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عنوان المداخلة:

“Using corporate governance system against corruption cases”

-The Algerian initiatives -

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Abstract:

There are a lot of discussions devoted to the understanding of corruption. Different authors express different approaches in defining corporate governance principles, in this paper we are going to describe the concept of corruption in business life, define the corporate governance as a control system and its principles, and find the role of corporate governance against corruption cases; finally we are going to drop the theoretical study on the case of Algeria.

Key words: Corporate governance, Corruption.

Resume:

Il y a beaucoup de discussions consacrées à l'arrangement de la corruption, d'autres expriment différentes approches en définissant les principes du gouvernement des entreprises, dans cette étude nous allons décrire les pratiques de corruption dans le monde des affaires, définir le gouvernement des entreprises comme un système de contrôle et ses principes, et trouver le rôle du gouvernement pour lutter contre la corruption, finalement nous allons traiter le cas de l'Algérie.

Mots clés : Le gouvernement des entreprises, la corruption.

Introduction:

Corruption takes place when public officials break the law in pursuit of their private interest. The most odious forms of corruption include bribery and extortion, but it can also include other forms such as the allocation of public resources to favored clients for political benefit. Clearly, corruption is a cost to developing countries in many different ways, including the subversion of development plans, the diversion of resources that may have been invested productively, as well as disrupting the transparent and normal operation of markets and thereby creating uncertainty for investors.

In recent years, there has been a much more concerted focus on corruption coming from international agencies based on an integrated analysis of the role of governance in improving the prospects of development in developing countries. The new analysis of corruption forms part of an integrated analysis of good governance. The problematic of our research is;

“How can we use corporate governance system against corruption cases?”

In this paper we are going to:

- Describe the concept of corruption in business life ,
- Define corporate governance system and its principles,
- Find the relation between corporate governance system and corruption cases,
- Finally we are going to drop the theoretical study on the case of “Algeria”.

I. Challenges of corruption in business life:

1- Definitions of corruption:

Corrupt behavior is a type of opportunistic behavior by an agent in which the agent uses the resources of the principal not to accomplish the goals of the principal but for the agent's own purposes. Here the principal is a person or organization owning property that it wishes to use in its interests. The agent is a person hired to manage the property of the principal in order to advance the principal's goals more effectively. Corrupt behavior is the intentional betrayal of the principal's interests by the agent for the agent's own benefit.

The principal is the entity that has the authority to grant and approve projects – a government agency such as the ministry of industry; the agent, is the intermediary who represents the principal and is actually responsible for granting the permission on behalf of the principal – a civil servant; and the client, a company or an individual who seeks a grant or permit for projects or investments – a business entity¹. See **Figure 1**.

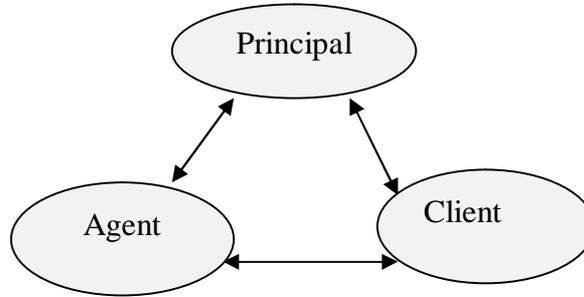


Figure (01): Key Actors in International Business Corruption.

Source: Anti-Corruption Trust of Southern Africa (ACT-Southern Africa): “*Corruption and its common forms*”, Democracy Centre Corner Prinsloo and Visagie , Streets Pretoria, South Africa,2007, p1.

Website: http://www.actsonthernafrica.org/ACT_Series%201

The difficulty with understanding corruption lies in the fact it not only covers many different types, but also has a divergent number of definitions that have been put forth by different agencies and researchers.

Table (01) presents the five most commonly used definitions of corruption and the name of the agencies that define it²



Table (01): Definitions of corruption,

International Organization	Definition Of Corruption
The United Nations (UN)	“Commission or Omission of an act in the performance of or in connection with one’s duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted”.
Organization for Economic Cooperation and Development (OECD)	“The offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution”.
Transparency International (TI)	“The misuse of entrusted power for private gain”. Transparency International further differentiates corruption “according to rule” or “against the rule”. In the first instance, the definition covers all the areas in which the receiver is required by law to receive some form of compensation (bribe), and in the second instance, the receiver is prohibited from providing some of these services and therefore is not entitled to any compensation (bribe).
World Bank and Asian Development Bank (ADB)	“Corruption involves behavior on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed”.
Law Library’s Lexicon	“An act done with intent to give some advantage inconsistent with official duty and the rights of others. It includes bribery, but is more comprehensive; because an act may be corruptly done, though the advantage to be derived from it be not offered by another”.
Summarized definition based on the above	“When a public agent or person in power uses his or her position to gain for themselves and/or those close to them by acting improperly or misusing their given powers and thereby compromising the trust that is entrusted in them and in so doing gives an unfair advantage to the person or persons who initiated the gift or provided the said gains”.

Source: James P. Neelankavil: International Business Corruption: “A Framework of Causes, Effects, and Prescriptions”, paper presented, Zarb School of Business Hofstra University, p4.

Website: <http://www.aueb.gr/deos/EIBA2002.files/PAPERS/W74.pdf>

2- Types of corruption:

Corruption can be classified as business corruption and political corruption³. **Table (02)** presents the different types of corruption and some examples of each type:



Type of Corruption	Examples	Predominantly Found in:
Business corruption	<ul style="list-style-type: none">* Bribing officials* Accounting irregularities* Tax evasion* Insider trading* Money laundering* Embezzlement* Falsifying documents (research data)	Most countries
Political corruption	<ul style="list-style-type: none">* Voting irregularities* Holding on to power against the will of the people* Nepotism and cronyism* Rule of the few	Mostly in developing and less developed countries

Table (02): Types of Corruption

Source: James P. Neelankavil : “*International Business Corruption: A Framework of Causes, Effects, and Prescriptions: A Framework of Causes, Effects, and Prescriptions*”, Op Cit, p:3

3- Causes and consequences of corruption:

There is currently a wave of empirical investigations on the causes and consequences of corruption. These investigations by and large relate to cross-country analyses, based on comparative assessments of the extent of corruption in various countries. Such assessments are sometimes compiled by agencies to determine country risks and the data gathered are sold to investors. Other sources are surveys of the general public or elite businesspeople.

a- Causes of corruption:

Causes of corruption can be classified into three main areas – environmental, individual, and firm related⁴. **Table (03)** presents the different causes of corruption:



Causes	Examples
a. Environmental variables:	<ul style="list-style-type: none">• Lack of a clear distinction between what is considered 'public' and what is considered 'private.'• Excessive administrative and discretionary power concentrated among a few.• Lack of transparency in the handling of public finances.• Lack of independent control agencies.• Absence of dependable legal machinery for preventing arbitrary application of regulations and laws.• Weak public institutions.• Over regulations.• Unclear regulations.• Lack of economic development.• Lack of competition.• Income inequalities.
b. Individual variables:	<ul style="list-style-type: none">• Greed.• Integrity/honesty• Wages and salaries• To maintain power
c. International firm variables:	<ul style="list-style-type: none">• Market expansion• Profit maximization• Low cost labor

Table (03): Causes of corruption

Source: prepared by researchers.

Generally, confusing bureaucratic rules, weak enforcement of existing laws, top-level corruption, and multi-level corruption are all factors that contribute a great deal to illegal business activities and bribes. This is especially true among developing countries as they are often beset by many of these forces.

Transparency International has found that developing countries suffer from 'systematic' corruption. It is like an epidemic and it infects every aspect of governance. This may be the reason that in most studies on corruption, developing countries tend to be the most corrupt from a business point of view. Corruption in some of these countries is so pervasive that the populace is hardly surprised to learn of corruption among its senior administrators and political leaders.

The most corrupt countries in the world according Transparency International's 'Corruption Perception Index' (CPI) for 2010 are presented in figure (02). The CPI is a 'poll of polls' and has been prepared using seven sources. The sources of the CPI include World Competitiveness Yearbook, Gallup International, and DRI/McGraw-Hill Global Risk Service. Because these sources provide similar assessments, they may be considered an indicator of a real world phenomenon. Over the years, TI has successfully publicized the problem of international business corruption. Hence, more and more people are aware this issue⁵.

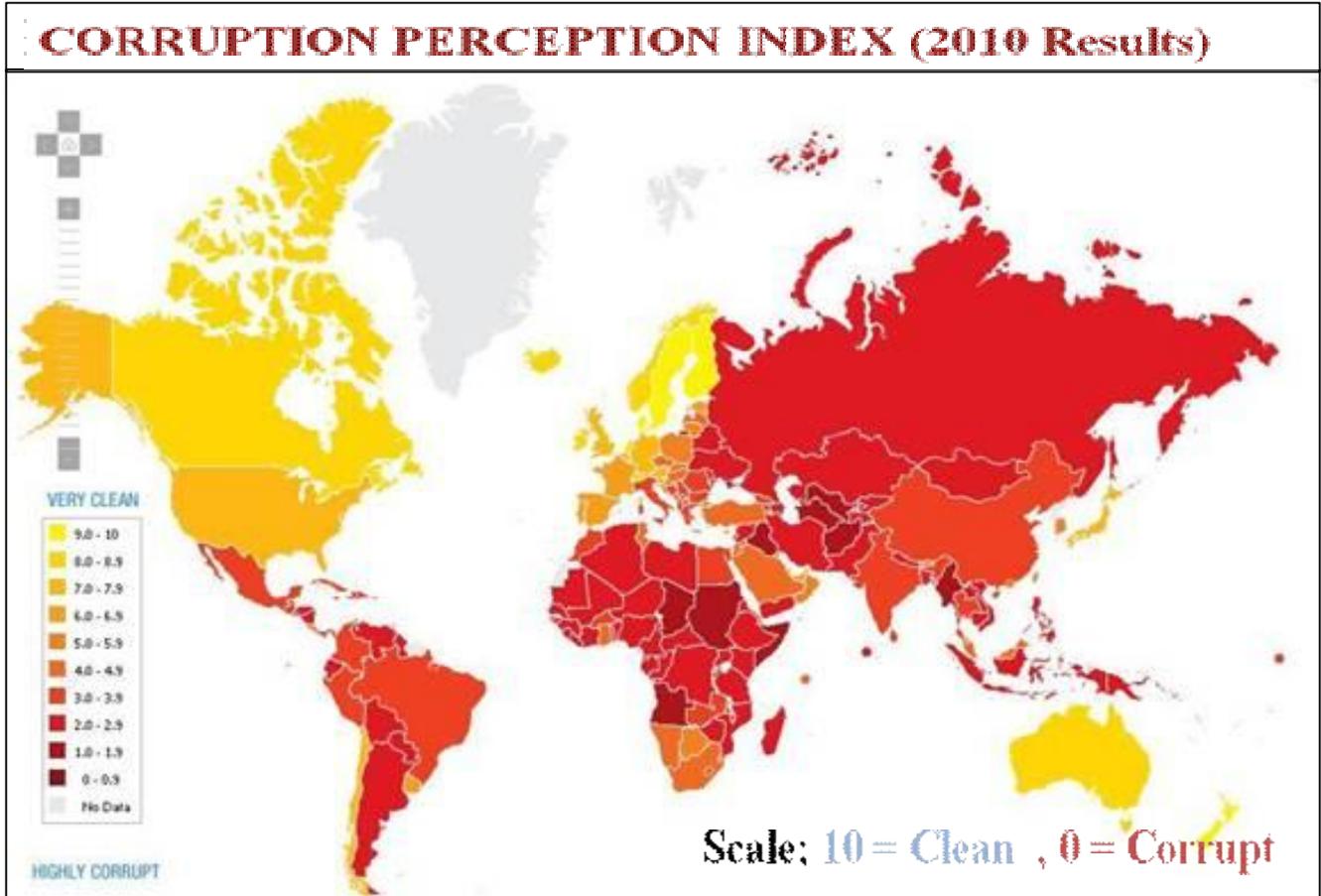


Figure (02): The Most Corrupt Countries of the World in 2010.

Source: James P. Neelankavil: “*International Business Corruption: A Framework of Causes, Effects, and Prescriptions*”, op cit, p: 6

The ten most corrupt countries of the world (CPI 2010 score):

Rank	Country	CPI 2010 Score	CPI 2009 Score
168	Angola	1.9	1.9
168	Equatorial Guinea	1.9	1.8
170	Burundi	1.8	1.8
171	Chad	1.7	1.6
172	Sudan	1.6	1.5
172	Turkmenistan	1.6	1.8
172	Uzbekistan	1.6	1.7
175	Iraq	1.5	1.5
176	Afghanistan	1.4	1.3
176	Burma	1.4	1.4
178	Somalia	1.1	1.1

Table (04): The ten most corrupt countries of the world (CPI 2010 score)



Source: Richard H. Girgenti, J.D & Timothy P.Hedley, Ph.D: “*Managing the risk of fraud and misconduct*”, MC GRAW HILL publication, United States, 2011, P: 41.

The Ten Least Corrupt Countries of the World (CPI 2010 Score):

Rank	Country	CPI 2010 Score	CPI 2009 Score
1	Danemark	9.3	9.3
1	New Zealand	9.3	9.4
1	Singapore	9.3	9.2
4	Finland	9.2	8.9
4	Sweden	9.2	9.2
6	Canada	8.9	8.7
7	Netherlands	8.8	8.9
8	Australia	8.7	8.7
8	Switzerland	8.7	9
10	Norway	8.6	8.6

Table (05): The ten Least corrupt countries of the world (CPI 2010 score)

Source: Richard H. Girgenti, J.D & Timothy P.Hedley, Ph.D: “*Managing the risk of fraud and misconduct*”, Op Cit, P: 41.

b- The consequences of corruption:

There is widespread recognition of the negative consequences of bribery and corruption internationally, regionally and domestically. It is generally recognized that corruption has the following effects:

- It affects the economy by undermining growth and development through hindering local investment;
- It affects the quality and composition of public expenditure projects;
- It undermines the fiscus through non-optimal collection of taxes and revenues as the unofficial underground economy flourishes;
- It distorts policy and resource allocations, thereby increasing inefficiency;
- It undermines trust and credibility in institutions and procedures;
- It threatens human security through linkages with drugs and organized crime,
- It can create social and political unrest if it goes unchecked.
- It takes its greatest toll on the poor; and bites into the moral fiber of society.⁶

II. Corporate governance and corruption :

In a wide sense, “corporate governance” covers the organization of the control and management of a company. The term is also used in a narrower sense, to refer to the relationship between shareholders and management, and in particular the operation of the company’s board.

1. Definitions of Corporate Governance:



The definition of corporate governance most widely used is "The system by which companies are directed and controlled"⁵ (Cadbury Committee, 1992). More specifically it is the framework by which the various stakeholder interests are balanced, or, as the International Finance Corporation (IFC states), "the relationships among the management, Board of Directors, controlling shareholders, minority shareholders and other stakeholders".

The **OECD** (Organization for Economic Cooperation and Development) Principles of Corporate Governance states: "Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined."⁷

It is important for companies to develop an effective model of corporate governance that will enable them to take advantage of opportunities that may arise, whilst at the same time instituting the necessary controls over the associated risks. The rules and standards of corporate governance are considered to be important factors in the creation of prosperous market economies.

Corporate governance consists of a set of rules and conduct in accordance with which companies are managed and controlled. It usually involves the mechanisms by means of which company manager's answer for the due and proper running and performance of the company. The company represents the assets of all the shareholders and in the long term the interests of the company necessarily converge with those of its shareholders.⁸

Good corporate governance revolves around the following aspects:

- To achieve a proper balance between entrepreneurship and control, as well as between
- Performance and compliance with the rules of corporate governance ;
- To facilitate performance-driven management, but also to provide mechanisms for management and leadership, whilst ensuring integrity and transparency in the decision-making process ;
- To determine the company's objectives, the means through which these are to be attained
- And how performance is to be evaluated. In this respect, corporate governance is intended to encourage and enable the board and management to pursue objectives that are in the best interests of the company, its shareholders and other interested parties, such as the company's customers and personnel.

“Control” implies effective evaluation of performance, careful management of potential risks, and proper supervision of agreed procedures and processes.

In this respect the emphasis here is on monitoring whether robust control systems are operating effectively, whether potential conflicts of interest are being managed and whether sufficient checks are in place to prevent abuses of power that may allow personal interests to prevail over corporate interests⁹.

2. The Principles of Corporate Governance:



The general principles form the pillars upon which good corporate governance should rest. These principles are sufficiently broad for all companies to be able to adhere to them, whatever their particular features.

The recommendations describe how the principles can be properly applied. Companies are expected to comply with the recommendations or explain why they are departing from them, taking account of their specific situation. Although listed companies are expected to comply with the recommendations for the Ten Principles of Corporate Governance most of the time, it is acknowledged that special circumstances may justify a departure from certain recommendations. These principles are :

- 1) Ensuring the Basis for an Effective Corporate Governance Framework ;
- 2) Rights of Shareholders,
- 3) Equitable Treatment of Shareholders,
- 4) Role of Stakeholders,
- 5) Disclosure and Transparency,
- 6) Responsibilities of the Board.

3. Strengthening Corporate Governance against Corruption cases:

The collapse of global financial markets in September 2008 has ignited a debate on what caused their quick undoing. As captured in the comments of the OECD Secretary-General, there is a growing sentiment that poor corporate governance is one of the forces to blame. It allowed the transparency, accountability and integrity of companies to be compromised and for abuses to go unchecked, particularly on matters of Transparency International (TI) considers strong corporate governance systems a vital component of company efforts to reinforce the right incentives and practices and to address the corrupt practices they confront. As empirical evidence has shown, without good corporate governance systems in place, the overall impact of anti-corruption initiatives is reduced and the growth of companies — and the countries where they operate — is undermined.

High profile cases of corporate mismanagement or employee misconduct, from Siemens in Germany and UBS in Switzerland to IBM in Argentina and Samsung in South Korea, demonstrate what can happen when the tenets of corporate governance — transparency, accountability and integrity — are absent, inadequate or abused. Despite the benefits of corporate governance, insufficient work has been done to realise its potential as a bulwark against abuses and for preventing and managing a company's corruption risks. This policy paper sets forth TI's recommendations for an effective agenda of action and reform. It offers a timely input into the search for medium-term solutions for rebuilding the markets, economies and confidence which the current global crisis has eroded.

a- Why is corporate governance critical?

Good corporate governance serves as a framework to secure investor confidence, enhance access to capital markets, promote growth and strengthen economies. By providing for clear 'rules of the game' and 'checks and balances', corporate governance systems help to lower company costs (for capital and production) and increase economic output. Such characteristics make corporate governance necessary,



beneficial and useful for all sectors and types of companies whether they are multinationals, state-owned enterprises, domestic firms, small businesses or family-owned operations.

Although corporate governance frameworks differ from country to country based on the legal, regulatory and institutional environment, they have a common aim: to define clearly the rights, responsibilities and behaviors that are required of a company's owners (the 'principals') and managers (the 'agents') for the business to operate successfully. 'Owners' include any group or individual holding an equity stake in the business, usually in the form of shares. 'Managers' comprise all persons who have been extended the right to run the business on behalf of the owners. These individuals can be company executives or members of the board of directors, who are either appointed or elected to their position.

When breaches in corporate governance happen, they may be systemic, result from negligence or reflect the actions of rogue employees. When systemic failures occur as have characterized the global crisis, they are a strong signal that the balance of interests which a good corporate governance structure should ensure — between owners (including stakeholders) and management (including the board of directors) — is out of equilibrium.¹⁰

b- What is covered by corporate governance?

Corporate governance typically addresses measures to manage and reduce financial and operational risks by building the integrity, transparency and accountability of a company's management toward different actors at varying levels within a company: board members, managers, employees and shareholders. Key issues include:

Shareholders' rights protection of owners' rights and facilitation of their participation in company meetings including voting on changes to the company's structure (i.e. 'articles of incorporation') and key governance decisions (i.e. board membership and the remuneration of its members).

Stakeholders' rights recognition of the company's impact on broader interest groups such as employees, customers and communities.

Financial transparency disclosure of the company's financial and operating results, the remuneration policy for board members and senior executives, and all related information needed to evaluate the performance of the company and management.

Proper accounting duty to record accurately all business transactions (to avoid fictitious entries and off-the-book accounts), ensure sound internal controls (including the safe custody over assets) and employ proper accounting principles (when valuing company assets and liabilities). Often external assurances can help to certify the validity of the financial information being provided by having an independent party assess the results.

Information sharing obligation to provide stakeholders with reliable, accurate and timely information about what the company is doing and to use these exchanges to reinforce and ensure the right types of behavior on the part of the business.

Oversight creation of board and organisational structures (e.g. committees and chairs) that ensure persons are responsible for and evaluate different dimensions of a company's accountability and operations.

Review production of reports on the implementation of policies and systems (and any remedial actions that have been taken when necessary).



While there are various institutional arrangements that can be adopted for corporate governance, a company's board of directors is viewed as the framework's centerpiece. The board takes leadership on strategic and key operational issues and is considered as having the 'duty of care' for a company by setting the 'tone at the top' and promoting a corporate governance framework that covers all levels of the organisation and types of risks.

The regulatory support that anchors this framework is drawn from mandatory corporate and business laws (e.g. legally-binding conditions), softer regulations (e.g. conditions to participate in certain spheres of the market and economy, such as listing on a national stock exchange) and voluntary measures (e.g. company-determined standards, such as employment, environment and anti bribery codes).

c- Aligning corporate governance and anti-corruption:

The processes that characterise strong corporate governance systems align in many respects with the key elements for countering bribery that have been outlined by TI in the Business Principles for Countering Bribery: effective risk management, integrity, transparency standards and accountability.

The overlap between rights and responsibilities, controls and oversight provide some clear entry points for linking the two complementary agendas and lessening the possibility that corrupt acts will occur (see side bar). When corruption happens in the private sector, it can arise within a company, between companies and in dealings with the public sector and private citizens.

To reinforce and operationalise this alignment, the active engagement of the board is essential. Given its organisational role, the board assumes responsibility over matters related to auditing (internal and external) standards, legal compliance systems and ethical policies which can be used to help to prevent abuses. Additionally, increasing a company's commitment to corporate social responsibility and sustainability initiatives — as part of overarching efforts to promote company values and ethical standards — can build the level of business integrity needed to mitigate corruption risks.

Globally, nations have worked together to advance such good practices and policies and to provide an international standard for helping to align corporate governance and anti-corruption.

These include the guidelines for multinational enterprises and principles for corporate governance that the OECD has set out as well as the passage of international anti-corruption accords such as the OECD Anti-Bribery Convention and the UN Convention against Corruption (UNCAC).

d- Recent reform efforts:

Recent corporate governance reforms have focused on the sources of system failures and their inability to effectively mitigate the full spectrum of company risks: financial, operational and corruption.

In response, companies and governments have increasingly pursued mechanisms to regulate and respond to the breakdowns that can lead to corruption by strengthening shareholder voting rights, providing clearer accounting standards to prevent fraud and making more transparent executive remuneration practices. As the current global crisis unfolds, new areas are likely to emerge that focus increasingly on board accountability, risk management and company disclosure policies (such as exposure to financial products).

Voting rights: Strengthening shareholder democracy is a trend most evident in Europe which is helping to create an accountability mechanism to combat corrupt practices on the part of a company's board. Rather than simply having 'the right of recommendation', shareholders vote to approve the board's performance from the past financial period and appoint its members. The primacy of shareholder rights — such as for share buy-backs, dividend payments and running shareholder meetings — is a shift supported by companies and new national legislation, for example in France, Germany and Italy .



Accounting fraud: The manipulation of a company's financial information may be designed to hide losses and bribes, bolster profits, inflate sales or disguise the level of indebtedness. The sudden collapses of the Italian conglomerate Parmalat (2003) and the US energy firm Enron (2002) are reminders of what can happen when accounting practices are used to misrepresent a company's true financial affairs. Despite the fallout for American banks from the Enron scandal, the current financial crisis has revealed that US financial institutions opted to use similar off-balance-sheet vehicles, which have proved to be their undoing and one of the impetuses of the turmoil.

Executive remuneration: It is difficult to determine when executive salaries and severance packages overstep the board's boundaries of trust and cross into the realm of corruption. However, most reformers agree that the lack of disclosure on why and how much remuneration company directors are given makes it hard for shareholders to hold boards accountable.

This may result in feelings of 'management capture', particularly when former company officers or friends sit on the board. In response, countries such as the US and Germany have called for independent company 'remuneration committees' as well as clear criteria for setting salary levels.¹² This issue has again risen to the top of the policy agenda in response to the crisis as countries from Switzerland to the US have made salary caps a condition for private banks to access financial lifelines funded by governments.¹⁴

e- Moving the agenda forward:

The global crisis has revealed how excessive risk taking within companies has been fuelled by the lack of transparency, accountability and integrity which allowed abuses and corruption to go unchecked. In many instances, corporate governance systems fell short in responding to these problems as a result of not having fully aligned their corporate governance systems with anti-corruption mechanisms.

Transparency international believes the risk management that corporate governance systems strive to achieve must equally and accurately assess corruption hazards if the framework is to function. For example, more appropriate and effective whistle blowing procedures by companies (an anti-corruption tool) could have ensured that insiders who recognised the risks and abuses could have had a channel to voice them,

Companies need to do much more to support good corporate governance and its role in contributing to the fight against corruption. To promote this change, TI advocates for action to strengthen the transparency, accountability and integrity of corporate governance.

Transparency:

Board and senior executive remuneration and benefits packages should be made public, tied to sustainable performance and determined by independent, non-executive directors. TI supports governments and institutional investors in their call for shareholder approval of individual board and senior executive remuneration packages (including long-term incentives, stock options and pensions). Companies should publicly report on corporate governance structures and anti-corruption systems, including their overall operations and performance.

While many companies dedicate a section in their annual report to describe their corporate governance system, this should be complemented by information on what a business is doing to combat corruption. Coverage of these issues may be alternatively included in corporate citizenship or sustainability reports that companies publish.

Accountability:



External assurance processes should be used to independently verify financial and non-financial data. These are now almost universally mandated by law for company financial reporting. Consideration should be given to requiring assurance work in other areas such as employment, environmental and integrity standards, including anti bribery programs.

Shareholder and stakeholder rights should include holding boards, owners and senior management accountable for their actions and respecting the rights of owners. The rights of minority shareholders must also be safeguarded to ensure their voice. Strengthened rights help to counter decisions that could provide a veil for boards to hide their corrupt actions or mask abuses.

Consideration should be given to formalising stakeholder dialogues as a way of improving stakeholder rights. This measure is particularly essential to provide for management's accountability on important business decisions which directly impact stakeholders and corruption risks.

Integrity:

The same good corporate governance standards should be applied across all units of a company and in all countries where it operates.

Good corporate governance standards, rules and ethical principles should not be limited to the parent company. Poor practices should not be allowed to be passed off to operating units or exported to other countries. Equally, companies should be committed to improving corporate governance standards in entities where they have influence (e.g. agents, joint ventures and consortia and suppliers). Specific board responsibilities should be designated to oversee corporate governance as well as ethical and integrity issues. Functions for policy formulation and oversight in the areas of corporate governance and company ethics should be clearly assigned to certain board member(s) and committees.

TI strongly supports the creation of independent audit and remuneration committees. Employees alerting the management of abuses should be protected from victimisation and retaliation. Case after case of corporate whistle blowing has shown that the majority of employees who report claims of corruption and misconduct are victimised and often forced to leave the company. To create a safe haven, TI calls for confidential hot lines, a supportive corporate culture and tailored trainings.

In supporting these components of good corporate governance, companies will be able to establish some of the mechanisms needed to mitigate corruption risks and demonstrate their zero tolerance for abuses. The effective creation, implementation and review of such a framework will insure that corruption is no longer considered an acceptable cost of doing business.¹¹

III. The Algerian initiatives to step up anti corruption and develop corporate governance practices:

1. Anti corruption initiatives in Algeria:

Algeria is a founding member of the Middle East and North Africa Financial Action Task Force, established on 30 November 2004.

a- Government Institutions and Initiatives:

Algeria's president created a committee to study corruption following his election in 1999, and in 2005, after his election to a second five-year term, his government submitted an Anti-Corruption law for



passage by both the People's National Assembly and the Senate in June 2005. The Law No. 06-01 of 20 February 2006 reinforces existing legislation to comply with the UN Convention against Corruption, but does not recognize civil society initiatives or protect those who denounce corrupt practices. Nor does it grant autonomy to a government agency announced by decree in November 2006 that awaits implementation. In early 2005 dozens of customs officials and at least thirty-three judges were dismissed in official campaigns against corruption. The "clean hands" campaign also put powerful governors in jail and forbade chief executive officers from leaving the country. There was a crackdown on customs authorities in February 2006: one hundred agents were fired, and 530 were being sued for alleged involvement in several corruption affairs. Already sentenced in absentia in March 2004 to five years of prison and a fine of \$85 million for banking violations, Abdelmoumen Khalifa is again to face trial in July 2006 for the "scandal of the century" involving his defunct Khalifa Bank. At least five former ministers and forty heads of state enterprises are witnesses who may also face prosecution. The presidential ordinance of February 28, 2008, broadens the authority of the general financial inspection, and the government auditing office, to discipline public sector enterprises.

b- Civil Society Initiatives:

Transparency International's affiliate in Algeria, the Algerian Association against Corruption, is very active and outspoken in its efforts to fight corruption in Algeria. Officers of the National Audit Court publicly protested at a press conference in August 2005 against being marginalized in their efforts to audit government finances.

c- Public Procurement:

Government procurement is supposed to be governed by the Law on Public Tenders rather than "private agreement", prohibited in a speech given by the president in April 2005. Government contracts for large projects are now awarded after a three step process:

- 1) A short list is created based only on the technical merits of the proposals submitted by the bidders;
- 2) The Algerian client redefines the project's specifications based upon the proposals received; and
- 3) The bidder with the lowest price for the redefined specifications gets the contract. State-owned companies are not required to purchase goods and services through tenders, but many of them do.

d- Anti Money Laundering:

Law No. 05-01, Algeria's first anti-money laundering legislation, was issued on February 6, 2005, and published in the Official Journal of February 9. It being implemented with technical assistance from the Bank of France and the World Bank, leading to the decree of the Ministry of Finance of 18 May 2008 detailing procedures for tracking suspicious movements of funds. In December 2004 a unit appointed by presidential decree began operations in the Ministry of Finance to detect any suspicious banking or financial operations¹².



e- Corruption Perception Index:

- In 2006 Algeria scored **3.1** on Transparency International's Corruption Perception Index and was in **84th place**, tied with Mauritania, among 163 countries
- In 2007 Algeria scored **3.0** and was in **99th place**, tied with Lebanon and ahead of Egypt as well as Mauritania, among 180 countries
- In 2008 Algeria scored **3.2** and was in **92nd** place, ahead of Lebanon but behind Morocco, among 180 countries
- In 2009 Algeria scored **2.8**, it is ranking in the **111th** position; the same as Egypt and Djibouti, ahead of Syria but behind Morocco.
- In 2010 Algeria scored **2.9**, ranks in the **105th** position, ahead of Argentina but behind Zambia.

2. Corporate governance in Algeria :

a- General Overview:

In 2003, the World Bank launched a Country Assistance Strategy in Algeria for Fiscal Years 2004 -2006 aimed at increasing the state's capacity to regulate the market and encourage the private sector to adopt good corporate governance practices through technical assistance. In a subsequent 2004 Financial Sector Assessment (FSA), the World Bank noted that, since the end of the 1980s, Algerian authorities have embarked upon a wide-ranging and credible modernization of laws and regulations governing financial intermediation. Significant deficiencies remain, however, with regards to laws and regulations, and Algeria lacks a modern corporate governance framework. Furthermore, although shareholders' rights seem to be well-protected, the absence of regulation on corporate governance weakens the protection of minority shareholders.

A 2007 African Peer Review Mechanism report under the New Partnership for Africa's Development initiative recommends that transparency and shareholder rights be improved in Algeria, management instruments be streamlined, private enterprises be encouraged to become joint stock companies and list on the stock exchange, a code of ethics be developed for companies at all levels, and corruption be curbed.

The Algerian Stock Exchange, which became operational in 1999, remains nascent after ten years of operation, with only three listed companies as of 2009. Initiated by the business community and supported by several government authorities, the Algerian Code of Corporate Governance was launched in March 2009. Despite the information provided above, there is insufficient publicly available information regarding Algeria's compliance with the Principles on Corporate Governance developed by the Organization for Economic Co-operation and Development. Per the same report, Algeria lacks a modern legal framework with regard to corporate governance, bankruptcy, mergers and acquisitions, and life insurance. Furthermore, although shareholder rights seem to be well-protected, the absence of regulation on corporate governance weakens the protection of minority shareholders.

In 2007, Algeria participated in the African Peer Review Mechanism (APRM) as part of the New Partnership for Africa's Development (NEPAD). The APRM has a distinct focus on corporate



governance. As part of the review of corporate governance, Algeria prepared a Country Self Assessment Report (CSAR) on Corporate Governance, which was reviewed as part of the completion of the Country Review Mission (CRM). Implementing the corporate governance related codes and a standard poses a big challenge for the government, according to the report, this states that “although measures are being taken to implement these, the progress achieved so far is insufficient both in terms of quality and quantity”.

Moreover, the non-compliance with code of ethics is a serious problem and corruption and fraud is commonplace in Algeria. The report also notes that in terms of transparency and shareholder rights, most Algerian corporations “have not developed adequate internal systems for providing information to their trading partners or shareholders”. Except for the few public corporations where “oversight by the supervisory authority is highly developed”, the provision of financial information, even for shareholders, is rare.

The lack of qualified accountants contributes to this problem and to address this issue, a program has been developed, funded by the European Union and running from 2007 to 2020, to train professionals and raise accounting and auditing codes to international standards. The APRM report emphasizes the importance of corporate reform in the economic transition process, and recognizes as priorities the modernization of management systems and the improvement of efficiency and transparency. It recommends that information systems be developed, management instruments be streamlined, private enterprises be encouraged to become joint stock companies and list on the stock exchange, a code of ethics be developed for companies at all levels, and corruption be curbed.

The Commercial Code establishes the accountabilities of corporations and duties of directors and management vis-à-vis their shareholders under different corporate structures. Amendments to the Commercial Code have helped reform creditors and shareholders' rights.

The Algerian Code of Corporate Governance was launched on March 11, 2009, according to a 2009 online newsletter published by the Center for International Private Enterprise. The code was initiated by the business community through three associations and gained the support of key government authorities, including the Ministry of Small and Medium Sized Enterprises and Artisans, the Ministry of Finance, and the Ministry of Justice. According to the APRM review, there were 109,732 companies in Algeria in 2005. The companies are predominantly (almost 90 percent) privately-owned. Meanwhile, the informal sector in the country accounts for about 30 percent of economic activity. The Algerian Stock Exchange was established under a 1993 legislative decree (Decree No. 93-10), and became operational in 1999. As noted in a 2009 U.S. Department of Commerce (DoC) Doing Business report, the Stock Exchange remains nascent after ten years of operation, with only three listed companies at the time of the report. According to the World Bank's 2004 FSA, the stock market in Algeria could play an important economic role by speeding up the privatization process, easing companies' reliance on bank financing, and promoting corporate governance practices.

Similarly the International Monetary Fund states in its 2008 Article IV Consultation with Algeria that “more effective financial intermediation would help channel Algeria’s large saving into private sector investment, which remains low outside the oil sector”.



The APRM review notes that the functioning of the stock exchange has been improving with the trading modernization and introduction of Act No. 03-04 of 2003, “which authorizes the banks to play the crucial role of broker in transactions on the exchange”. Moreover, a program is being implemented to energize the Algiers Stock Exchange, which encourages the issuance of bonds by local large companies. The Exchange is supervised by the Commission for the Organization and Surveillance of Stock Market Transactions (COSOB). Other regulating or administrative bodies include the Algeria Clearing, the Stock Exchange Management Company (SGBV), and intermediaries engaging in stock market operations. In its 2010 Doing Business report, the World Bank ranks investor protection in Algeria above the regional (Middle East and North Africa) average, but slightly below the OECD mean. The Investor Protection Index is a subcomponent of the Doing Business Indicators, and consists of three dimensions of investor protection: transparency of transactions (Extent of Disclosure Index), liability for self-dealing (Extent of Director Liability Index) and shareholders' ability to sue officers and directors for misconduct (Ease of Shareholder Suits Index). The indexes range between 0 and 10, with higher values indicating greater disclosure, greater liability of directors, greater powers of shareholders to challenge the transaction, and better investor protection. Algeria scores 6 in the disclosure index against a regional average of 6.3 and an OECD average of 5.9. It scores 6 in the Director Liability Index against a regional average of 4.8 and an OECD average of 5 and 4 in the Shareholder Suits Index against a regional average of 3.7 and an OECD average of 6.6.

b- Creation of Algerian institute of corporate governance late 2010:

An Algerian Institute on Corporate Governance will be created late 2010 by a group of private company managers and experts, with An Algerian Institute on Corporate Governance will be created late 2010 by a group of private company managers and experts, with the support of Ministry of Small and Medium Enterprise and crafts industry, a member of group said Tuesday in Algiers. An Algerian Institute on Corporate Governance will be created late 2010 by a group of private company managers and experts, with the support of Ministry of Small and Medium Enterprise and crafts industry, a member of group said Tuesday in Algiers. The holders of the project are the managers and experts that drafted the Algerian Code of Corporate Governance, published in March 2009, explained Meriem Bellil Medjoubi, co-writer of this Code, during a meeting organized by the Algerian-German Chamber of Commerce and Industry (AHK). The Institute will be assigned to ensure the application of the Algerian Code of Corporate Governance by Algerian SMEs and its updating in line with changes lived through by the country's economy, Bellil noted, adding that the project is "currently in the stage of funds collection." ¹³

Conclusion:

International institutions and in particular the World Bank and the IMF are rightly giving a great deal of attention to issues of governance and institutions in developing countries and they are particularly concerned with corruption. There is strong evidence that governance and institutions matter in accelerating development and in reducing poverty in developing countries. However, the evidence strongly suggests that there is no common set of institutions that all successful developing countries have shared. More worrying is the observation that governance and institutions in the most successful developing countries have often been starkly at variance with the good governance model that international agencies are committed to. Even the most successful developing countries have suffered



from significant corruption and other governance failures during the early stages of their development. However, they did have significant governance capacities that allowed states to ensure that the conditions for rapid growth and sustained political legitimacy of the state were maintained. A sustained pressure to reduce corruption and improve governance is both necessary and desirable but these ends cannot be achieved unless attention is also given to the governance capacities required for accelerating and sustaining growth. The very desirable goals of good governance may be neither necessary nor sufficient for accelerating and sustaining development. Nevertheless, some types of anti-corruption and governance reforms are likely to be part of a sustainable development strategy in most countries. The challenge for developing countries trying to devise institutional reform and anti-corruption strategies is to learn the right lessons from the international experience and create feasible governance reform agendas appropriate and feasible for their own circumstances. The current governance and anti-corruption agendas do not achieve this and may even be doing damage by setting unachievable targets for developing countries and diverting attention from critical governance reforms.

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