are seeking ways to mitigate it, given its complexity and the difficulty of eradicating it, even in developed countries. In developing nations, this phenomenon has reached alarming levels.

Public procurement is particularly susceptible to corruption as public contracts are among the most vulnerable government activities. This vulnerability stems from the scale of government transactions and the complexity of the procurement process, involving multiple administrative agents and economic institutions. According to the 2013 OECD report, the total value of contracts (purchases, services and works) constitutes 12% of gross domestic product, amounting to €4.2 billion. It is estimated that corruption rates in public procurement account for 57% of total corruption, with losses due to mismanagement and corruption ranging between 10% and 30%.

Recognising that public procurement is one of the most corruption-prone areas, the Algerian legislator has introduced legal measures to combat corruption. These measures include successive legal texts regulating public procurement, from Order

No. 90/67 dated 17 July 1967 to Presidential Decree No. 15/247 dated 16 September 2015, the latter of which currently governs public procurement. Additionally, Law No. 08/22, dated 4 Shawwal 1443 (5 May 2022), defines the organisation of the High Authority for Transparency and Prevention of Corruption.

Following Algeria's accession to the United Nations Convention Against Corruption on 31 October 2003, the Algerian legislature enacted Law No. 06/01 on 20 February 2006 concerning the prevention and combating of corruption. This law includes a section outlining criminalised acts in public procurement, with the aim of enhancing preventive and deterrent measures.

This research paper aims to evaluate the adequacy of the legal measures incorporated by the Algerian legislature in the aforementioned texts in reducing corruption in public procurement. The central question we will address is:

To what extent are the legal mechanisms established by the Algerian legislature sufficient to combat corruption in public procurement in Algeria?

Research structure:

We will break down the main issue into the following sub-questions:

1. What risks threaten the integrity of public procurement procedures and their execution?
2. What are the strengths and weaknesses of legal mechanisms aimed at reducing corruption in public procurement?

In order to address the main issue and the sub-questions, we propose the following hypotheses:

1. The legal measures outlined in Law No. 06/01 and Presidential Decree 15/247 effectively mitigate corruption in public procurement.
2. The Algerian legislator has identified all actions and behaviours leading to corruption in public procurement through various legal texts.

We will employ a descriptive analytical approach based on legal analysis to explore this topic, enabling us to pinpoint the strengths and weaknesses of the preventive and dissuasive legal measures adopted by the Algerian legislator to combat corruption in public procurement.

To address the main issue and sub-questions, we have divided the research into the following sections:

1. Corruption and its causes in Algeria
2. Manifestations of corruption in public procurement
3. Legal mechanisms for combating corruption in public procurement

Corruption and its causes in Algeria:

1. Corruption and its causes in Algeria

1.1 The concept of corruption

In linguistic terms, corruption refers to decay, damage and deviation from what is beneficial. Its opposite is righteousness. In legal terms, it signifies the corruption of the earth, involving disobedience to God and deviation from His guidance. This

often causes harm to others in terms of their person, property, and sometimes their honour and dignity. The term ‘corruption’ appears 50 times in the Quran¹, carrying various meanings and implications. For example, verse 56 of Surah Al-A’raf states, ‘Do not cause corruption on the earth after its reformation.’²

In English, the term ‘corruption’ is derived from the Latin verb *rumpere*, meaning to break something. Similarly, in French, the concept of corruption encompasses multiple meanings, including oppression, injustice, destruction, theft and extortion.

Due to their varied intellectual backgrounds, legal scholars have differing views on corruption, resulting in multiple definitions across legal, administrative, social, and political fields. One widely accepted definition is: ‘Corruption is the sum of actions that violate laws and regulations to achieve personal benefits at the expense of public interest.’³ It is also defined as ‘the breach of integrity and trust imposed by professional duties to achieve personal interests’⁴. A definition often cited by international organisations fighting corruption is “the abuse of public office for private gain”.

The lack of a precise definition of corruption stems from the differing perspectives and theoretical frameworks of scholars, who rely on various criteria to judge behaviour as corrupt. The four fundamental criteria for defining corruption are the value criterion, the interest criterion, the legal criterion and public opinion⁵.

Key approaches to defining corruption:

1. Political approach: Transparency International defines political corruption as ‘the abuse of entrusted power by political officials for private gain, aimed at increasing power or wealth, which does not necessarily involve monetary exchange; it may take the form of influence peddling or favouritism’⁶.

2. Social approach: Sociologists view corruption as a social dysfunction that arises from historical, social and cultural factors resulting from conflicts between different groups within society. Political sociologists emphasise moral behavioural considerations when defining corruption, considering an act to be corrupt if it is deemed so by society or if public opinion sees it as a deviation from established norms and traditions.

3. Economic approach: This perspective defines corruption in terms of a material criterion, viewing it as a market in which various parties illegally exchange benefits through supply and demand dynamics. In this context, the ‘goods’ are services, privileges and contracts obtained in exchange for bribes, leaked information or assistance in evading taxes and customs duties, creating an environment conducive to corruption.

4. Legal approach

According to this view, corruption is prevalent in societies due to flaws in the legal framework, whether in its formulation or in the form of loopholes that corrupt individuals exploit to further their own interests without facing punishment. Joseph S. Nye defines corruption as ‘behaviour that violates the official duties of public office in pursuit of private gains, whether material or moral’. Amer Al-Kubaisi, on

the other hand, argues that corruption consists of actions that violate laws aimed at influencing the operations and decisions of public administration for material benefit⁷.

Drawing on these various definitions of corruption, we can adopt the operational concept of viewing it as any intentional behaviour or act that deviates from societal and ethical values, national legislation and public interest in order to achieve personal material or moral objectives.

1.2 Causes of corruption in Algeria

Before 1990, discussing corruption in Algeria was taboo. This changed following a statement by the then Prime Minister, Abdelhamid Brahimi, in March 1990, in which he estimated the scale of corruption at around \$26 billion across all sectors. The prevalence of corruption and its transformation into a tool for governance and control can be explained by several key factors, which can be summarised as follows:⁸

A. Social and cultural causes:

Corruption, particularly petty corruption, has become ingrained in the administration, justice system and public institutions. Major corruption can be traced back to the late 1960s and 1970s, when industrialisation policies were implemented, consumer imports increased, and wages and labour conditions improved. Additionally, certain bureaucratic dysfunctions have exacerbated corruption, bribery, nepotism and favouritism. Key social and cultural factors include:

- The prevalence of personal relationships based on tribal, regional and family loyalty in social and political life, which undermines national interests.

The emergence of a class of people who have achieved wealth unjustly, leading to a distorted value system.

- Widespread poverty, social marginalisation and unemployment make large segments of the population susceptible to exploitation and coercion by wealthy individuals and those in positions of power, who often resort to informal markets and illegal activities.

B. Political causes:

The legitimacy crisis is a key factor in Algeria's complex situation. Since gaining independence, the country's governance has relied on various forms of legitimacy, ranging from constitutional legitimacy under President Ben Bella, to revolutionary legitimacy under President Boumediene and constitutional legitimacy under President Chadli Bendjedid. This was followed by the political and security crisis of the 1990s and popular legitimacy under President Abdelaziz Bouteflika. Other political causes of corruption include:

- The association of authoritarian and totalitarian political systems with corruption, which is employed to maintain stability and continuity, particularly in the Algerian context.

The lack of legitimacy of most political and administrative institutions (parliament, political parties, the government, etc.).

- Weak citizen engagement and the absence of a social contract to regulate the relationship between rulers and the ruled. This is compounded by the weakness of civil society institutions due to a lack of human resources and state control over their creation and funding.
- Limited political participation resulting from the legacy of a single-party system and centralisation in governance.
- The dominance of the executive branch over the legislative branch and a weak judiciary, which encourages corruption.
- A lack of political will among leaders to combat corruption, reflected in weak oversight mechanisms.

Limited media freedom due to the state's monopoly on major media outlets restricts public access to information.

C. Economic causes:

Algeria is a quintessential rentier state, with 95% of its annual income coming from hydrocarbon revenues. The substantial funding allocated to various development plans has attracted numerous suppliers, contractors and managers, both national and international. For example, the five-year plan for 2004–2009 was valued at approximately \$150 billion. The main economic causes of corruption can be summarised as follows:

- Government officials enjoy significant discretion with minimal accountability.
- A widening gap between wage levels and purchasing power, which makes public employees vulnerable to bribery and corruption in order to meet their consumption needs.

A lack of commitment from successive governments to create a transparent and economically sound investment climate, which is often limited to slogans and rhetoric aimed at improving their image before international bodies.

- Ambiguity and a lack of clarity in many important laws and regulations relating to taxation, finance and public procurement.

D. Administrative causes of corruption

The administrative apparatus is fertile ground for financial and administrative corruption due to its control over transactions, complex relationships and intricate procedures. Furthermore, administrative personnel tend to have lower salaries than those in other sectors, making them susceptible to coercion from interested parties. Other administrative causes of corruption include:

- bureaucratic overstaffing;

The inflation of positions within the administrative apparatus leads to increased complexity and a lack of coordination.

- Power dynamics:

The administrative apparatus has become a centre of power in Algerian society, overshadowing the legislative and judicial authorities.

- Brain drain:

The emigration of skilled individuals has resulted in a shortage of competent professionals within the administrative apparatus, hindering the effective planning and implementation of development programmes.

- **Excessive Centralization:**

The highly centralized nature of the administrative apparatus causes delays in decision-making, making citizens vulnerable to exploitation and justifying the use of bribes to fulfill their needs.

2. Manifestations of Corruption in Public Procurement

The principle of integrity in public procurement procedures faces numerous risks due to the multiple stages of contracting and the various stakeholders involved from the initiation phase to execution. We will highlight the key risks associated with each stage as follows:⁹

2.1 Pre-contract stage

During this phase, the contracting authority will identify its requirements by creating a quantitative and estimated list outlining the nature and quality of the requirements, and will select the most appropriate procurement method and evaluation criteria. Risks at this stage include:

Lack of realistic needs assessment:

This may lead to difficulties in executing the contract and potential amendments, opening the door to deviations from the original subject of the contract.

- Influence of economic operators:

Economic operators may pressure the contracting authority to prepare specifications that align with their technical and financial requirements.

- Inflated project estimates:

Administrative estimates may be exaggerated and leaked to certain contractors.

Absence of logical justifications:

This may lead to non-competitive procurement methods.

2.2 Contracting stage:

During this stage, the contracting authority receives bids by the specified deadline. The bids are then opened and evaluated, resulting in a provisional award which is published in the same national newspapers where the call for bids was announced. Risks in this phase include:

- Lack of advertisement: failure to announce the call for tenders or unclear evaluation criteria.

Absence of competition: Collusion during the bidding process, such as soliciting bids for completed works or tampering with submissions.

- **Conflict of interest:**

The evaluation process may be compromised due to familiarity with bidders over time.

2.3 Post-contract stage (execution phase):

This phase begins with the announcement of the provisional award and resolution of any appeals. External audits then ensure compliance with applicable laws and regulations. Then, the awarded contract undergoes financial oversight and the contractor begins executing the contract. The contracting authority is obligated to pay the contractor according to their progress. Risks in this phase include:

- Non-compliance with execution elements:

Failure to adhere to key execution factors (quality, prices, deadlines) can lead to increased initial costs due to the use of lower-quality materials or collusion among supervising staff.

- Accounting manipulations:

Such as inflating or duplicating invoices, misallocating costs or delaying payments, which may incur additional interest charges for the contracting authority.

3. Legal Mechanisms to Combat Corruption in Public Procurement

As outlined in the previously mentioned legal texts, the Algerian legislator has established two types of legal measures to combat corruption. These include preventive measures to uphold the integrity of public procurement procedures and punitive measures against behaviours and actions that violate this principle.

3.1 Preventive measures:

These measures aim to ensure the integrity of public procurement procedures and can be summarised as follows:

A. Employment-related measures:

The Algerian legislator has set out a series of principles that relevant appointing authorities must adhere to, including:¹⁰

- Respect for efficiency and transparency:

- Employing objective criteria such as merit, fairness, and competence during recruitment.

- Appropriate procedures for selecting and training candidates.

This involves ensuring that candidates for public positions, particularly those susceptible to corruption, are chosen and trained appropriately.

- Adequate compensation:

Providing fair salaries alongside sufficient benefits.

Training and educational programmes:

Implementing suitable programmes to equip public employees to perform their roles honestly and effectively, and to raise their awareness of corruption risks.

While adherence to these principles is feasible in cases of appointment, it becomes more challenging for positions filled through elections, such as municipal council presidents, as the law does not impose strict requirements for these roles. These positions are directly related to public procurement at the local level. For example, in 2005, 1,174 local elected officials were suspended for corruption, including 612 mayors. Furthermore, the criteria for appointing senior roles, such as executive directors who are authorised to award public contracts, are unclear, which complicates the integrity of the procurement process¹¹.

B. Legal mechanisms to combat corruption in public procurement

Declaration of assets:

Articles 4, 5 and 6 of Law No. 06/01 set out the requirements for declaring assets. Public officials in certain senior positions are required to declare their assets within one month of taking up their duties or the start of their electoral term. This declaration must be renewed following any significant increase in the official's financial portfolio, and it is submitted to the President of the Supreme Court and subsequently published in the Official Gazette within two months of their election or assumption of office.

However, the asset declaration process has notable shortcomings, including its limitation to the official and their minor children. Certain positions directly involved in public procurement are excluded, such as executive directors and members of internal and external control committees. Furthermore, there are no mechanisms to ensure compliance with asset declaration requirements, nor are there administrative or criminal penalties for non-compliance.

C. Advance preparation of specifications:

Although Article 27 of Decree 15/247 states that 'the needs of contracting authorities must be predetermined before initiating any public procurement procedure', the legislator emphasises this requirement in the anti-corruption law (Article 9). This requires public procurement procedures to be based on transparency, fair competition and objective criteria, particularly when preparing participation and selection conditions in advance. All elements of the call for bids must be clearly and objectively outlined and approved by the relevant procurement committee, as per Article 173 of Decree 15/247. These measures aim to prevent favouritism towards any contractor and ensure equality among all bidders.

D. Determination of Procurement Methods:

According to Article 39 of Decree 15/247, tendering is the general rule, while the simple agreement process is the exception, whereby a contract can be awarded to a contractor without competitive bidding under the conditions detailed in Article 41. These conditions include:

- Monopoly situations involving an economic operator (e.g. SONELGAZ).

Technical, cultural or artistic considerations.

- Urgent circumstances, such as a threat to an investment or public safety, or national priority projects requiring urgent action, provided the circumstances were unforeseeable by the contracting authority. In such scenarios, prior approval from the Council of Ministers is required if the amount exceeds 10 billion dinars; otherwise, prior approval at a government meeting is necessary.

However, justified cases for using the simple agreement method present numerous risks due to several factors, including:

- The difficulty of accurately assessing urgent situations that require this procurement method, which necessitates expertise in relevant fields.

- The monopolistic position of certain economic operators is incompatible with the state's market economy approach, leading to increased costs for the public treasury as these operators set prices without competition.
- Granting exclusive rights for certain services to specific operators through legislative and regulatory texts can be misused to control the publishing and advertising market.

Despite these issues, there are some advantages to awarding contracts through the simple agreement method in order to promote national production, provided that a precise and regularly updated list of eligible contractors is maintained in order to prevent the misuse of this process.

H. Establishment of a Regulatory Authority for Public Procurement:

Although Presidential Decree 15/247 stipulates the creation of this authority in Article 213, including a public procurement observatory and a national dispute resolution body, it has not yet been established. This authority would have the power to significantly reduce corruption and enhance the effectiveness of public procurement. Key powers include:

Regulating public procurement and monitoring implementation;

- Overseeing the organisation of public procurement processes.

- Disseminating documents and information:

Informing and distributing all relevant documents related to public procurement.

- Initiating training programmes:

Developing training initiatives in the field of public procurement.

Resolving disputes:

Addressing disputes arising from contracts with foreign contractors¹².

Electronic Transactions in Public Procurement:

This initiative is one of the most significant reforms adopted by the Algerian legislature, formalised for the first time in the decree currently regulating public procurement, which came into effect in early 2016. However, the implementation of electronic transactions in public procurement, as outlined in Articles 203 to 206 of Presidential Decree 15/247, is still pending. This initiative involves establishing an electronic portal for public procurement, replacing paper transactions with electronic ones to enhance transparency and integrity in procurement processes, reducing direct communication between procurement officials and economic operators, and facilitating oversight.

The reasons for this delay can be attributed to two main factors: a lack of political will to activate this modern mechanism, and the inadequate technical infrastructure necessary for its implementation.

Experience in various countries has demonstrated the effectiveness of this mechanism in significantly reducing corruption in public procurement, saving time and improving the efficiency of public spending. For instance, South Korea's Central Procurement Agency implemented an electronic system in 2002 called KONEPS, which manages all public procurement processes electronically, including

registration, bidding announcements, contracts, monitoring and payments. It connects with 140 other electronic systems, providing bidders with essential information regarding tenders.

By 2012, 62.7% of public contracts were being awarded electronically through this system, amounting to \$106 billion and involving 45,000 public entities and 244,000 registered economic operators. According to an assessment by the Korean Anti-Corruption and Civil Rights Commission, the integrity index for procurement processes improved from 6.8 to 8.5 following the implementation of the system (with a higher score indicating greater integrity). In 2011, the system was also made available on smartphones¹³.

3.2 Punitive measures

Both Law No. 06-01 and Presidential Decree 15-247 list various criminal acts and deviant behaviours that could compromise the integrity of public procurement procedures. These include:

A. Under Law No. 06-01:

Article 9 of this law sets out the principles underpinning public procurement procedures, including transparency, fair competition and objective criteria. These are manifested through:

- public access to information regarding procurement procedures;
- Advance preparation of participation and selection criteria.
- Objective and precise decision-making criteria in public procurement.
- The right to appeal in cases of non-compliance with procurement rules.
- The inclusion of a declaration of integrity during public procurement processes¹⁴.

According to this law, corruption in public procurement encompasses all crimes defined in Chapter Four, specifically Articles 26 and 27.

-Granting Unjustified Advantages:

Article 26 states that any public official who enters into or endorses a contract, or reviews a contract, in violation of applicable laws and regulations with the intent of providing unjustified advantages to others shall be punished by imprisonment for a period of two to ten years and a fine ranging from 200,000 to 1,000,000 DZD. The amendment introduced by Law 11-15, dated 02/08/2011, emphasises the element of intent.

- Bribery in Public Procurement: Article 27 stipulates that ‘Any public official who directly or indirectly accepts or attempts to accept any form of payment or benefit in connection with the preparation, negotiation, conclusion or execution of a contract on behalf of the state or local authorities shall be punished by imprisonment for ten to twenty years and a fine ranging from 1,000,000 to 2,000,000 DZD.’

B. Under Presidential Decree 15-247:

Section Eight of this decree is dedicated to combating corruption and lists actions that violate public procurement rules, as well as the legal and penal consequences of committing these acts.

- Offering bribes to public officials.

This includes offering rewards or advantages to a public official, either directly or indirectly, during the preparation or execution of a public procurement process. Consequences may include the annulment of the public contract and the inclusion of the offending entity on a list of banned economic operators¹⁵.

- Conflict of interest:

A public official involved in the procurement process must disclose any personal interests that may conflict with the public interest, and must recuse themselves from the task¹⁶.

- Disclosure of information:

Economic operators must report any potential conflicts of interest related to the contract. They must inform the contracting authority if such a situation arises¹⁷.

- Access to information:

Officials with access to information that could give them an unfair advantage in public procurement must prove that their knowledge does not violate the principle of free competition¹⁸.

Conclusion and recommendations

In this research paper, we have examined the various preventive and punitive legal mechanisms and measures that the Algerian legislator has implemented to combat corruption in public procurement. These measures are encapsulated in two key reference texts: Presidential Decree 15/247, which regulates public procurement; and Law 06/01, which addresses the prevention and combating of corruption.

As is often the case with legal texts in Algeria, however, the practical application of these measures is problematic. Although the legislator has established provisions to ensure the integrity of public procurement procedures, there are significant shortcomings in several critical areas affecting the rules and standards that govern these procedures. Given that public procurement is a high-risk area, the main shortcomings of the legal mechanisms to combat corruption can be summarised as follows:

1. Shortcomings in general employment measures: There is a lack of comprehensive regulations regarding the conditions for holding public procurement-related positions, and asset declaration requirements do not apply to all relevant roles.
2. Practical application issues: There are deficiencies in the implementation of fundamental rules relating to public procurement, particularly with regard to the advertisement of tenders in daily newspapers and ensuring maximum participation. Additionally, both internal and external oversight mechanisms lack clarity regarding the legal quorum for internal review committees, and their functions are often performed on a voluntary basis.
3. Ineffective activation of key measures: Important and effective measures, such as establishing a regulatory authority for public procurement and implementing electronic procurement procedures — which have been shown to be effective in other countries — have not yet been activated.

4. Reliance on regulations for clarification: The dependence on regulatory texts to interpret and clarify many measures in Presidential Decree 15/247 indicates weaknesses in the legal basis and quality of the decree. This can lead to an excessive amount of regulatory texts, which complicates application processes, especially when texts are delayed.

5. Limited Scope of Punitive Measures:

Despite the numerous risks and deviations present in this area, the punitive measures are restricted to only two criminal acts in public procurement: granting unjustified advantages and bribery.

Recommendations:

To mitigate corruption in public procurement, we propose the following recommendations:

1. Activate electronic procurement: Implement electronic procurement processes that have been shown to maintain procedural integrity, as demonstrated by experience in various countries.
2. Careful selection of personnel: Ensure that employees involved in public procurement are selected on merit, avoiding favouritism and nepotism.
3. Clarity in legal texts: legal provisions should be clear and self-contained, without relying on regulations that delay the implementation of important anti-corruption measures.
4. Strengthen penalties: Increase penalties for corruption-related crimes in public procurement due to their severe impact on the national economy and societal stability.

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¹⁴ - Article 9 of Ordinance No. 10-05 dated August 26, 2010, amending Law No. 06-01 concerning the prevention and combating of corruption.

¹⁵ - Article 89 of Presidential Decree 15-247 dated September 16, 2015, concerning the organization of public procurement and delegations of public facilities.

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