

# THE COMPATIBILITY OF LEGISLATIVE TREATMENT OF INTERNATIONAL BRIBERY IN ALGERIA WITH THE PROVISIONS OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION OF 2003.

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## **Abstract:**

*The purpose of this study is to highlight the compatibility of the legal treatment of international bribery in Algeria, as a newly created offence under Law 06/01 on the fight against corruption, as amended and supplemented, and its consistency with the provisions of the 2003 United Nations Convention against Corruption, which Algeria ratified with reservations in 2004 by Presidential Decree No. 04-128. This study is based on the presentation and analysis of legal texts in order to clarify this compatibility.*

*The importance of this study lies in demonstrating Algeria's implementation of its obligations under this Convention in this area, as well as in highlighting the importance of aligning legal texts and comparative legal systems with international and regional agreements in order to overcome obstacles and facilitate international coordination efforts, thereby increasing the effectiveness of cooperation in combating corruption in general and international bribery as one of its most prominent crimes in particular.*

**Keywords:** *International bribery, anti-corruption, foreign officials, international public institutions.*

## **INTRODUCTION**

Bribery is the quintessential crime and a clear indicator of the prevalence of corruption and injustice, whether among individuals, communities, or within and between state administrations and institutions. This phenomenon has persisted throughout history and continues to escalate today.

Bribery strikes at the heart of good governance, leading to loss of rights, damage to national economies, undermining of capabilities, disruption of development and erosion of citizens' trust in their institutions. Compared to other corruption crimes, bribery is more pervasive, occurring in all public and private sectors, at all levels, from the highest echelons of power to the humblest grassroots worker, and affecting all local and international spheres.

Since corruption is a phenomenon that transcends national borders, bribery, as one of its crimes, has also transcended the borders of individual states and taken on an international character, especially with the increase in trade relations between countries and the emergence of contracts and financial transactions. It becomes a transnational phenomenon when it involves the bribery of foreign officials and employees of international public institutions.

With the proliferation of transactions and the flourishing of international trade, as well as the rapid technological advances that facilitate financial transfers and settlements worldwide, and the establishment of international organizations in various countries to facilitate their humanitarian and development missions, conflicts of commercial interests and the sheer volume of transactions have not spared employees of these States and organizations from falling prey to this prohibited conduct, taking undue advantage of other individuals to obtain personal benefits, even to the detriment of the public interest of the State where they perform their duties or the State and organization for which they work, thereby betraying the trust placed in them.

On a local level, Algeria has not been spared from this affliction since its independence, and no stage has been free from this malady, which has undermined the integrity of administrative work and burdened citizens, shaking their trust in their administration and state institutions alike. Rights have been lost, needs have been neglected, projects and investments have been compromised, and corrupt

money and illicit wealth have proliferated, all alongside a non-punitive policy that has encouraged the spread of such practices, amid the involvement of an entire political and financial system in this corruption, sometimes even to the point of protecting the corrupt.

At the beginning of the millennium, Algeria witnessed a shift towards a liberal economic approach and began to emerge from a decade-long period of international isolation following a severe security crisis. This was followed by a thaw and openness to global trade, launching international tenders for significant developmental projects and entering into transactions with employees of foreign countries and international public institutions. Consequently, this crime took on an international dimension, increasing the need for appropriate legislative mechanisms and approaches to address any deviations in the conduct of these employees that could affect the state's economic interests and put an end to such behavior. Thus, the timing of the issuance of Law 06/01, concerning the prevention and fight against corruption, was crucial as a specialized and comprehensive law to combat corruption and, consequently, international bribery, which is one of its most significant crimes. The Algerian legislator aimed for its provisions to align with the United Nations Convention Against Corruption of 2003, which Algeria ratified with reservations in 2004.

In the area of criminalizing acts of corruption and enforcing the law, the third chapter of this convention urged the member states to adopt necessary legislative measures and other actions to criminalize the bribery of local public officials, foreign public officials, and employees of international public institutions, as reflected in Articles 15 and 16<sup>1</sup>. This is evident in the provisions of Article 28 of Law 06/01, which addresses the prevention and fight against corruption, as it introduced a new form of bribery that had not been addressed by the legislator in previous criminal legislation.

In other words, to what extent do the provisions of Algerian legislation comply with the International Convention against Corruption in combating the crime of international bribery?

This question can be broken down into two sub-questions:

1. What is the legal framework for the crime of international bribery?
2. Has the Algerian legislator been successful in applying the provisions of the United Nations Convention against Corruption in the fight against international bribery?

In order to answer these questions, the study is divided into two sections. The first section deals with the concept of international bribery and its national and international legal framework. The second section discusses the fight against international bribery between Algerian legislation and the United Nations Convention against Corruption.

### **Section One: The concept of international bribery and its legal framework**

The prevalence and spread of bribery in any country has serious consequences for society. Morally, it serves as evidence of corruption and acceptance of betrayal of trust, leading to a loss of public confidence in government institutions and hindering the progress of development projects.

Islamic law categorically condemns bribery and considers it one of the greatest sins. The Qur'an addresses it in several verses, including the verse: "And do not consume each other's wealth unjustly, or send it [in bribes] to the rulers, that they may help you to consume a part of the wealth of the people in sin, when you know that it is unlawful"<sup>2</sup>. Most commentators agree that this verse is general and refers to all forms of unlawfully acquired wealth, including gambling, fraud, usurpation of rights, and anything that the owner disapproves of or that is forbidden by law, even if the owner may have consented to it, such as bribery.

In a hadith narrated by Abu Huraira, the Prophet Muhammad (peace be upon him) said: "The Messenger of Allah cursed the one who gives a bribe and the one who takes a bribe in judgement. This hadith, among many others, confirms the crime of bribery and emphasises that Islam prohibits all forms of illicit gain, including bribery"<sup>3</sup>.

In modern times, for various reasons, corruption has acquired an international dimension, which can be explained by the various foundations that have given it this characteristic (first requirement). This has led international and regional legislation to include specific provisions on the subject, which has prompted the national legislations of the countries that have signed these agreements to adopt measures to combat this serious crime (second requirement).

### **First requirement: The concept of international bribery, its causes and the basis of its international dimension**

Several attempts have been made to define the concept of this crime in a way that is applicable to all countries. These attempts are part of the search for an international criminal law, both at the level of international organisations and at the level of local jurisdictions. The investment committees of these organisations have held numerous regular meetings to exchange views on the subject, which have led to the exposure of notorious financial scandals<sup>4</sup>.

Accordingly, this section will address the definition of international bribery in the first sub-section and the causes of its prevalence in the second sub-section.

#### **Sub-section One: Defining international bribery and the causes of its prevalence**

This study requires a definition of bribery, both linguistically and legally, which does not differ in substance from international bribery, except for the characteristic of the offender as a “foreign official” (First). Several factors have contributed to its spread, ranging from economic to political (second).

#### **First Requirement: The Concept of International Bribery, Its Causes, and the Foundations of Its International Dimension**

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#### **Sub-section One: Definition of International Bribery and Its Causes of Prevalence**

This study requires a definition of bribery, both in linguistic and legal terms, which does not differ in substance from international bribery, except for the characteristic of the offender as a “foreign official” (First). Several factors have contributed to its spread, ranging from economic to political (Second).

#### **First: Definition of Bribery**

In linguistic terms, bribery is derived from the root verb “رشا” refers to the act of bribery. Ibn Abu al-رشا: “الرَّشْوُ” or “رَشِي” as the act of giving. The plural can be “الرَّشْوَةُ” and “الرَّشْوَةُ”. Sidah defines “الرَّشْوَةُ” is derived from the chick stretching its neck to its mother for sustenance, and “الرَّشْوَةُ” Abbas states that .refers to favoritism

Ibn al-Athir states: “الرشاء” the means to achieve a need through persuasion, and its origin is from: “الرَّشْوَةُ وَالرَّشْوَةُ: الرَّشْوَةُ وَالرَّشْوَةُ” (rashi) is someone who gives to assist in wrongdoing, while a ‘رَاشِي’ which is used to access water; thus, a ‘رَاشِي’ is the intermediary seeking to increase one and decrease the other ‘رَاشِي’ is the one who takes, and a

When it is said: “it is the means of satisfying a need by persuasion”, this refers to what one uses to satisfy one’s needs by favour, either by wealth, flattery or compromise. This definition does not adequately define bribery, because if persuasion is bribery, as some linguists explain, it would be defining something by itself, which is not permissible.

If flattery and compromise are taken into account, the definition would not prevent a person from satisfying his needs without bribery by flattery, favouritism or hypocrisy<sup>7</sup>.

In legal terms, bribery has several definitions, including: “It is what is given to nullify a right or to establish a falsehood.” This means anything given to undermine a legitimate right or to support a falsehood that is not permitted by law.

Ibn Abidin stated that bribery is “what a person gives to a ruler or others to rule in their favor, or to influence them to do what they want.”<sup>8</sup> It is clear from this definition that bribery involves giving

something to a ruler or others; thus, it encompasses not only money but also any benefit that can be granted or fulfilled for the briber<sup>9</sup>.

In this context, “the ruler” refers to the judge, while “others” includes anyone from whom the briber seeks to achieve a benefit, whether they are state officials or employees, or individuals involved in private dealings, such as agents of merchants, companies, property owners, and so on<sup>10</sup>. The term “to rule in favor of the briber” or to influence the bribed party to act according to the briber’s wishes refers to fulfilling the desires and objectives of the briber, whether those desires are just or unjust<sup>11</sup>. In contemporary legal terms, bribery is defined as “the deviation of an employee in performing their duties from the intended purpose of that performance<sup>12</sup>, which is the public interest, in order to achieve a personal interest, namely, illicit gain from their position.” Here, the danger of bribery is highlighted as being more harmful and pervasive than mere individual misconduct between an employee and a single individual<sup>13</sup>. Today, the world faces bribery at various levels, including international bribery among states, which is the focus of this research paper.

#### **Regarding the legislative definition of bribery:**

Article 1(1) of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) defines bribery as “...any person who intentionally offers<sup>14</sup>, promises or gives, directly or through intermediaries, a financial or non-financial advantage to a foreign public official or for the benefit of that official or a third party, in order to influence that official in his official capacity, to obtain or retain business or any other improper advantage in the conduct of international business”.

This article urges Member States to take the necessary measures to ensure that such acts constitute criminal offences under their laws.

According to this article, offering a bribe in order to obtain a business advantage or any other improper advantage, whether or not the company in question has the best qualified offers, is a criminal offence. It also applies to companies that could legitimately win business<sup>15</sup>.

This definition aligns with the first paragraph of Article 16 of the United Nations Convention Against Corruption, adopted by the United Nations General Assembly in New York on October 31, 2003, which addresses international bribery. It states that international bribery involves “...intentionally promising a foreign public official or an employee of an international public organization an undue advantage, offering it to them, or granting it to them, directly or indirectly, whether for the benefit of the official themselves or for the benefit of another person or entity, in order for that official to perform or refrain from performing an act in the course of their official duties, to obtain a commercial advantage or any other undue advantage in relation to the conduct of international business.” This is in its positive form only.

The negative aspect of this crime is addressed in the second paragraph of the same article, which states that “...a foreign public official or an employee of an international public organization intentionally solicits or accepts an undue advantage, whether for the benefit of the official themselves or for another person or entity, to perform or refrain from performing an act in the course of their official duties.”

This definition is consistent with the provisions of Article 28 of Law 06/01 concerning the prevention and fight against corruption.

#### **Second: Causes of the Spread of International Bribery**

The economic transformations driven by capitalist profit motives in international trade, along with ongoing political and security tensions in today’s world and the crises that arise from them, are critical factors contributing to the prevalence of international bribery. These include:

##### **1. Economic causes**

These are primarily related to the expansion of international trade in the context of so-called economic globalisation, and the increasing volume of investment and large transactions, especially in developing countries. Global and multinational companies compete to secure these deals and make substantial profits from them.

In this context, some companies may seek to influence a government in a developing country, for example, to purchase necessary equipment and supplies from one company rather than another through international tenders to carry out large projects, such as concessions for oil, gas and mineral exploration, the purchase of civil aircraft, and heavy and light military equipment, including fighter jets. Similarly, there are tenders in the mobile and satellite communications sectors, which lead foreign companies to pay substantial commissions to secure external tenders and concessions in these countries<sup>16</sup>.

## **2. Political causes**

The world today is hardly free of tensions and wars, which can lead to extremely difficult humanitarian situations for entire populations, such as the siege of countries and crises involving displaced persons. In addition, from time to time, natural disasters can cause tragedies in areas that require international assistance and the intervention of international organisations, especially those of the United Nations, to provide the necessary aid. However, this aid can be diverted from its intended purpose and misused by officials of these countries and organisations.

Among the consequences of international conflicts are cases of bribery involving employees of international public organisations and the involvement of high-ranking United Nations officials in receiving contracts from the oil-for-food programme in Iraq, as well as high-profile individuals, including a former French interior minister, and companies such as the French group Total and the Australian company IWB. Investigations have revealed that much of the food purchased under the programme was unfit for human consumption<sup>17</sup>.

### **Sub-section Two: Principles underlying the international dimension of the crime of international bribery**

Given the global nature of corruption, several factors contribute to the international characterisation of this crime, including the status of the offender (first) and the nature of the transactions involved in this crime (second).

#### **First: The international status of the offender (presumed element of the offence)**

The offence of international bribery requires a specific status for the briber, namely that he must be a foreign public official or an employee of a foreign public organisation, as this is an assumed element of the offence. It should be noted that the material and moral elements of this offence are similar to those of bribery of national public officials.

The briber in this offence may be either a national or a foreigner in relation to the state in which the offence is committed<sup>18</sup>.

**1. The definition of a foreign public official** is “any person who holds a legislative, executive, administrative or judicial position in a foreign country, whether appointed or elected, and any person who performs a public function for a foreign country, including for a public agency or public enterprise”<sup>19</sup>. This definition is the same as that contained in Article 2(b) of the 2003 United Nations Convention against Corruption.

It should be noted that some countries have expanded the definition of “foreign public official” to include employees appointed under foreign law or custom, in particular any person holding a position or office created by the customs or conventions of a foreign country or part of a foreign country, or performing duties incidental to such position or office<sup>20</sup>.

#### **2. Definition of an official of an international public organisation**

The role played by international organisations at the regional, local or international level is unparalleled by any other international entity, as they act on behalf of a group of States to achieve their common interests<sup>21</sup>, primarily ensuring the stability and balance of international relations by maintaining international peace and security.

The term “employee of an international public organisation” refers to an international civil servant or a person authorised by such an organisation to act on its behalf<sup>22</sup>.

The Law on the Prevention and Combating of Corruption defines it as: “any international official or any person authorised by such an organisation to act on its behalf”<sup>23</sup>.

## **Second: The international nature of the offence**

Despite their important role in supporting the economic development of countries, international commercial transactions provide fertile ground for the spread of bribery. They raise critical ethical and political concerns, undermine good governance and economic development, and distort international conditions and competitiveness<sup>24</sup>. This phenomenon also finds a way under the guise of humanitarian and relief work necessitated by the aftermath of political crises and security challenges around the world.

Foreign trade has emerged as a solution to the problem of countries' inability to achieve self-sufficiency in goods and services due to their inability to produce these goods, either because of the nature of the goods or because some countries lack the capital, technology or modern management to produce them adequately<sup>25</sup>.

In addition, operating under the umbrella of United Nations agencies, including humanitarian agencies, provides a wide avenue for their dishonest staff to receive bribes from certain parties and divert them from their intended purpose. This diversion may be partial and difficult to trace due to the nature of the conditions under which aid is distributed and the sheer volume of aid, which can absorb unnoticed deductions relative to its size.

## **Second requirement: The legal framework for the crime of international bribery at the national and international levels**

In an effort to comply with the provisions of the 2003 United Nations Convention against Corruption, to which Algeria is a party, the Algerian legislature has increasingly focused on establishing a legal framework for the crime of international bribery through Law 06/01 on the Prevention and Combating of Corruption. In addition, the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions serves as a binding framework for the countries that are party to it.

In this section, the first sub-section deals with the legislative framework for the offence of international bribery at the international level and the second sub-section deals with the legislative framework for the offence of international bribery at the national level.

### **Sub-section One: The legal framework for the crime of international bribery at the international level**

The 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (first) and the 2003 United Nations Convention against Corruption (second) are the two most important treaties for combating international bribery at the level of international agreements. These include the Arab Convention against Corruption of 2010 and the African Union Convention on Preventing and Combating Corruption of 2003, which draw many of their provisions from the UN Convention.

#### **First: The legal framework for the crime of international bribery in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997**

This Convention was adopted by the Organisation for Economic Co-operation and Development (OECD) in 1997 to take effective measures to deter and combat bribery of foreign public officials. The Convention consists of 17 articles and entered into force on 15 February 1999. It includes 38 countries, 34 of which are permanent members, and 4 non-member countries: Bulgaria, Brazil, South Africa and Argentina<sup>26</sup>.

The Convention's main efforts to combat international bribery focus on several aspects, including bribery in international business transactions. In 1994, it issued recommendations on bribery in international business transactions, urging member states to establish effective standards to combat bribery of foreign public officials, which were reviewed in 1997. It also addressed corruption in aid-funded procurement, issuing "Recommendations for Combating Corruption in Aid-funded Procurement" in May 1996, calling for the adoption of a set of measures to prevent corrupt practices in aid-funded procurement<sup>27</sup>.

#### **Second: The crime of international bribery in the 2003 United Nations Convention against Corruption**

The crime of international bribery is addressed in Article 16 of the United Nations Convention against Corruption as a second form of bribery. This form was introduced by the drafters of the Convention and differs from the first form only in that the offender is a foreign public official or an employee of an international public organisation, as defined in Article 2(a) and (b).

The purpose of this offence is to obtain a commercial advantage or other improper benefit in connection with international business transactions. This extension of criminalisation is commendable<sup>28</sup>.

**Sub-section Two: The legal framework for the crime of international bribery at the national level**

This subsection examines the crime of bribery in Algerian criminal law, specifically the former Penal Code (First) and Law 06/01 on the Prevention and Combating of Corruption (Second).

**First: The crime of international bribery in the Algerian Penal Code**

Bribery is considered a punishable offence in Algerian legislation, previously under the Penal Code and currently under the Law on the Prevention and Combating of Corruption. It is noteworthy that the Algerian legislator has combined the forms of passive and active bribery contained in the repealed articles 126, 127 and 129 of the Penal Code<sup>29</sup>. However, there is no mention of the crime of bribery involving foreign officials and employees of international organisations, which highlights the inadequacy of this law to keep pace with the new nature of corruption crimes, which includes this crime. This situation necessitated the adoption of a specific law to remedy the shortcomings of the Criminal Code.

At the institutional level, Presidential Decree No. 96-233 of 12 July 1996 created the National Observatory for the Control and Prevention of Corruption. This Observatory was placed under the authority of the Prime Minister. One of its tasks was to form a committee responsible for investigations and studies within public institutions and agencies, as well as private entities, in order to uncover all cases of bribery<sup>30</sup>. However, it was disbanded in 2000 due to significant failures in its work.

Currently, the High Authority for Transparency, Prevention and Fight against Corruption, established by the Constitutional Amendment of 2020, has replaced the National Authority for the Prevention and Fight against Corruption, established by Article 17 of Law No. 06/01 on the Prevention and Fight against Corruption. This new authority is responsible for the prevention of corruption, in accordance with the provisions of Article 6 of the 2003 United Nations Convention against Corruption. In addition, the Central Office for the Fight against Corruption is an operational unit of the Judicial Police in charge of investigating and documenting crimes related to the fight against corruption, established under Article 24 bis of Law No. 06-01 on the Prevention and Fight against Corruption, as amended.

**Second: The crime of bribery in Law 06-01 on the prevention of and fight against corruption**

The Algerian legislator introduced the crime of international bribery in article 28 of chapter four, which deals with criminalisation, penalties and methods of investigation. This article states that:

“Anyone who promises, offers or gives, directly or indirectly, an undue advantage to a foreign public official or to an employee of an international public organisation, whether for his own benefit or for the benefit of another person or entity, in order that the public official or the employee of an international public organisation for that official to do or refrain from doing any act in the course of his duties with a view to obtaining or retaining a contract or any other undue advantage related to international trade or otherwise, shall be punished by imprisonment for a term of between two (2) and ten (10) years and a fine of between DZD 200,000 and DZD 1,000,000.

In addition, any foreign public official or employee of an international public organisation who, directly or indirectly, solicits or accepts an undue advantage for himself or herself or for any other person or entity, in order to perform or refrain from performing any act in the course of his or her duties, shall be subject to the same penalties”.

**Section Two: The Compatibility of Algerian Legislation with the United Nations Convention Against Corruption in the Area of Combating the Crime of International Bribery**

The constitutional amendment of 2020 emphasized Algeria's commitment to working towards the prevention and fight against corruption in accordance with the international agreements it has ratified<sup>31</sup>. Resolution 5/2, entitled "Enhancing the Implementation of the Criminalization Provisions in the United Nations Convention Against Corruption<sup>32</sup>, Particularly Regarding the Solicitation of Bribes," notes with concern the international phenomenon of solicitation of bribes, both directly and indirectly, at the national and international levels. It acknowledges that national legal systems are essential for preventing and combating corruption and must align with the provisions of the convention.

Moreover, Article 65/1 of the United Nations Convention Against Corruption calls on states parties in its Chapter Eight to "take the necessary measures, including legislative and administrative measures, to ensure the implementation of their obligations under this convention in accordance with the fundamental principles of their domestic law."

Accordingly, this section will examine the extent to which Algerian legislative treatment of the crime of international bribery aligns with the provisions of the international anti-corruption convention in terms of criminalization and the proportionality of penalties to the severity of the crime (in the first requirement), and then the extent of this compatibility regarding aggravating circumstances and activating international cooperation mechanisms to combat the crime (in the second requirement).

#### **First requirement: Compatibility of criminalisation and proportionality of penalties to the gravity of the offence**

In contrast to the situation regarding the bribery of national public officials, relatively few countries have criminalised or taken steps to criminalise the bribery of foreign public officials or employees of international public organisations. This is mainly due to the novelty of these offences, which first appeared in national criminal legislation in 1977 and were only applied at the international level from 1996 onwards. On the other hand, countries that were first obliged by the Convention against Corruption to proceed with this criminalisation have generally not yet made all the necessary amendments. Furthermore, a limited number of countries criminalise the bribery of foreign public officials but not the bribery of employees of international public organisations<sup>33</sup>.

To illustrate the extent of alignment between the Algerian legislator's stance and the provisions of the United Nations Convention Against Corruption on this point, this section will examine this alignment in terms of the codification of the crime of international bribery as an independent crime (in Sub-section One) and then in terms of the proportionality of penalties to the severity of the crime (in Sub-section Two).

#### **Sub-section One: The Alignment Regarding the Codification of International Bribery as an Independent Crime**

In this sub-section, we will discuss the codification of international bribery as an independent crime in the United Nations Convention Against Corruption (First) and then its codification as an independent crime in Law No. 06/01 on the Prevention and Fight Against Corruption (Second).

##### **First: The Codification of International Bribery as an Independent Crime in the United Nations Convention Against Corruption**

Article 16 of this convention urges the criminalization of bribery in both its passive and active forms (bribery and solicitation) through an independent provision, separate from Article 15, which addresses the bribery of national public officials<sup>34</sup>.

The United Nations Office on Drugs and Crime has considered the legislation of countries that have criminalized bribery of foreign officials as separate crimes to be good and generally compliant with the requirements of the convention.

As for the countries that opted for an equal treatment approach (with the crime of bribing national public officials), the criminalization of bribery of foreign officials is likely to involve the same issues and implications as the bribery of local officials. This includes, for example, promises of undue benefits or intangible advantages, the roles of third-party beneficiaries, immunities, and bribes that do not contravene the official's duties, as well as mitigating factors for whistleblowers or victims of



extortion. On the other hand, the criminalization in this group of countries tends to exceed the requirements of Article 16<sup>35</sup>.

### **Second: The codification of international bribery as an independent offence in Law 06/01 on the Prevention of and Fight against Corruption**

In line with the provisions of the United Nations Convention against Corruption, the Algerian legislator has created a separate article on the bribery of foreign public officials, as provided for in Article 28 of Law 06/01 on the Prevention and Combating of Corruption. This article is independent of Article 25, which deals with the bribery of national public officials, and forms part of Chapter Four, which deals with criminalisation, penalties and methods of investigation.

### **Sub-section Two: The Alignment Regarding the Proportionality of Penalties to the Severity of the Crime**

The United Nations Convention Against Corruption of 2003 emphasizes the need for penalties that correspond to the severity of the crime of international bribery (First). In line with this approach, the Algerian legislator has established penalties that are appropriate for the seriousness of this emerging crime (Second).

### **First: Proportionality of Penalties to the Severity of the Crime of International Bribery in the United Nations Convention Against Corruption of 2003**

The United Nations Convention Against Corruption stipulates that every act criminalized within it must be subject to prosecution and punishment, as outlined in Article 30, titled “Prosecution, Legal Proceedings, and Penalties.”

It states that “each State party shall ensure that the commission of an act that is criminalized in accordance with this convention is subject to penalties that take into account the seriousness of that offense.”<sup>36</sup>

In addition, “each State Party shall endeavour to ensure that any discretionary legal powers afforded by its domestic law with respect to the prosecution of persons for acts criminalized under this Convention are exercised with a view to achieving the maximum effectiveness of prosecutions of such offences, having due regard to the need to deter their commission”<sup>37</sup>.

### **Second: Proportionality of penalties to the gravity of the crime of international bribery in Algerian legislation**

Turning to Algeria’s anti-corruption legislation, we note that although it takes a punitive approach to bribery offences, it does impose a severe penalty for them.

Article 28 states: “Any person shall be punished by imprisonment for a term of two (2) to ten (10) years and a fine of DZD 200,000 to DZD 1,000,000.” This is due to the seriousness of the crime and its significant negative impact, especially on the economy of the state.

This penalty is the same as that prescribed for the crime of bribery of national public officials.

### **Second requirement: Approximation of provisions on aggravation and activation of international cooperation mechanisms to combat the crime**

This section deals with the aspects of alignment between Algerian legislation and the United Nations Convention against Corruption with regard to the aggravation of penalties and the length of the limitation period for this crime (in the first section) and the establishment of international cooperation mechanisms to combat the crime of international bribery (in the second section).

### **Sub-section One: The Alignment Regarding the Aggravation of Penalties and the Duration of Limitation**

The convention stipulates that every act criminalized within it must be subject to prosecution and punishment, as outlined in Article 30, titled “Prosecution, Legal Proceedings, and Penalties.” It states that “each State party shall ensure that the commission of an act criminalized in accordance with this convention is subject to penalties that take into account the seriousness of that offense.”

### **First: The Alignment Regarding the Aggravation of Penalties**

Each State party may adopt measures that are stricter or more severe than those provided for in this convention in order to prevent and combat corruption.

Consequently, member states are obliged to follow all the procedures and measures stipulated in the convention, and they are also encouraged to take more stringent measures if they believe it serves their interests<sup>38</sup>.

Referring to Article 48 of Law No. 06/01, it emphasizes the aggravation of penalties: “If the perpetrator of one or more crimes stipulated in this law is a judge, a high-ranking state official, a public officer, a member of the authority, a police officer, or a judicial police officer, or someone exercising certain police powers, or a court clerk, they shall be punished by imprisonment for a term of ten (10) to twenty (20) years and the same fine prescribed for the committed crime.<sup>39</sup>”

**Second: The Alignment Regarding the Duration of Limitation for the Crime**

Article 11, paragraph 5, of the Convention urges States Parties to “provide in their domestic law, where appropriate, for a long limitation period during which proceedings may be instituted for any of the offences covered by this Convention and for a longer period if the alleged offender has fled from justice”.

Looking at Article 54 of Law No. 06/01, we see that the Algerian legislator refers to the application of the provisions of the Code of Criminal Procedure concerning the limitation of public action and the specific penalties for the crimes listed therein. However, it excludes these crimes from this rule and states that they are not subject to any limitation if the proceeds of these crimes are transferred abroad. This is not in line with the Convention, which provides for an extension of this period in cases where the offender has fled from justice<sup>40</sup>.

**Sub-section Two: The Alignment Regarding International Cooperation in Combating the Crime of International Bribery**

Corruption crimes are transnational offenses, and therefore, the prosecution of their perpetrators should not be limited to national jurisdictions; rather, it should extend to the international level. This requires the international community to establish a legal and judicial cooperation strategy among states to ensure the prosecution of perpetrators of corruption crimes, regardless of their nature<sup>41</sup>.

In this sub-section, we will discuss international cooperation to combat the crime of international bribery in the United Nations Convention Against Corruption (First), and then the international cooperation provisions in the Algerian anti-corruption law (Second).

**First: International Cooperation to Combat the Crime of International Bribery in the United Nations Convention Against Corruption**

The United Nations Convention Against Corruption of 2003 emphasizes the necessity of combating corruption and the importance of international cooperation as an effective mechanism for this purpose. Given that corruption crimes are serious and varied, it is no longer feasible for each country to combat them independently<sup>42</sup>; rather, cooperation among countries in this domain is essential, which applies directly to the crime of international bribery<sup>43</sup>.

This will be facilitated by the mechanisms set out in Articles 43 to 50 of Chapter Four of the Convention, in particular as regards extradition of offenders, transfer of sentenced persons, mutual legal assistance, transfer of criminal proceedings, cooperation in law enforcement and joint investigations and special investigative techniques.

**Second: International cooperation to combat the crime of international bribery in Algerian anti-corruption legislation**

Looking at Algerian Law No. 06/01 on the Prevention of and Fight against Corruption, we find that it provides for mechanisms for coordination and international cooperation to prevent and combat corruption crimes, in accordance with the provisions of the Convention. This is detailed in Chapter Five, which includes several mechanisms set out in Articles 57 to 70, reflecting the obligations arising from the Convention.

Article 57 provides for the establishment of “the widest possible judicial cooperation relations, in particular with the States Parties to the Convention, in the fields of investigation, prosecution and judicial proceedings relating to the offences established in this Act”, which include the crime of international bribery.

### CONCLUSION

Based on the above analysis, the study came to the following conclusions and recommendations:

#### First: Findings

Bribery is one of the oldest and most significant forms of corruption faced by societies, both past and present. With the flourishing and globalisation of international trade, the influx of foreign projects and investments - especially in developing countries - coupled with technological advances that have facilitated financial transfers worldwide, as well as the expansion of development and relief programmes by international agencies and organisations, the crime of bribery has taken on an international character that transcends national borders.

Countries have sought to unify their efforts to combat this crime, beginning with the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997. This was followed by the broader and more comprehensive United Nations Convention against Corruption of 2003, which serves as the only binding instrument for countries in the fight against corruption and contains specific provisions dedicated to this issue. This has had a significant impact on the national legislation of the countries that are parties to the Convention, which have made efforts to align their national legislation with its provisions. Algeria is one such country, which has manifested this alignment through the enactment in 2006 of Law No. 06-01 specialising in the fight against and prevention of corruption offences.

The alignment of Algerian legislation on the fight against organised crime with the provisions of the United Nations Convention against Corruption of 2003 is reflected in several aspects, to the extent of a literal conformity with some of its texts, particularly with regard to criminalisation, the proportionality of penalties to the gravity of the offence, the provisions for aggravation and the activation of international cooperation mechanisms to combat crime.

#### Second: Recommendations

1. Activate preventive measures: Focus on selecting competent and honest individuals to manage transactions and oversee foreign investment. This includes fostering in them a sense of citizenship that places the national interest above personal gain, while helping them to resist the temptations that arise from their duties.
2. Enhance investigative journalism: Strengthen the role of investigative journalism to enhance its crucial function in exposing suspicious deals and scandals related to the operations of international agencies and organisations.
3. Establish effective monitoring and oversight mechanisms: Establish robust monitoring and oversight mechanisms for the work of foreign officials, closing international loopholes that allow corrupt and dishonest officials to launder money and the proceeds of these crimes. In addition, enhance banking cooperation to manage and mitigate illicit financial flows.

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<sup>1</sup>- Before that, in the same context, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions established a binding legal framework for criminalizing the offering of bribes by companies from the signatory countries to public officials in other countries (i.e., developing countries). This implies the necessity and obligation for the national laws of the signatory states to be amended to align with its provisions, which aim to unify standards related to the issue of bribery. See: Khalid bin Wasil bin Dughailib Al-Harbi, "International and Arab Efforts to Combat Administrative Corruption," *Legal Journal*, p. 183.

<sup>2</sup>- Verse 188 of Surah Al-Baqarah.

<sup>3</sup>- Al-Tirmidhi, Muhammad ibn Isa, "Sunan al-Tirmidhi," authenticated by Al-Albani, 1st ed., Hadith 1337, Al-Ma'arif Library, Riyadh, n.d., p. 315.

- 4- An example includes the Lockheed and Boeing cases, where negotiators in some developing countries received bribes from the mentioned global aviation companies in exchange for completing aircraft sales deals. Following these events, several definitions were issued, the latest being the definition included in the United Nations Convention Against Corruption under the term "Bribery of Foreign Public Officials and Employees of International Public Organizations." See: Bakhdour Mukhtar, "Bribery and Mechanisms to Combat It at the Algerian and International Levels," *Journal of the Researcher, Legal and Political Studies, Faculty of Law and Political Science, Muhammad Boudiaf University, M'sila*, Vol. 06, No. 01, June 2021.
- 5- Ibn Manzur, Abu al-Fadl Jamal al-Din Muhammad bin Makram, "Lisan al-Arab," Dar al-Fikr, Beirut, 1417 AH - 1997 AD, 6th ed., Vol. 14, p. 322.
- 6- Ibn Manzur, op. cit., Vol. 14, p. 322.
- 7- Al-Tarqi, Abdullah bin Abdul Mohsen, "The Crime of Bribery in Islamic Law," 1st ed., Al-Risalah Foundation, Beirut, 1400 AH - 1980 AD, pp. 50-51.
- 8- Kuwait's Ministry of Awqaf and Islamic Affairs, "The Jurisprudential Encyclopedia," *Thaat al-Salasil*, 2nd ed., 1412 AH - 1992 AD, Vol. 22, p. 220.
- 9- Al-Tarqi, op. cit., p. 51.
- 10- Ibn Abidin, Muhammad Amin, "Rad al-Muhtar 'ala al-Durar al-Mukhtar Sharh Tanwir al-Absar," *Study and Investigation: Adel Ahmad bin Abdul Mawjud and Ali Muhammad Muawwad*, Dar Al-Alam Al-Kutub, Riyadh, 1423 AH - 2003 AD, pp. 8, 34.
- 11- See: Nour Eddine Azize, "Bribery and Administrative Corruption and Their Impact on Economic and Social Development," *Dar Al-Khaldounia, Algeria*, 1436 AH - 2015 AD, p. 17.
- 12- See: Nour Eddine Azize, "Bribery and Administrative Corruption and Their Impact on Economic and Social Development," *Dar Al-Khaldounia, Algeria*, 1436 AH - 2015 AD, p. 17.
- 13- Haroun Nourah, "The Crime of Bribery in Algerian Legislation: A Study in Light of the United Nations Convention Against Corruption," Thesis submitted in pursuit of a Doctorate in Law, Faculty of Law and Political Science, Mouloud Mammeri University - Tizi Ouzou, Academic Year 2016/2017, p. 19.
- 14- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted at the Negotiating Conference on November 21, 1997.
- 15- See: Organization for Economic Cooperation and Development, "Comments on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted at the Negotiating Conference on November 21, 1997," 2010, p. 13.
- 16- Nawal Tarek Ibrahim Abdul Razak, "Journal of the Faculty of Law," *Al-Nahrain University*, Vol. 12, No. 1, 2010, p. 204.
- 17- Ibrahim Brahimi Mukhtar, op. cit., p. 183.
- 18- Ahmed Hassan Muhammad Ali, "The Crime of International Bribery: An Analytical Study in Light of International Agreements and National Legislation," *Journal of Al-Zaytouna University for Legal Studies*, Vol. 2, Issue 3, 2021, p. 111.
- 19- Article 2, paragraph (c) of Law No. 06-01, dated 21 Muharram 1427 AH, corresponding to February 20, 2006, concerning the Prevention and Fight Against Corruption, amended and supplemented.
- 20- Conference of the States Parties to the United Nations Convention Against Corruption, Fifth Session, Panama City, November 25-29, 2013, p. 12.
- 21- Ibrahim Brahimi Mukhtar, "Responsibility of International Officials and Its Applications in the Jurisprudence of International Administrative Courts," *Doctoral Thesis in Public Law, Faculty of Law and Political Science, Abou Bakr Belkaid University, Tlemcen*, Academic Year 2016-2017, p. 01.
- 22- Paragraph (c) of Article 2 of the United Nations Convention Against Corruption, 2003.
- 23- Article 2, paragraph (d) of Law No. 06-01.
- 24- See: Paragraph One of the Preamble to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997.
- 25- Foreign trade is defined as "international commercial transactions in its three forms, consisting of the movement of goods and services, individuals, and capital, occurring between individuals residing in different political units, or between governments, or between economic organizations located in different political units." Walid Abi, "Environmental Protection and the Liberalization of Foreign Trade within the Framework of the World Trade Organization - A Case Study of Algeria," Thesis submitted for the Doctorate in Economic Sciences, Faculty of Economic Sciences and Management, Ferhat Abbas University Sétif 1, Academic Year 2018/2019, p. 3.
- 26- Ahmed Hassan Muhammad Ali, op. cit., p.
- 27- Haja Abdul Ali, "Legal Mechanisms for Combating Administrative Corruption in Algeria," Thesis submitted for the Doctorate in Legal Sciences, Faculty of Law and Political Science, Mohamed Khider University of Biskra, p. 42.

- <sup>28</sup>- Nabil Mad Allah Al-Abidi, Mufeed Naif Turki, "The Stance of International Criminal Law on the Crime of Bribery and Its International Combating," *Journal of Jurisprudential and Judicial Studies*, Research Laboratory for Jurisprudential and Judicial Studies, University of El-Oued, No. 02, June 2016, p. 120.
- <sup>29</sup>- Order No. 66-156, dated 18 Safar 1386 AH, corresponding to June 8, 1966, containing the Penal Code, Official Journal No. 49 issued on 21 Safar 1386 AH, corresponding to June 11, 1966, amended and supplemented
- <sup>30</sup>- Bakhdour Mukhtar, *op. cit.*, p. 1557.
- <sup>31</sup>- The constitutional amendment approved in the referendum of November 1, 2020, issued under Presidential Decree No. 20-442, dated December 30, 2020, Official Journal No. 82, issued on December 30, 2020.
- <sup>32</sup>- The decisions and resolutions adopted by the Conference of the States Parties to the United Nations Convention Against Corruption, p. 04.
- <sup>33</sup>- United Nations Office on Drugs and Crime, Vienna, "Status of Implementation of the United Nations Convention Against Corruption: Criminalization, Law Enforcement, and International Cooperation," p. 42.
- <sup>34</sup>- See: Text of Articles 15 and 16 of the United Nations Convention Against Corruption, 2003.
- <sup>35</sup>- The same reference, p. 43.
- <sup>36</sup>- See: Text of Article 30 of the United Nations Convention Against Corruption, 2003.
- <sup>37</sup>-
- <sup>38</sup>- Article 65, paragraph 2 of the United Nations Convention Against Corruption, 2003.
- <sup>39</sup>- Khaled Shaarawi, "The Legislative Framework for Combating Corruption: A Comparative Study of the Legislation of Some Countries," Social Contract Center, 2011, Egypt, p. 2.
- <sup>40</sup>- Article 54 of this law states: "Without prejudice to the provisions set forth in the Code of Criminal Procedure, neither the public action nor the penalty for the crimes stipulated in this law shall be subject to limitation if the proceeds of the crime are transferred abroad. In other cases, the provisions of the Code of Criminal Procedure shall apply. However, for the crime stipulated in Article 29 of this law, the limitation period for public action shall be equal to the maximum penalty prescribed for it."
- <sup>41</sup>- Khadija Mujahid, "Mechanisms of International Cooperation to Combat Corruption and Prevent It," *Journal of Legal and Political Studies*, Faculty of Law and Political Science, Amar Telidji University, Laghouat, No. 2, June 2015, p. 270.
- <sup>42</sup>- Ahmed Abdullah Widan, "New Forms of Criminalisation Introduced by the United Nations Convention Against Corruption: The Crime of Bribery in the Private Sector as a Model", *Sebha University for Human Sciences*, Volume 21, No. 03, 2022, p. 89.
- <sup>43</sup>- Paragraph 01 of Article 43 of the United Nations Convention Against Corruption states: "States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention and, where appropriate and consistent with their domestic legal systems, shall consider assisting each other in investigations and proceedings relating to civil and administrative matters involving corruption."