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**Review of implementation of the United Nations
Convention against Corruption**

Executive summary: Algeria

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Executive summary

Algeria

1. Introduction

1.1. Overview of the legal and institutional framework of Algeria in the context of implementation of the United Nations Convention against Corruption

Algeria is a Republic where the constitutional regime rests upon the principle of separation of powers. Algeria ratified the United Nations Convention against Corruption (“UNCAC”) on 19 April 2004 by Executive Order No. 04-128.

The president of the Republic is the Chief of the executive power and has the power to appoint the members of the Government after consulting the Prime Minister, who implements the program of the President and coordinates the actions of the Government.

The Legislative Power is exercised by a Parliament composed of two chambers: The People’s National Assembly, elected directly, and the Council of the Nation, elected indirectly by the members of Community People’s Assemblies and the People’s Assembly of Wilaya (Administrative Territorial Jurisdiction). One-third of the members of the Council of the Nation are appointed by the President.

The judiciary is the guardian of the fundamental rights of the citizens. The judge is subject only to the law and the Justice Council, and is protected against any form of pressure, intervention or manoeuvres intended to hinder independence.

The Algerian legal system follows a civil law tradition. The personal status and successions are the only matters governed by Islamic law.

Judicial organization is characterized, since 1996, by the duality of jurisdiction and it comprises, apart from the regular judicial jurisdictions (tribunal, court, supreme court), an administrative judicial jurisdiction (administrative court, State council) and a jurisdictional court (tribunal des conflits).

The Constitutional Council, before which a case may be submitted by the President of the Republic, the President of the People’s National Assembly, or the President of the Council of the Nation, ensures compliance with the Constitution and rules on the constitutionality of treaties, and legislative and statutory provisions.

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

After the 1960s, the specialization of the services in charge of combating economic crimes and corruption has always been prioritized both at the level of police and administrative investigations, and at the level of judicial investigations (investigation sections, economic brigades). Today there are, in addition to the classic judicial police services, several bodies and structures specializing in the detection, investigation and judicial handling of corruption affairs.

Detection:(1) The Financial Intelligence Unit (CTRF):

Created in 2002, and made operational in 2004, the CTRF is an administrative authority in the Ministry of Finance specialized in combating the financing of terrorism and money-laundering. Its mission includes: (a) receiving reports of suspicion related to any terrorism financing or money-laundering operation; (b) referring appropriate files to the territorially competent Public Prosecutor; and (c) implementing necessary procedures for the prevention and detection of any form of terrorism financing and money-laundering. The unit is also authorized to request from the bodies and persons designated by the law any document or information that may be necessary for the fulfilment of its mission.

(2) National Body for Preventing and Combating Corruption (ONPLC):

Created by Law No. 06-01 in 2006, the ONPLC became operational in January 2013, and is an independent administrative authority with legal personality and financial autonomy, reports to the President and is the main facilitator of the national anti-corruption strategy. It is also in charge of collecting and analysing corruption statistics and trends, and leads efforts in education, outreach and promotion of good governance practices. When appropriate, it also refers cases to the Ministry of Justice for prosecution.

(3) General Financial Inspectorate (IGF):

The IGF is a permanent control body under the direct authority of the Ministry of Finance. It is in charge of controlling public finance a posteriori by conducting audits and investigations that may lead to prosecution.

(4) The Court of Auditors:

The Court of Auditors is a higher institution for a posteriori control of the finances of the State, the local collectivities and public establishments. If, while exercising its control, the Court of Auditors learns of any facts constituting a criminal offence, it transmits the file to the territorially competent Attorney General for prosecution, and it informs the Minister of Justice.

Investigation:(1) The General Office for National Security (DGSN):

The fight against economic and financial crimes is part of mission assigned to the DGSN under the office for economic and financial affairs. This specialized central structure is in charge of monitoring and coordinating the actions of the judicial police, including in relation to corruption affairs. At the level of the security of each wilaya, the investigations of corruption are done by the economic and financial brigade.

(2) The National Gendarmerie:

As a central service for criminal investigations, there is a specialized office against economic and financial crimes. The actions of this service are deployed at the territorial level by specialized units.

(3) The Central Judicial Police Service (SCPJ) of the Military Security Services of the Ministry of National Defense:

The SCPJ has the mission of verifying infractions to criminal law and the code of military justice, gathering evidence and investigating the perpetrators until a formal investigation proceeding is opened.

(4) The Central Office for the Repression of Corruption (OCRC):

Established in 2011 by Decree No. 11-426, and made operational in March 2013, the OCRC is a central specialized investigative service in charge of the fight against corruption, including specialists of the judicial police, the gendarmerie and financial investigators, among others. The OCRC initiates the investigation of acts of corruption and refers appropriate cases to the Ministry of Justice and the Attorney General for prosecution.

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (articles 15, 16, 18, 21)

Bribery of public officials is made a criminal offence in the Algerian Criminal Code of 1966, Article 119. The LPLCC redefined this offence to ensure compliance with the provisions of the UNCAC. Article 25 of the LPLCC sets forth a definition of “public official” that tracks precisely the language of Article 2 of the UNCAC, and includes a catch-all provision that applies to persons “treated” as public officials by legislation or regulations. Article 25 of the LPLCC differentiates active and passive bribery, following the language of the UNCAC.

Bribery of foreign public officials is addressed in Article 28 of the LPLCC, and follows the language of the UNCAC for both active and passive bribery.

Article 32 of the LPLCC makes active and passive trading in influence a criminal offence and tracks the language of Article 18 of the UNCAC.

Active and passive bribery in the private sector is made criminal under Article 32 of the LPLCC. It is notable that the Article goes beyond the provisions of the UNCAC by eliminating the requirement that the act take place “in the course of economic, financial or commercial activities.”

Money-laundering, concealment (articles 23, 24)

Law 05-01 of 6 February 2005, amended by ordinance 12-02 of 13 February 2012, addresses money-laundering and the financing of terrorism in both criminal and preventive aspects. The enforcement component is also addressed by the Criminal Code (Article 389 bis to 389 bis 7) which defines the constituent elements of the laundering of funds, including conversion, transfer, concealment, acquisition, possession and use of property or proceeds of crime. These provisions also make criminal conspiracy to commit, and aiding and abetting the commission of, money-laundering. Article 42 of the LPLCC cross-applies the general money-laundering offence to corruption offences.

A conviction for money-laundering may result in prison sentence of five to ten years, and commission by an organized criminal group or a person using facilities provided by his or her professional activity results in aggravated penalties

of ten to twenty years. In addition, all laundered funds may be confiscated and forfeited with due consideration for the rights of bona fide third parties.

Predicate offences are not enumerated so as to maximize the scope of the money-laundering provisions, although mere infractions (contraventions) are excluded. Therefore, all corruption crimes in the LPLCC count as predicate offences. Algeria reported that offences committed abroad count as predicate offences if they would constitute offences in Algeria. A person can be convicted of both money-laundering and the underlying offence.

Algeria officially furnished copies of its money-laundering legislation to the Secretary-General of the United Nations on 29 November 2012.

Criminal concealment is addressed under Article 43 of the LPLCC, and meets the requirements of the Convention.

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

Article 29 of the LPLCC makes it a crime for a public official to misappropriate in any way property, funds or securities entrusted to him or her. This article applies broadly to public officials who handle cash transactions with the public as well as high-level public officials who are involved in complex embezzlement schemes.

Article 33 of the LPLCC makes abuse of functions a crime for any public official who performs or fails to perform an official act for the purpose of obtaining an undue advantage for himself or herself, another person or an entity.

Article 37 of the LPLCC makes it a criminal offence for a public official, who bears the burden of proof, to be unable to reasonably explain a substantial increase in assets relative to his or her income, and states that this is considered to be a continuing offence. The same article also makes it a crime for another person to assist in the concealment of such assets. Articles 4, 5 and 6 set forth the requirements for asset disclosures by certain public officials. It is notable that Article 36 makes it a criminal offence for a public official required to do so to fail to declare assets or provide an incomplete disclosure.

Article 41 of the LPLCC makes embezzlement of property in the private sector a criminal offence, and follows the language of Article 22 of the UNCAC.

Obstruction of justice (article 25)

Article 236 of the Criminal Code makes it a crime of general applicability to bribe, pressure, threaten or attack anyone, including a witness in a criminal case, to make a false statement, which includes the production of evidence. In addition, Article 44 of the LPLCC applies specifically to corruption offences and makes it a crime to use physical force, threats, intimidation or offers of an undue advantage to obtain false testimony, prevent testimony or produce false evidence related to any corruption offence.

Article 44 of the LPLCC makes it a crime to use physical force, threats or intimidation to interfere with the course of an investigation for any corruption offence. This article applies beyond the requirements of the UNCAC to any person involved in the investigation, not only justice and law enforcement officials.

Liability of legal persons (article 26)

Under Article 51 bis 1 of the Criminal Code, legal persons are liable for offences committed on their behalf by their organs or legal representatives. This principle of liability is confirmed specifically for corruption offences by Article 53 of the LPLCC. Such liability does not prejudice the criminal liability of natural persons who commit the same offence. Punishment includes fines or other monetary penalties, and can include dissolution, exclusion from public contracts and/or asset confiscation.

Participation and attempt (article 27)

Articles 41 to 43 of the Criminal Code criminalize participation in, or incitement to commit, an offence and impose the same penalty as for the principal. Article 52 of the LPLCC makes these provisions specifically applicable to corruption offences. Attempt is similarly criminalized under both the Criminal Code and Article 52-2 of the LPLCC. Preparation to commit a criminal offence is not criminalized except to the extent that it constitutes a commencement of the crime or an attempt.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

Under the LPLCC, punishment is imposed in proportion with the gravity of the offence, including ranges for both imprisonment and fines, and certain aggravating factors may apply, such as the status of the public official or the extent of the corruption activity.

Among public officials, only members of Parliament are granted immunity from prosecution during their term of service under Articles 109 and 110 of the Constitution, which can be waived by the member or by a vote of Parliament. Members of the government, magistrates and the judicial police are not entitled to immunity, but are entitled to a change of venue of prosecution.

Detailed provisions in the Criminal Procedure Code (Articles 30, 31 and 36) define the discretionary power and autonomy of the public prosecutor to pursue corruption cases. This discretion is primarily focused on the elements of the offence without regard to the sufficiency of the evidence at the beginning of an investigation or the size of the loss. In addition, the Criminal Procedure Code sets forth measures to be taken with regard to the detention and conditional release of persons being prosecuted, taking into account the need to ensure public safety and the accused's appearance at subsequent proceedings (Articles 124, 126, 129 and 132). Persons who are found guilty of corruption offences are generally excluded from eligibility for pardon (Presidential Decree No. 12-277) and are not entitled to parole except under extraordinary circumstances, such as poor health.

Specific provisions exist in the laws of Algeria regarding the suspension, discipline and potential dismissal of magistrates, bailiffs and notaries for criminal offences, including corruption offences. In addition, Article 173 of Ordinance 06-03 provides for the immediate suspension of any public official who is accused of committing any serious offence, including corruption offences. Article 22 of Presidential Decree No. 11-426 empowers the Central Office for the Repression of Corruption to recommend any precautionary administrative measure when a public official is accused of acts of corruption. Article 50 of the LPLCC provides a range of

measures, under Article 9 bis 1 of the Criminal Code, that can be taken following conviction of a corruption offence, including disqualification from holding public office. Articles 676 to 693 of the Criminal Procedure Code provide for means to reintegrate convicted person into society following their term of incarceration, including training, education and employment assistance.

Regarding cooperation with law enforcement, Article 49(2) of the LPLCC permits the maximum penalty to be halved for any person who facilitates the arrest of one or more perpetrators involved in the offence. Article 49(1) of the LPLCC permits the application of immunity from prosecution to any person who reveals a corruption offence to law enforcement before the beginning of an investigation.

Protection of witnesses and reporting persons (articles 32, 33)

Although Article 45 of the LPLCC makes it a crime to retaliate against, intimidate or threaten witnesses, experts, victims and their families, Algeria reported that its laws do not contemplate specific measures of protection, relocation or shielded testimony. However, Algeria reported that witness protection measures are currently under consideration and may be adopted in the future. Articles 69 bis, 72, 74 and 353 of the Criminal Procedure Code permit victims and their counsel to be heard by the court at any stage in the proceedings, and allow for the victim to file as a plaintiff in any legal proceeding against the accused.

With regard to persons reporting corruption, and in addition to the protections provided in Article 45 of the LPLCC, Article 73 of Law No. 90-11 of the Labor Code does not include reporting acts of corruption as a reason for which an employer can execute a disciplinary termination. A working group is currently developing additional measures to ensure the protection of reporting persons.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

The legal mechanism that permits the court, upon conviction, to order the confiscation of items acquired as a result of the offence or used in the commission of the offence, is set forth in Article 15 and 15 bis 1 of the Criminal Code. In addition, this mechanism is further elaborated for corruption cases in Article 51 of the LPLCC, which permits freezing, confiscation and forfeiture of the criminal proceeds or property, or their equivalent in value. This is without prejudice to the rights of bona fide third parties, which are specifically protected in Article 51. The accused is only required to demonstrate the lawful origin of frozen or targeted assets in illicit enrichment cases and not in other corruption cases.

Article 389 of the Criminal Code, regarding confiscation procedures in money-laundering cases, addresses converted and intermingled property, allowing for seizure and forfeiture up to the proceeds of the criminal activity. When the criminal assets cannot be located, the court is permitted to issue a pecuniary penalty against a convicted person in the amount of those assets.

Although there is no specialized body to regulate the administration of property frozen, seized or confiscated, procedures are in place to regulate how certain items are to be stored or disposed of, including through deposit in a secure account, sequestration, auction and sale, and destruction. The property in questions falls under the jurisdiction of the judiciary, which appoints an administrator to oversee and maintain the property. Article 51 of the LPLCC provides for the restitution, on

behalf of the victims, of any misappropriated assets or of the value of the interest or the gain obtained, whether they remained in their state or were transformed into any other form.

Article 158 of the Law on Money and Credit specifically prohibits a bank or other financial institutions from refusing to comply with a judicial order or subpoena in criminal proceedings based on professional secrecy. The money-laundering and terrorist financing legislation contains a similar provision. Article 21 of the LPLCC makes the refusal to comply with such orders a crime of obstruction of justice.

Statute of limitations; criminal record (articles 29, 41)

The general limitations period in Algeria to bring prosecution is ten years for crimes, three years for offences and two years for misdemeanours. However, Article 8 bis of the Criminal Procedure Code exempts from the limitations period cases of bribery and the misappropriation of funds. The limitations period is also waived under Article 54 of the LPLCC in corruption cases where the proceeds of the criminal activity have been transferred outside of the territory of Algeria. Accused persons who abscond from the jurisdiction may be tried in absentia and later sentenced upon their arrest.

Algeria reported that most of its agreements regarding mutual legal assistance provide for the reciprocal exchange of information relating to criminal convictions for the purpose of prosecution or sentencing. This information may be taken into account for any investigation related to corruption cases.

Jurisdiction (article 42)

Article 3 of the Criminal Code establishes jurisdiction for offences committed in Algeria, and also includes cases where the crime is committed abroad, if this crime is under the jurisdiction of Algerian law enforcement according to the Criminal Procedure Code. Articles 590 and 591 of the Criminal Procedure Code extend jurisdiction to vessels and aircraft bearing the Algerian flag, and includes foreign vessels and aircraft if the accused is Algerian or if the vessel or aircraft arrives in Algeria after the crime has been committed.

Articles 582 to 587 of the Criminal Procedure Code extend jurisdiction to offences committed abroad by Algerian citizens, without regard to the nationality of the victim, if the act would constitute an offence under Algerian law. This provision is applicable even if the accused person obtains Algerian citizenship after the commission of the offence. Article 585 permits jurisdiction over a person in Algeria who acted as an accessory to an offence committed abroad. When the perpetrator of the offence is a foreign national, Algerian courts may retain jurisdiction over the case if the corruption offence is related to any of the offences contained in Article 588 of the Criminal Procedure Code, which includes offences against state security and counterfeiting currency. For purposes of consultation in such cases, Algeria and France, its primary assistance partner, established liaison magistrates to facilitate and expedite communication.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

In addition to the potential for exclusion from public contracts discussed above, which can be either permanent or time-limited, Article 55 of the LPLCC permits

courts to annul any contract, transaction, license, concession or authorization obtained through an act of corruption. In addition, Presidential Decree 10-236 of 7 October 2010, regulating public contracts, permits blacklisting of persons or entities from entering into public contracts and permits their termination.

Article 124 of the Civil Code permits a person to bring a lawsuit for a claim of damages caused based on a wrongful act committed by another, which would include acts of corruption. The award of civil damages is without prejudice to the potential imposition of criminal penalties.

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

As detailed above, Algeria has several specialized offices that work in the area of anti-corruption and law enforcement.

Coordination among oversight institutions is ongoing, as well as between these institutions and judicial and investigation agencies, to promote the prevention, detection and investigation of corruption. Reporting relevant information relating to criminal activity to law enforcement by public servants is a legal obligation under Article 32 of the Criminal Procedure Code.

Article 19 of the Money Laundering Law requires banks and financial institutions to report cases of suspected money-laundering to law enforcement, and provides mechanisms for doing so. Algeria regularly convenes information seminars for private sector stakeholders to raise awareness of reporting obligations and mechanisms. Article 57 of the LPLCC makes it a crime for a person, who by virtue of his or her position or profession becomes aware of a corruption offence, to fail to report the offence to law enforcement.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- Detailed provisions for investigating and prosecuting high-level officials accused of corruption.
- Broad application of obstruction of justice statute to apply to officials in the criminal justice system.
- Waiver of statute of limitations permitted in corruption cases where the proceeds of the criminal activity have been transferred abroad.
- Establishment of liaison magistrates between primary mutual legal assistance partners to facilitate consultation and communication in jurisdiction matters.

2.3. Challenges in implementation, where applicable

The following steps could further strengthen existing anti-corruption measures:

- Continue to implement measures to collect and review asset disclosures submitted by public officials with a view to countering illicit enrichment.
- Continue to consider the adoption and implementation of measures to strengthen the protection of witnesses, experts and victims in relation to corruption cases.

- Continue to consider the adoption and implementation of measures to strengthen the protection of persons reporting corruption from workplace retaliation or other unjustified treatment.

2.4. Technical assistance needs identified to improve implementation of the Convention

- Article 23, money-laundering, with regard to interagency coordination, training in the analysis of suspicious activity reports and summaries of best practices.
- Support to the OCRC in the development and implementation of training programmes with regard to corruption and financial crimes investigations.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (articles 44, 45, 47)

In Algeria, extradition is provided for in the Criminal Procedure Code, and also in bilateral agreements to which Algeria is a party. Algeria has signed 33 bilateral Conventions on the subject of extradition and it is also a party to the African Union Convention on Preventing and Combating Corruption and the Riyadh Arab Agreement for Judicial Cooperation, which includes a chapter on extradition. Since 2010, it has also been a party to the Arab Convention against Corruption.

Algeria does not authorize the extradition of its nationals. In other cases, double incrimination is a prerequisite to grant extradition. In addition, the offence shall be punishable with no less than two years. It must be noted that all UNCAC offences are punishable under Algerian law with at least two years of prison; therefore, all of them are extraditable offences.

None of the offences established in accordance with the UNCAC are considered political offences, and are thus extraditable offences. Furthermore, Algeria does not authorize extradition based on political motives. With regard to extradition requests related to fiscal matters, Algeria directly applies article 44, paragraph 16 of UNCAC and it doesn't deny extradition requests for the sole reason of being based on fiscal matters.

Regarding the transfer of sentenced persons, given that they are contemplated in certain regional and bilateral conventions to which Algeria is a party, they are not covered by the internal laws of Algeria.

In addition, the Algerian Criminal Procedure Code guarantees fair treatment to any person of whom an extradition request has been made, throughout the entire procedure.

Also, certain bilateral judicial conventions signed by Algeria contemplate the refusal of an extradition request when it is based on motives of a discriminatory nature, such as the race, sex, language, religion or the nationality of the person, even if no domestic provision covers this requisite.

Last, while the transfer of criminal proceedings is not contemplated in the internal legislation of Algeria, it is nonetheless established in article 22 of the Arab Convention against Corruption, when it is in the interest of the proper administration of justice.

Mutual legal assistance (article 46)

While certain provisions of the UNCAC are not considered in the internal laws of Algeria, the law for the prevention and fight against corruption, the Criminal Procedure Code and the law on money-laundering and the fight against terrorism contemplate mutual legal assistance subject to reciprocity. In addition, certain bilateral conventions to which Algeria is a party contemplate the broadest mutual legal assistance possible.

The Ministry of Justice is appointed as the central authority in all bilateral mutual legal assistance conventions. In the absence of a bilateral agreement, the requests are sent by the diplomatic channel and it is the Ministry of Justice who transmits them to the competent judicial authorities.

Mutual legal assistance may be agreed in certain cases without regard to the principle of double incrimination, except when it involves coercive actions. Bank secrecy and fiscal matters, when related to acts of corruption, are not grounds to deny a mutual legal assistance request. However, mutual legal assistance requests may be denied if it may endanger the sovereignty, security, the public order, or any other essential interests of Algeria. It may also be denied if it is based on considerations related to race, religion, sex, nationality, language, or personal or social conditions.

The mutual legal assistance contemplated in the internal laws of Algeria and in many bilateral and regional agreements to which Algeria is a party, consists on taking testimonies or statements, providing evidentiary items, tracing and identifying persons, transferring detained persons as witnesses, the execution of freezing or seizure orders, the freezing, seizure and confiscation and the disposal of the proceeds of crime and the recovery of assets.

In addition, under its national laws and the conventional standards to which Algeria is a party, the latter may transmit information on any UNCAC offence spontaneously. Certain mutual legal assistance conventions, to which Algeria is a party, additionally provide that any information and evidence provided under a legal assistance request shall remain confidential except when otherwise mutually agreed by the parties.

Under the same principle, any information received by the requested State shall not be used for any purposes different to those of the legal assistance request, except when otherwise mutually agreed by the parties. As a general rule, any information on the public domain may be used for other purposes, and any exculpatory evidence may be revealed.

Last, the costs of the execution of the legal assistance request are generally assumed by the requesting State, except when otherwise mutually agreed by the parties.

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

In order to reinforce international cooperation, Algeria has regulatory norms that establish the exchange of information for the purposes of law enforcement. It has also signed many bilateral agreements that contemplate the exchange of information upon request and the exchange of personnel in order to share best practices. Algeria is also a member of Interpol and its financial processing unit has completed 15 agreements for the exchange of financial information on money-laundering and terrorism financing. Fifteen financial processing units have also completed administrative cooperation agreements with Algeria.

The Criminal Procedure Code and the Law for the fight against Money Laundering authorize the use of special investigative techniques in organized crime and corruption cases.

3.2. Successes and good practices

Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of the UNCAC:

- Algeria has ratified a large number of bilateral, regional, multilateral and international conventions.
- Algeria directly applies the provisions of UNCAC in the absence of national laws.

3.3. Challenges in implementation, where applicable

The following points could serve as a framework to strengthen and consolidate the actions taken by Algeria to combat corruption:

- Please consider transposing to the internal laws certain UNCAC provisions related to mutual legal assistance and extradition for the adoption of legislative measures that have already been initiated.

3.4. Technical assistance needs identified to improve implementation of the Convention

- Capacity-building in the fields of legal assistance and international financial investigations.