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Corruption in Public Procurement: Between the Debate over Legal Texts and Judicial Proceedings

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Abstract

This study addresses corruption in public procurement as a critical issue related to protecting public funds and ensuring the proper management of public administration. It aims to provide a comprehensive conceptual framework for both corruption and public procurement, analyzing potential manifestations of corruption during the preparation, award, and execution stages of procurement processes. The study also seeks to clarify the legal and supervisory mechanisms employed to prevent and combat corruption. A descriptive and analytical methodology was adopted, based on a review of relevant legal texts, particularly Algerian Law No. 23-12 of 2023 and Law No. 06-01 on the Prevention and Combating of Corruption, along with prior studies and judicial practices. The findings indicate that public procurement is highly susceptible to corrupt practices, including favoritism, bribery, and embezzlement. The results demonstrate that enhancing transparency, promoting competition, and activating oversight mechanisms significantly mitigate this phenomenon. Furthermore, the study highlights the essential role of judicial proceedings in enforcing legal provisions and holding offenders accountable. The development of governance mechanisms and the expansion of digitalization—including the new electronic public procurement platform (2026) and blockchain-based smart contracts—represent effective tools for improving public procurement management and safeguarding public funds. The study concludes with several recommendations, including the clarification of ambiguous provisions in Presidential Decree No. 15-247, the establishment of secure whistleblower channels, and mandatory integrity declarations.

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1. Introduction

Public procurement is one of the most important tools upon which the state relies to manage public utilities and carry out development projects, given the significant public expenditure it requires. The public procurement system aims to ensure rational and transparent management of public funds by respecting the principles of competition, transparency, and equality among economic operators. However, this field is highly susceptible to corruption due to the vast amounts of money involved and the multiplicity of parties involved at various stages (Ben Naïja & Beqchich, 2025).

The Algerian legislator has sought to establish a legal framework regulating public procurement and limiting irregularities, by enacting a set of laws and regulations governing how procurement contracts are awarded, executed, and supervised. In this context, Law No. 23-12 of August 5, 2023 was enacted as the new legal framework defining the general rules on public procurement, aiming to enhance transparency and integrity in the management of public funds, simplify procedures, and improve the effectiveness of public demand.

Despite these legislative efforts, certain illegal practices continue to appear in public procurement, such as bribery, influence peddling, and manipulation of tender procedures. This raises the question of the effectiveness of legal texts in combating this phenomenon. Judicial proceedings also play a key role as an essential means of enforcing the law and deterring those involved in corruption crimes. Hence the importance of studying corruption in public procurement by analyzing the relationship between the legal texts governing it and the related judicial proceedings, in order to understand this phenomenon and search for ways to reduce it and enhance transparency in the management of public funds.

Accordingly, the following main problem can be posed: *“To what extent has the new legal framework for public procurement succeeded in combating corruption, and what is the role of judicial proceedings in activating these texts and reducing irregularities in this field?”*

Importance of the Study:

The importance of studying corruption in public procurement lies in its connection to protecting public funds and ensuring the proper management of public resources. Its importance also emerges in analyzing the effectiveness of the legal texts governing public procurement in reducing corrupt practices. This study helps to highlight the role of judicial proceedings in combating corruption and strengthening the principle of accountability. In addition, it contributes to revealing legal and procedural gaps that may be exploited in corruption operations. It also provides a scientific basis that can contribute to developing oversight mechanisms and strengthening the principles of transparency and good governance.

Objectives of the Study:

This study aims to analyze the phenomenon of corruption in public procurement by highlighting the relationship between the legal texts governing it and the related judicial proceedings. It also aims to assess the effectiveness of the legal framework in preventing and reducing corrupt practices. The study also seeks to clarify the role of the judiciary in prosecuting crimes related to public procurement and strengthening the principle of accountability. In addition, it aims to reveal legal or application gaps that may allow corruption to occur. Finally, it aims to offer some proposals that would enhance transparency and improve oversight mechanisms for public procurement.

Methodology of the Study:

This research adopts a descriptive and analytical methodology, by analyzing the legal texts governing public procurement, especially Law No. 23-12 of August 5, 2023, in order to understand the legal framework governing this field. This methodology is also used to describe the phenomenon of corruption in public procurement and to explain its most important forms and effects on the management of public funds.

In addition, the legal analytical methodology is employed to study the various legal provisions relating to public procurement and to analyze the role of judicial proceedings in applying these texts and combating related crimes. This methodology helps to highlight the effectiveness of the legislation in reducing corruption, as well as to identify deficiencies or difficulties that may arise in the practical application of legal texts.

The study is divided into three main axes:

1. The Various Meanings of the Concepts of Corruption and Public Procurement;
2. Manifestations of Corruption in Public Procurement;
3. Legal and Legislative Mechanisms to Reduce the Phenomenon of Corruption in Public Procurement.

2. The Various Meanings of the Concepts of Corruption and Public Procurement

The meanings associated with the concepts of corruption and public procurement are numerous, depending on different legal, economic, and administrative approaches. Each concept is linked to a set of theoretical and practical implications that reflect its nature and function within the state's administrative and economic system.

2.1. The Various Meanings of the Concept of Corruption

2.1.1. Definition of Corruption

The term "corruption" is relatively new in Algerian legislation, as it was not used before 2006, nor was it criminalized in the Penal Code. However, after Algeria ratified the United Nations Convention against Corruption in 2004 by Presidential Decree No. 04-128 of April 9, 2004, it became necessary to adapt its domestic legislation to this Convention (Ben Naïja & Beqchish, 2025, pp. 171-172). Consequently, Law No. 06-01 of February 20, 2006 on the Prevention and Combating of Corruption was enacted (amended and supplemented), which criminalized corruption in its various forms. Referring to the aforementioned law, the Algerian legislator followed the same approach as the UN Convention. The draft UN Convention against Corruption of 2003 defined corruption as: "the performance of acts representing improper performance of duty or abuse of position or power, including acts of omission in anticipation of an advantage or seeking to obtain a promised advantage, offered, or requested, directly or indirectly, or the acceptance of an advantage granted directly or indirectly, whether for the person himself or for another person." However, this definition was not agreed upon and was withdrawn from the final draft, which did not define corruption but referred to its forms: bribery, embezzlement of property, trading in influence, abuse of function, and illicit enrichment (Mohammed Hussein Mahdi Saeed & Ahmed Hashem Al-Saqqal, n.d., p. 6). The Algerian legislator chose not to provide a philosophical or positive definition but instead defined corruption by referring to its forms and manifestations, as confirmed by paragraph a of Article 2 of Law No. 06-01: "Corruption means all crimes provided for in Title IV of this Law." The Algerian legislator wisely avoided engaging in jurisprudential definitions of corruption, which have sparked considerable debate (Beqchich, 2011, pp. 249-265).

Corruption is a complex and multi-dimensional phenomenon—the transformation of a normal state into an unacceptable one (Emad Salah Abdel Razek Daoud, 2003, p.

31)—stemming from the exploitation of public or private power by individuals or institutions to achieve personal gain at the expense of the public interest. This exploitation includes practices such as bribery, nepotism, embezzlement, and manipulation of administrative and legal decisions, leading to the erosion of trust in institutions and the deterioration of the effectiveness of the state's administrative and economic apparatus (Al-Hawas Kaabouche, 2017, p. 144).

Corruption is viewed from a legal perspective as a violation of regulations and laws, and from an ethical perspective as a violation of societal values and norms; it also has a negative economic impact (Sara Alaeddin Nouri, 2024, p. 37), consisting of the waste of public resources, distortion of competition, and encouragement of illegal practices. Corruption also affects political and social stability, weakening the relationship between citizen and state and hindering sustainable development (Hamad Ahmed Al-Saleh, 2003, p. 122). Therefore, combating corruption is an absolute necessity to ensure good governance, enhance social justice, and achieve comprehensive development.

2.1.2. Causes of Corruption

Many researchers and thinkers have addressed the phenomenon of corruption from different angles, each trying to explain its causes according to a particular perspective. The most important of these views can be highlighted in three main categories (Hamza Ali, Maizi Gouider, & Tatai Kamal, 2023, p. 409; Belbal Hassnaoui & Diaa Eddine Zouaou, 2019, p. 35; Mikhael Jumayyan, 1975, pp. 15-16).

2.1.2.1. Causes of Administrative Corruption According to the First Group:

- *Urban causes:* A large gap between prevailing urban values in society and the official work values and rules applied in state apparatuses.
- *Political causes:* Limited informal channels of influence on administrative decisions, weak relationship between administration and the public, and the spread of partial loyalties.

2.1.2.2. Causes According to the Second Group:

- *Structural causes:* Outdated structures of administrative apparatuses that have not changed despite major development and changes in individuals' values and aspirations.
- *Value causes:* Corruption occurs as a result of the collapse of the value system of the individual or group.
- *Economic causes:* Injustice in the distribution of wealth in society.

2.1.2.3. Causes According to the Third Group:

- *Biological and physiological causes:* Acquired by the individual through heredity and previous life background.
- *Social causes:* Arising from environmental and social influences.
- *Compound causes:* Resulting from the interaction of the previous two groups.

General causes can be summarized as: widespread poverty and ignorance; lack of adherence to balanced separation of powers; weak and non-independent oversight bodies; transitional periods; weak public services; and lack of media freedom (Ali Ahmed Saleh, 1998, p. 08).

2.1.3. Types of Corruption

Corruption takes various forms, including: doctrinal corruption, security and social corruption, political corruption, administrative corruption, economic corruption, financial corruption, and institutional corruption (Rahmouni Fateh Al-Nour & Madani Leila, 2021, p. 577; Filali Fatima, 2023, p. 06; Kerdoudi Sabrina & Saf Atiga, 2016, p. 221). In terms of scale, there is minor corruption (low-grade officials) and gross corruption (high-ranking officials) (Moulay Al-Mustapha Barjaoui, n.d.). The effects of corruption include poverty, waste of state funds, loss of trust in the political-social system, brain drain, and loss of citizenship (Goutal Yassine & Khediri Hanane, 2016, p. 248; Jumayyan, 1975, pp. 17-18).

2.1.4. Mechanisms for Combating Corruption

Mechanisms include: accountability (Draji Walid & Zeghdi Khalil, 2020, p. 338), transparency, integrity (Mohammed Fellaq & Samira Ahlam Haddou, 2015, p. 14), and a comprehensive anti-corruption strategy requiring: a democratic system based on separation of powers; an independent and strong judiciary; activation of anti-corruption laws; strengthening the role of legislative oversight bodies; enhancing the role of public oversight bodies (e.g., Court of Accounts); focusing on the ethical dimension; press freedom; and developing popular participation (Goumeri Hamida, 2022, p. 191; Saleh, 1998, p. 08). Successful international experiences include the US FCPA, Singapore's CPIB, and Scandinavian countries.

2.2. The Various Meanings of the Concept of Public Procurement

2.2.1. Legislative Definition of Public Procurement

The Algerian legislator has defined public procurement through successive laws: Ordinance No. 67/90 (written contracts for works, supplies, or services); Decree No. 82/145; Executive Decree No. 91/434; Presidential Decree No. 02/250; Presidential Decree No. 10/236 (Ghanes Habib Al-Rahman, 2016, pp. 41-43); Presidential Decree No. 15/247; and finally Law No. 23-12 of August 5, 2023. Article 2 of Law No. 23-12 defines public procurement as: "written contracts concluded for consideration by the public buyer, called the contracting authority, with one or more economic operators, called the contractor, intended to meet the needs of the contracting authority in various areas, including the execution of works, procurement of supplies, provision of services, and completion of studies, in compliance with the provisions and conditions set out in this law, and in accordance with applicable legislation and regulations, ensuring the organization of the public contracting process according to the rules of transparency, competition, and proper use of public funds."

The jurisprudential definition (French legal dictionary) describes public procurement as written contracts concluded by the state, local authorities, and their public administrative institutions with public or private persons for the purpose of executing works, procuring supplies, or providing services, subject to precise formal and substantive rules to guarantee the principles of free access to public procurement, equal treatment of bidders, and transparency of procedures (Mohammed Bekrarouchouche, 2014, p. 58).

2.2.2. Control over Public Procurement

Control is both internal (tender opening and evaluation committees) and external (various procurement committees at central, ministerial, provincial, and municipal levels) (Slimani Lakhmisi, 2022, pp. 922-945; Nadia Abdel Rahim, 2015, pp. 185-186).

3. Manifestations of Corruption in Public Procurement

3.1. Crimes Related to Granting Unjustified Privileges in Public Procurement

3.1.1. The Crime of Favoritism

Favoritism in public procurement is defined as a public official awarding, endorsing, reviewing a contract, agreement, procurement contract, or amendment in violation of applicable legislative and regulatory provisions to grant unjustified privileges to another person (Article 26 of Law No. 06-01). It is punishable by imprisonment of 2 to 10 years and a fine of DZD 200,000 to 1,000,000 (Article 26/1 as amended by Law 11-15). Favoritism requires that the perpetrator grants an unjustified privilege by acting contrary to the rules of free competition, equal treatment, and transparency (Obeid Al-Shafei, 2008, p. 315; Razzaki, 2015, pp. 127-149; Hussein Bouskiâa, n.d., p. 140; Awad Mohamed, 1985, p. 10).

3.1.2. Unjustified Privileges

Unjustified privileges arise when contracts or facilities are granted to specific institutions or persons without objective or transparent criteria, leading to discrimination based on personal relationships, favoritism, or political pressure. These include preferential prices, illegal discounts, or bypassing public tender procedures (Article 4 of Ordinance No. 06-03; Bouskiâa, n.d., p. 14; Bouskiâa, n.d., p. 141; Khaled Khalifa, 2017, pp. 14-15).

3.2. Crimes Related to Aggression Against Public Funds in Public Procurement

3.2.1. Embezzlement of Public Funds Due to Violation of Competition and Transparency Rules

This occurs when there is unjustified resort to purchase by invoices through the fragmentation of public procurements to avoid competition procedures (e.g., not publishing the competition announcement). Fragmentation is often linked to issuing false invoices by companies affiliated with the beneficiary companies.

3.2.2. Bribery of a Public Official in Public Procurement

Article 27 of Law No. 06-01 criminalizes the receipt of commissions. The material element consists of a public official receiving or attempting to receive a commission on the occasion of preparing, conducting negotiations, awarding, or executing a contract, procurement, or amendment on behalf of the state or its public law entities. The moral element requires general criminal intent (knowledge and will) (Farid Mezyani, 2014, p. 10; Hamza Khedri, 2012, p. 176).

4. Legal and Legislative Mechanisms to Reduce the Phenomenon of Corruption in Public Procurement

4.1. Legal Mechanisms to Combat Corruption in Public Procurement

4.1.1. Deterrent Procedures under Anti-Corruption Law No. 06-01

These include: transparency rules, fair competition, objective criteria (Article 9); publicity of information (Article 62 of Decree 15/274); prior preparation of participation and selection conditions; inclusion of an integrity declaration; objective and precise criteria for decision-making; all methods of appeal (Article 82 of the public procurement law); and severe penalties (Article 27: imprisonment of 10 to 20 years and a fine of DZD 1,000,000 to 2,000,000).

4.1.2. Deterrent Procedures under Decree 15/247 (amended by Law 23-12)

Articles 88 to 94 establish: a supervisory authority for a code of ethics and professional conduct; criminal prosecution for promises of rewards or privileges; conflict of interest rules; and blacklisting of economic operators involved in corruption.

4.2. Organizational and Digital Mechanisms to Combat Corruption in Public Procurement

4.2.1. Organizational Mechanisms

These include criminalization of acts aimed at offering promises or privileges to a public official; possibility of annulment or rescission of the procurement contract in case of proven corruption; and handling of conflicts of interest (Article 88 of Presidential Decree No. 15-247).

4.2.2. Digital Procedures: The Electronic Public Procurement Platform

A decision of February 4, 2026 (16 Sha'ban 1447 AH) defines the content and management procedures of the electronic public procurement portal. It aims to publish information related to procurement procedures, ensure free downloading of tender documents, electronic submission and exchange of bids, electronic signature, encryption, publication of lists of excluded operators, and secure digital archiving (Boumnad Hajra, 2025, p. 434; Mouden Maa El Ainine, 2024, p. 548; Naoui Ikram, 2025, p. 192). This implements Law No. 23-12.

4.2.3. Smart Contracts and Blockchain

Blockchain and smart contracts provide a secure, tamper-proof environment for recording all stages of the contracting process, reducing human intervention and strengthening digital oversight. Singapore and the UAE have implemented pilot models (Weingärtner et al., 2021, p. 85).

4.2.4. Participatory Auditing and the Role of Civil Society

Civil society participation (e.g., Transparência Brasil in Brazil) provides an additional channel for monitoring government activities and contractual practices, enhancing accountability (De Simone & Shah, 2012, p. 142).

4.2.5. Enhancing Financial Transparency

Publishing contract details, financial statements, costs, and any related gains on open digital platforms reduces information asymmetry and strengthens oversight (Ferwerda, Deleanu, & Unger, 2017, pp. 245-267). Northern European countries (Sweden, Denmark) have adopted strict financial disclosure policies.

5. Conclusão

Corruption in public procurement is a complex phenomenon where legal texts intersect with judicial practices. The Algerian legislator has established rules aimed at transparency and fair competition, but practical irregularities require effective oversight and judicial prosecution. Combating corruption requires the synergy of precise legal texts and resolute judicial proceedings to protect public funds and enhance trust in public administration and the national economy.

6. Recommendations

1. Clarify ambiguities in Presidential Decree No. 15-247 (especially Articles 52, 82, 136, 139, 174).
2. Specify the body competent to study consultation terms and conditions (Article 82).
3. Clarify the amicable settlement procedure and the concept of urgency in awarding procurement contracts.
4. Organize training courses for procurement officials.
5. Provide intensive training for members of tender opening and evaluation committees.
6. Simplify legal appeal procedures and ensure access to independent bodies.
7. Establish a secure channel for reporting violations to protect whistleblowers.
8. Require full disclosure of all procurement-related information.
9. Adopt clear and objective criteria for selecting economic operators.
10. Generalize the use of the electronic public procurement portal with electronic signature and encryption.
11. Create a secure digital archive to ensure review and accountability.
12. Mandate a code of ethics and integrity principles for public officials involved in procurement.

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